

# THE CITY OF



# OWATONNA

**Troy Klecker**  
Community Development Director

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Owatonna, MN 55060-4794  
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DATE: February 25, 2021  
TO: Mayor and City Council  
FROM: Community Development Dept. - Troy Klecker  
SUBJECT: Eastgate Apartments - Phase 2

**Purpose:**

City Council to approve a Purchase Agreement with LWO Properties, LLC for the development of the second phase of the Eastgate Apartments.

**Background:**

The City has been working with LWO Properties, LLC on developing affordable housing in the City for over a decade. Currently, they are developing a 36-unit workforce housing project on Cherry Street, next to Domino's Pizza. Tax Credits have been awarded for this project to make these units more affordable. Tax Credit projects take approximately 4 years from start to finish and there are very few developers that do these projects. One of the hardest parts of the project is securing a piece of property for a project.

The City has additional land adjacent to the Eastgate project in which to partner with the developer to develop another workforce housing project. The developer would pursue tax credits, probably in 2022, after the Eastgate project is completed and rented up. The developer would pay the City \$50,000 earnest money now to secure the property in order to pursue tax credits. Staff would work with the developer to secure tax credits to complete another workforce housing project.

This second phase would be identical to the first phase of the Eastgate project and the Northgate project on Rose Street in which the City would contribute \$450,000 towards the project in order to be awarded tax credits. Those funds can be reimbursed through tax increment financing like the previous projects. The land is valued at \$200,000.

**Budget Impact:**

None at this point. The City would be committing \$450,000 towards another workforce housing project, probably in 2023, if the purchase agreement is executed.

**Staff Recommendation:**

Staff recommends approval of the purchase agreement with LWO Properties, LLC for Phase 2 of the Eastgate Apartments.

**PURCHASE AGREEMENT**  
**BETWEEN CITY OF OWATONNA**  
**AND**  
**LWO PROPERTIES, LLC**

**Dated:** \_\_\_\_\_, 2021 (the "Effective Date")

RECITALS

WHEREAS, the Buyer and Seller have worked together to develop property adjacent to the Property, and desire to enter into this Agreement as well as a Purchase Option Agreement with respect to a future development; and

WHEREAS, the Buyer and Seller desire to enter into this Agreement pursuant to the terms herein.

1. **Parties.** The parties to this Purchase Agreement (this "Agreement") are:
  - a. City of Owatonna, Minnesota, a Minnesota municipal corporation, ("Seller")  
  
Attn: Kris Busse, City Administrator, City of Owatonna, 540 West Hills Circle, Owatonna, MN 55060; and
  - b. LWO Properties, LLC, a Florida limited liability company, ("Buyer")  
  
Attn: Lawrence W. Olson.

This Agreement sometimes refers to Seller and Buyer individually as a "Party" and collectively as the "Parties".

2. **Property.** The real property that is the subject of this Agreement is located in the City of Owatonna, Steele County, Minnesota, and is legally described on the attached Exhibit A (the "Property"). The term "Property", as used in this Agreement, will include any improvements and fixtures located on the Property and all hereditaments and appurtenances to the Property. The Property may adjusted by mutual agreement of the Parties for the inclusion of additional parcels of real property.

3. **Purchase and Sale.** For and in consideration of the sum of One and no/100ths Dollars (\$1.00) and in consideration of the mutual promises set forth herein, Seller agrees to sell the Property to Buyer pursuant to the terms of this Agreement and Buyer agrees to purchase the Property from Seller pursuant to the terms of this Agreement.

