

THE CITY OF



OWATONNA

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Date: December 31, 2020
To: Honorable Mayor, City Administrator, and City Council
From: Mark M. Walbran, City Attorney
Subject: West Hills Lodge

Purpose:

Proposed Resolution 15-21 authorizes Council to sign an Agreement with Lee Foundation which is purchasing the West Hills Lodge to release certain deed restrictions in a 1976 deed from the City to Steele County which granted the City a right to repurchase the property if the County ever chose to sell it and which also required any changes to the exterior of the property be approved by the West Hills Commission. The Resolution also releases the property from deed restrictions in a 1981 deed from The City to West Hills Lodge, Inc. which included the above restrictions and which further provided that if the property were no longer used for a halfway house the property would then revert to Steele County. The Lee Foundation (Anna and Lawrence Lee) has asked that these restrictions be deleted. In their place, the Lees have agreed that (1) any changes to the exterior of the building will be submitted to the City for its approval before undertaking such exterior changes. In addition, the Lees have agreed that if they should ever decide to sell the property they would give the City the first right to purchase the property.

Background:

After West Hills Lodge vacated the building, Steele County decided that it did not want to take back ownership of the building as provided in the 1981 deed. The Lee Foundation organized by Lawrence and Anna Lee signed a Purchase Agreement to acquire the West Hills Lodge site from Azure Opportunities, LLC, the successor to West Hills Lodge, Inc. Lee Foundation plans to put the property to its former use of a rehabilitation halfway house. The restrictions in the 1976 deed and the 1981 deed constitute "clouds on title." The Lees have asked the City to release the restrictions in the old deed and have agreed that (1) any exterior changes to the building will be referred to the West Hills Commission and to the City for approval; and (2) in the event Lees ever decide to sell the building they would provide the City with the Right of First Offer.

Budget Impact:

None.

Recommendation:

City staff recommends approval of Resolution No.15-21.

RESOLUTION NO. 15-21

A RESOLUTION RELEASING LAND RESTRICTIONS

WHEREAS, the Lee Foundation requests the City release certain old restrictions under a 1976 deed from the City to Steele County to the West Hills Lodge site and restrictions under a 1981 deed from City to West Hills Lodge, Inc.; and

and

WHEREAS, the City and Lee Foundation have agreed to certain new re-stated restrictions related to the property;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Owatonna, as follows:

1. That the Mayor and City Administrator are hereby authorized to execute and deliver the following documents:
 - (a) Agreement attached as Exhibit A; and
 - (b) Release of Land from Restrictions attached as Exhibit B
2. The Agreement and Release shall be recorded in the Office of the Steele County Recorder.
3. The City Administrator is authorized to execute and deliver any and all other documents and to do all other acts and things necessary and expedient to the transaction.

Passed and adopted this ___ day of _____, 2021, with the following vote:

Aye _____; No _____; Absent _____.

Approved and signed this _____ day of _____, 2021.

Thomas A. Kuntz, Mayor

ATTEST:

Kris M. Busse, City Administrator/City Clerk

EXHIBIT A

AGREEMENT

This Agreement made this ____ day of January 2021 by and between the CITY of Owatonna, Minnesota, a Minnesota Municipal Corporation (“CITY”) and the Lee FOUNDATION, a non-profit organization organized and existing under the laws of the state of Minnesota, (“FOUNDATION”).

RECITALS

1. FOUNDATION is purchasing premises formerly known as the West Hills Lodge located at 545 Florence Avenue, Owatonna, MN legally described as follows:

Lot 5, Block 2, West Hills Addition No. 2, CITY of Owatonna, Minnesota

from Azule Opportunities, LLC (“AZULE”).