- a. Within five (5) business days of the Effective Date, Buyer will deliver to Seller, a deposit in the amount Fifty Thousand and no/100ths Dollars (\$50,000.00) (the "Earnest Money"). Notwithstanding anything else to the contrary herein, the Earnest

Money shall be refundable to Buyer upon a termination of this Agreement and/or returned to Buyer at Closing.

b. As and for further consideration, Buyer agrees to construct an apartment building with parking (the "Project") within three (3) years of the Closing Date herein. In the event the Project is not substantially completed within three (3) years of the Closing Date, it is agreed that Seller shall be entitled to recover from Buyer its actual documented out of pocket costs extended for the Project, including the Earnest Money; provided, however, Seller shall not be able to recover consequential or punitive damages.

c. As and for further consideration, Seller agrees to provide \$450,000 in site improvements to and acquisition costs for the Property. Of the \$450,000, the Seller provided \$200,000 in site acquisition costs prior to the Effective Date of this Agreement. The Seller anticipates to receive tax increment financing funds for the Property. The remaining \$250,000 shall be used for: (i) acquiring additional property estimated at \$160,000, in which case this Agreement shall be revised to include such additional property, and (ii) site improvements estimated at \$90,000, which shall include but not be limited to improving the condition of the Property and environmental remediation for the Project including, but not limited to, demolition existing structures, providing sewer and water services, providing certain concrete work, providing soil correct and engineering work. Seller agrees to establish a tax increment financing district and agrees to rezone (as residential multifamily housing) and re-plat the Property as is necessary for the development of the Project.

4. **Conveyance Terms.** At Closing, Seller will execute and deliver to Buyer a Limited Warranty Deed conveying fee title to the Property to Buyer subject only to:

- a. Building, zoning and subdivision statutes, laws, ordinances and regulations;
- b. Reservations of minerals or of mineral rights in favor of the State of Minnesota, if any;
- c. Covenants, conditions, restrictions and easements of record, if any;
- d. Any defects in the marketability of Seller's actual or record title to the Property which exist as of the Date of Closing (defined below) and which Buyer does not object to pursuant to the provisions of **Section 8** below.

(hereinafter, collectively, the "Permitted Encumbrances").

5. **Seller's Disclosure.** Seller will deliver to Buyer such of the following as are currently in Seller's possession or readily available to Seller at no cost within ten (10) days of the Effective Date:

- a. Any documentation or reports in Seller's possession relating to the Property. Buyer acknowledges that Buyer has environmental reports for the Property.

6. **Buyer's Inspection.** At all times prior to the Date of Closing, Buyer and its agents will have the right, upon reasonable notice to Seller, to go upon the Property to inspect the Property and to determine the condition of the Property and the improvements located thereon; including, specifically, the presence or absence of hazardous substances, petroleum products and asbestos in, on, or about the Property. Buyer agrees to indemnify and defend Seller from and to hold Seller harmless against any and all claims, causes of action or expenses, including attorneys' fees, relating to or arising from Buyer's presence on the Property prior to the Date of Closing and to provide Seller with evidence that Buyer maintains reasonably adequate liability insurance, including contractual liability endorsement or provisions insuring Buyer's potential liabilities under this **Paragraph 6**. Buyer agrees to repair any damage to the Property caused by such inspections and to return the Property to substantially the same condition as existed prior to Buyer's inspection. **Buyer acknowledges that Buyer is purchasing the Property in reliance on Buyer's inspection of the Property pursuant to this Section and on Buyer's judgment regarding the sufficiency of such inspections. Buyer is not relying on any written or oral representations or statements that Seller or Seller's Agent have made. Subject to Buyer's right to terminate this Agreement pursuant to Section, Buyer is purchasing the Property in "AS IS" condition.**

7. **Evidence of Title.** To demonstrate that Seller's title is good and marketable of record, within a reasonable time after acceptance of this Purchase Agreement, Seller shall furnish Buyer with an ALTA commitment for title insurance, an Abstract of Title or a Registered Property Abstract certified to date including proper searches conveying bankruptcies and state and federal judgments, federal court judgment liens in favor of the U.S., liens, and levied and pending special assessments.

8. **Examination of Title.** Within fourteen (14) days of Buyer's receipt of the last item of the Evidence of Title, Buyer may give Seller written notice of alleged defect(s) in the marketability of Seller's actual and record title to the Property and state the curative actions requested of Seller ("Objections"). The Permitted Encumbrances may not serve as a basis for an Objection.

Within fourteen (14) days of Seller's receipt of Buyer's Objections, Seller will notify Buyer, in writing, if Seller will attempt to make Seller's title to the Property marketable. If Seller notifies Buyer that Seller will attempt to make Seller's title to the Property marketable, Seller will have up to thirty (30) days from Seller's receipt of Buyer's Objections to do so (the "Cure Period"), or to obtain appropriate modifications to the Title Commitment and, if necessary, the Date of Closing will be rescheduled accordingly. If Seller makes Seller's title marketable within the Cure Period, Seller will notify Buyer, in writing, and the Parties will close pursuant to the terms of this Agreement.

Any defects in the marketability of Seller's title to the Property which Buyer does not object to, in writing, within the time period set forth above, will be deemed Permitted Encumbrances.

Buyer specifically agrees that notwithstanding the continued existence of a defect or defects in the marketability of Seller's title to the Property, Seller will be deemed to have satisfied Buyer's Objections if Buyer's title insurer removes the matters giving rise to such defects from

the list of requirements and/or exceptions set forth in the Title Commitment or agrees to endorse the Title Commitment to insure Buyer against loss or damage resulting directly from the matters giving rise to such defect(s).

Notwithstanding any provisions herein, Seller must satisfy all liens on the Property on or before the Date of Closing. If Seller notifies Buyer that Seller does not intend to cure Buyer's Objections or if Seller notifies Buyer that Seller intends to cure Buyer's Objections to title but is unable to do so or obtain appropriate modifications to the Title Commitment within the Cure Period, Buyer may either:

- a. terminate this Agreement pursuant to the procedures set forth in **Section 17**;
- or
- b. notify Seller that Buyer waives Buyer's Objections. If Buyer waives Buyer's Objections, the matters giving rise to such Objections will be deemed a Permitted Encumbrance and the Parties will fully perform their obligations under this Agreement. The Parties will establish a new Date of Closing by mutual agreement, but if the Parties cannot establish a new Date of Closing by mutual agreement, the Date of Closing will be the date ten (10) days from the date Seller has deemed to have received notice from Buyer that Buyer waives Buyer's Objections.

If Buyer does not notify Seller of Buyer's election to terminate this Agreement pursuant to subsection (a) above or waive Buyer's Objections pursuant to subsection (b) above within ten (10) days of the expiration of the Cure Period provided for above, it will be deemed a waiver of Buyer's right to terminate and this Agreement shall continue in full force and effect.

9. **Buyer and Seller Contingencies.**

a. **Buyer Contingencies.** In addition to Buyer's right to terminate this Agreement pursuant to **Section 8**, Buyer's obligations under this Agreement are contingent on Buyer satisfying itself as to the following matters by the dates or within the time periods set forth in each subsection below. Failure of Buyer to give written notice of exercise of the contingency as of such date constitutes waiver of such contingency. If Buyer gives notice of the exercise of such contingency, then the Parties will proceed pursuant to **Section 10**:

- (i) On or before the Closing Date, Buyer obtains the necessary funding for the Project from financing parties, all of which is satisfactory to Buyer;
- (ii) On or before the Closing Date, Buyer obtains the necessary funding for the Project from Minnesota Housing Finance Agency;
- (iii) On or before the Closing Date, Buyer, in its sole and absolute discretion, determines that the Project is feasible; and
- (iv) On or before thirty (30) days after the Effective Date, Buyer's determination, in Buyer's reasonable discretion, based on the information in Buyer's possession, Buyer's inspections and any other relevant information that the

condition of the Property, including, but not limited to, environmental and soil conditions, and improvements located on the Property are acceptable to Buyer.