2. Azule acquired title from West Hills Lodge, Inc. by quit claim deed dated 12/12/19 recorded on 12/12/19 as Document No. A000426862 in the Office of the County Recorder, Steele County, Minnesota.
3. West Hills Lodge, Inc. acquired title from CITY of Owatonna by quit claim deed on 9/2/81, recorded on 9/21/1981 as Document No. 181478 in the Office of the County Recorder, Steele County, Minnesota, which deed included the following two restrictions:
 - a. The property herein described shall be used for the purpose of operating a residential halfway house for alcohol and drug users. That should the property cease to be used by the grantee for such purpose, then the property shall revert to the County of Steele, State of Minnesota.
 - b. That the conveyance of the property is further subject to the restrictions as set forth in a deed dated May 19, 1976, and recorded on May 25, 1976, in Steele county Recorder’s office in Book 161 of Deeds, page 150.
4. The CITY conveyed the Premises to Steele County by quit claim deed dated 5/19/76 and recorded on 5/27/76 in Book 161 of Deeds, page 150, as Document No. 162064 with the following two restrictions:
 - a. Any exterior changes to the building located on the subject premises are to be first referred to the West Hills Commission of the CITY of Owatonna for their approval prior to the commencement of any work.

- b. Sale of the subject property is further conditioned that if the grantee, County of Steele, ever desires to sell this property that the CITY of Owatonna would have first opportunity to purchase the property at the original cost plus depreciated value of improvements.
5. FOUNDATION requests that the CITY execute and deliver a Release of Restrictions to release any and all rights of repurchase or reverter set forth in the above deeds.

COVENANTS

NOW, THEREFORE, in consideration of the foregoing and the mutual promises hereinafter set forth, CITY and FOUNDATION agree as follows:

1. CITY agrees to execute and deliver a Release of Restrictions in the Form hereto attached as Exhibit A releasing any and all rights of repurchase or reverter as set forth in Recitals 3 and 4 above.
2. FOUNDATION hereby grants to CITY a continuing Right of First Offer to purchase the above-described premises as follows:
 - a. In the event FOUNDATION desires to sell the premises FOUNDATION shall provide the CITY with its notice of intent to sell specifying the general terms upon which FOUNDATION desires to sell the premises (the "Offering Notice"). If CITY desires to purchase the premises CITY shall within 60 days after receipt of the notice, notify FOUNDATION in writing either (1) that the CITY intends to exercise its Right of First Offer, or (2) that CITY declines to exercise its Right of First Offer. If CITY fails to give either notice within 60 days it will be deemed to have declined to exercise its Right of First Offer.
 - b. If CITY declines to exercise, or is deemed to have declined to exercise, its Right of First Offer, FOUNDATION will be entitled to sell the premises after the date of such declining or deemed declining. Such sale by FOUNDATION must be on substantially the same terms as in the Offering Notice. "Substantially the same terms" as in the offering notice means (1) the net purchase price (i.e. taking into account commissions and other costs if same would be incurred in a sale to a third party but would not be incurred in a sale to CITY) paid by a third party is at least 95% of the price presented in the offering notice and (2) the remaining terms are not materially more favorable to the purchaser than those in the offering notice.
 - c. If the FOUNDATION desires to complete a sale of the premises on terms substantially different than those included in the Offering Notice, then FOUNDATION must give written notice to the CITY of its Right of

First Offer to purchase the Premises upon such different terms and conditions. If CITY desires to purchase the premises CITY shall within 60 days after receipt of the notice, notify FOUNDATION in writing either (1) that the CITY intends to exercise its Right of First Offer, or (2) that CITY declines to exercise its Right of First Offer. If CITY fails to give either notice within 60 days it will be deemed to have declined to exercise its Right of First Offer.

- d. If CITY decides to purchase the Premises (a) under the terms of the Offering Notice or (b) upon such substantially different terms and conditions, the CITY shall within the 60 day period execute the letter of intent presented by the FOUNDATION and make a non-refundable deposit per the terms of the letter of intent, and close the transaction within 60 days.
- e. If the Premises are sold to a third party after compliance with the terms of this Agreement, CITY's Right of First Offer thereafter shall be null and void and shall not be binding on such purchaser nor applicable to any subsequent sale of the Premises.

3. FOUNDATION agrees that any exterior changes to the building located on the subject premises are to be first referred to the West Hills Commission and the CITY of Owatonna for approval prior to commencement of any work consistent with sections 32.035-32.037 of the 2015 Ordinance Code of the CITY of Owatonna, as amended.

4. Covenants Run With the Land. The agreements, covenants and conditions contained in this Agreement are and shall be deemed to be covenants running with the land and shall be binding upon and shall inure to the benefit of CITY and FOUNDATION, and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year above.

LEE FOUNDATION

By: _____
Its: _____

By: _____
Its: _____