If Buyer's contingencies are not satisfied, Buyer may, on or before the date which is the end of the relevant contingency period, terminate this Agreement by providing Seller with written notice of such termination, as provided in Section 20 hereof. Failure to give such notice constitutes a waiver of the contingency. Notwithstanding anything herein to the contrary, if the contingencies described in Section 9 are not satisfied by the specified contingency date, Buyer may extend such contingency date for a period of up to thirty (30) days by (i) providing Seller and Commercial Partners Title LLC, a Minnesota limited liability company (the "Title Company"), with notice of such extension, which notice must include a waiver of Buyer's right to terminate this Agreement pursuant to Section 20 (the "Extension Notice"), on or before the date which is thirty (30) days after the Effective Date. If the Extension Notice does not include a waiver of Buyer's right to terminate this Agreement, the Extension Notice will be of no force and effect, and the Parties shall proceed to close on the Date of Closing in effect as if no Extension Notice had been given. Notwithstanding anything to the contrary herein, the Earnest Money shall be fully refundable to Buyer until the Buyer waives all of the Buyer contingencies set forth in this Section 9.

10. **Closing.** The Parties will close in escrow through the offices of the Title Company on or before September 30, 2024 (the "Initial Closing Date"). Buyer and Seller acknowledge that Buyer is submitting applications to fund the Project with housing tax credits. If Buyer applies for housing tax credits on or before the Initial Closing Date, Buyer may extend the Initial Closing Date to on or before September 30, 2026 (the "Extended Closing Date", and together with Initial Closing Date (as the case may be), the "Closing Date") by providing notice to Seller of its right to exercise such extension. or such later date as the Parties may establish at which time the closing of the purchase and sale (the "Closing") will take place Subject to the terms and conditions contained herein, including the fulfillment of the following:

- a. Seller will:
  - (i) execute and/or deliver to the Title Company for recording in the appropriate county land records any documents necessary to establish Seller's title to the Property, subject only to Permitted Encumbrances;
  - (ii) execute and deliver to Buyer the deed described in **Section 4** above;
  - (iii) execute and deliver to Buyer and Buyer's title insurer, if any, an appropriate Minnesota form affidavit evidencing the absence of bankruptcies, judgments, tax liens or marriage dissolution proceedings involving parties with the same or similar names as Seller and evidencing the absence of mechanic's lien rights affecting the Property, unrecorded interests affecting the Property, persons in possession of the Property and known encroachments or boundary line questions affecting the Property;
  - (iv) deliver to Buyer appropriate municipal resolutions authorizing Seller's conveyance of the Property to Buyer and identifying the individuals

authorized to execute the deed described in **Section 4** and any other documents required hereunder;

(v) execute and deliver to Buyer a non-foreign affidavit containing such information as is required under Section 1445(b)(2) of the Internal Revenue Code and any regulations relating thereto;

(vi) execute and deliver to the Title Company or other appropriate party any appropriate Federal Income Tax Reporting Forms;

(vii) execute and deliver to the closing agent a completed Minnesota Department of Health Well Disclosure Certificate or include on the deed described in **Section 4** the statement "Seller certifies that Seller does not know of any wells on the described real property" or the statement "I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate"; and

(viii) execute and deliver a development agreement (the "Development Agreement") between the Seller and Buyer, which will set forth certain terms for Buyer to develop the Project, and the Seller will agree to provide certain site improvements and environmental remediation for the Project including, but not limited to, demolition existing structures, providing sewer and water services, providing certain concrete work, providing soil correct and engineering work. The Development Agreement may be entered into at, before or after Closing.

b. Buyer will:

(i) tender the Purchase Price to Seller pursuant to the provisions of **Section 3** together with Buyer's written understanding to complete the Project as provided in **Section 3**;

(ii) deliver to Seller an opinion of Buyer's counsel dated as of the Date of Closing in a form reasonably satisfactory to Seller, stating that Buyer has been duly formed and is in good standing under the laws of the State of Minnesota and that Buyer has the requisite entity power and authority to enter into and perform this Agreement and any and all documents which Buyer has executed in connection with this Agreement; and that such documents have been duly authorized by all necessary entity acts on the part of Buyer and have been duly executed and delivered; and

(iii) execute and deliver the Development Agreement.

11. **Possession; Condition of Property at Closing; Prorations.** Upon Buyer's full performance of Buyer's obligations under this Agreement, Seller will deliver possession of the Property to Buyer. Seller will contact all utility providers, including, but not limited to electric, natural gas, sewer and water ("Utility Providers"), and arrange for final, private utility meter reading(s) on or before the Date of Closing and will arrange for Utility Providers to close all of

Seller's accounts on the Date of Closing. Buyer will contact Utility Providers on the Date of Closing and transfer such utilities from Seller's name to Buyer's name.

12. **Real Estate Taxes and Special Assessments.** The Parties will pay the real estate taxes ("Real Estate Taxes"), and special assessments ("Special Assessments") as follows:

a. On or before the Date of Closing, Seller will pay Real Estate Taxes and Special Assessments, if any, and any penalties and interest thereon, due and payable with respect to the Property for all years prior to the year of Closing. Seller represents that it will not have to pay Real Estate Taxes and Special Assessments while Seller owns the Property;

b. Buyer and Seller will pro-rate the Real Estate Taxes, if any, and installments of Special Assessments, if any, due and payable in the year of Closing, on a per-diem basis, using a calendar year, to the Date of Closing. The Parties will pro-rate these amounts using current year real estate tax information, if available, and, if current year real estate tax information is not available, using the amount of the Real Estate Taxes and Special Assessments due and payable in the year immediately preceding the year of Closing. Any such pro-rations will be final and no subsequent adjustments, refunds or additional payments will be made; and

c. As of Closing, Buyer will pay and assume all Special Assessments pending, levied or deferred, and Buyer will pay all Real Estate Taxes and Special Assessments due and payable in the years following the year of Closing.

After Closing, Buyer acknowledges that the Property will not have tax exempt status unless Buyer takes the necessary steps to qualify the Property under the appropriate Minnesota statutes.

13. **Seller's Representations.** Seller represents to Buyer the following:

a. Seller has the legal and corporate authority to enter into this Agreement and to sell the Property. The individuals executing this Agreement on behalf of Seller have the legal and corporate authority to execute this Agreement on behalf of Seller and to bind Seller.

b. Seller is not a foreign person, foreign corporation, foreign partnership, foreign trust or foreign estate, as defined in Section 1445 of the Internal Revenue Code.

c. There have been no bankruptcy or dissolution proceedings involving Seller during the time Seller has had any interest in the Property.

d. There are no unsatisfied judgments of record against Seller.

e. There are no state or federal tax liens filed against Seller.

f. There has been no labor or materials furnished to the Property for which payment has not been paid.

g. There are no unrecorded mortgages, contracts, purchase agreements, options, leases, easements or other agreements or interest relating to the Property.

h. There are no persons in possession of any portion of the Property other than pursuant to a recorded document.

i. To the best of Seller's actual knowledge, that there are no encroachments or boundary line questions affecting the Property.

j. Seller is the fee owner of the Property subject only to Permitted Encumbrances.

k. The Property has legal access to a public right of way.

l. Seller has not received notice of any new public improvement project(s), the cost of which a governmental entity may assess against the Property.

m. To the best of Seller's actual knowledge there is no action, litigation, governmental investigation, condemnation or administrative proceeding of any kind pending against Seller or involving any portion of the Property, and no third party has threatened Seller with commencement of any such action, litigation, investigation, condemnation or administrative proceeding.

n. Seller is not in default in the performance of any of Seller's obligations under any mortgage, contract for deed, easement agreement, covenant, condition, restriction or other instrument relating to the Property.

o. **Minnesota Required Statutory Disclosures.** As required by statute, Seller represents as follows:

(i) Wells.

To the best of Seller's actual knowledge, there are no wells located on the Property.

(ii) Storage Tanks.

To the best of Seller's actual knowledge, there is one underground storage tank located on the Property.

(iii) Septic.

Sewage generated at the Property goes to a facility permitted by the Minnesota Pollution Control Agency.

(iv) Hazardous Substances.

To the best of Seller's actual knowledge, that there is no basis for Seller to record with the County Recorder or Registrar of Titles an affidavit described in Minnesota Statutes, § 115B.16, Subd. 2 indicating that there is "extensive contamination" on the Property.

(v) Methamphetamine Production.

To the best of Seller's knowledge, methamphetamine production has not occurred on the Property.

14. **Buyer's Representations.** Buyer hereby represents to Seller as follows:

a. Buyer represents that Buyer has the full and complete authority to enter into this Agreement and to purchase the Property. The individuals executing this Agreement on behalf of Buyer have the legal authority and the legal capacity to execute this Agreement on behalf of Buyer and to bind Buyer.

15. **Assignment.** Buyer may not assign Buyer's rights and obligations under this Agreement to a third party without the written consent of Seller. Seller may grant or withhold Seller's consent to an Assignment at Seller's sole discretion. Notwithstanding the foregoing, Buyer may assign its interest in this Agreement to an affiliate of Buyer or an entity under control of Lawrence Olson or LWO Properties, LLC without the consent of Seller.

16. **Default.** If either Party defaults in the performance of any of such Party's obligations under this Agreement, the non-defaulting Party may, after written notice to the defaulting Party, suspend performance of its obligations under this Agreement, and the rights of the non-defaulting Party are as follows:

a. **Buyer's Default.** If Buyer defaults in the obligation to close under this Agreement or otherwise defaults in its obligation under this Agreement, Seller will have the right to:

(i) Terminate this Agreement pursuant to Minnesota Statutes, § 559.21 and retain fifteen thousand dollars (\$15,000) as liquidated damages; or

(ii) initiate a civil action to compel Buyer's specific performance of Buyer's obligations under this Agreement provided that Seller commences the action within six (6) months of the date of Buyer's default. In any such action for specific performance, Seller may not recover Seller's attorneys' fees.

The remedies set forth in this **Section 16.a** are Seller's sole and exclusive remedies in the event of Buyer's failure to close. If Buyer defaults in any other obligation, Seller will have the right to commence an action in a court of competent jurisdiction seeking a judgment termination of this Agreement and awarding damages to Seller, excluding Seller's attorneys' fees and costs.

b. **Seller's Default.** If Seller defaults in the performance of any of Seller's obligations under this Agreement, Buyer may:

(i) terminate this Agreement and Seller will deliver to Buyer any Earnest Money and the Buyer's actual out of pocket documented costs and expenses in an amount not to exceed the sum of \$50,000.00 as liquidated damages which Buyer will receive as compensation for Seller's default due to the difficulty and uncertainty of ascertaining Buyer's actual damages; or

(ii) initiate a civil action to compel Seller's specific performance of Seller's obligations under this Agreement provided that Buyer commences such action within six (6) months of the date of Seller's default. In any such action for specific performance, Buyer may not recover Buyer's attorneys' fees.

The remedies set forth in this **Section 16.b** are Buyer's sole and exclusive remedies in the event of Seller's default.

17. **Termination.** Various sections of this Agreement allow Buyer and Seller to terminate this Agreement under certain conditions. The following procedures will govern the Parties' exercise of their termination rights:

a. A Party intending to terminate this Agreement (the "Terminating Party") will notify the non-terminating Party (the "Non-Terminating Party"), in writing, of the Terminating Party's intent to terminate this Agreement.

b. The Terminating Party's notice will recite the Section of this Agreement that authorizes the Terminating Party's termination of this Agreement and will describe the facts and circumstances which the Terminating Party asserts justify termination under the referenced Section.

c. The Terminating Party's notice of termination will be effective as of the date the Terminating Party deposits the notice of termination with the United States Postal Service, with all necessary postage paid, for delivery to the Non-Terminating Party via certified mail, return receipt requested at the address set forth in **Section 1** above. If the Terminating Party delivers a notice of termination in a different manner than described in the preceding sentence, the notice of termination will be effective as of the date the Non-Terminating Party actually receives the notice of termination. The Terminating Party will also mail a copy of the notice of termination to the Parties respective attorneys, if applicable, as provided for in **Section 20** below.

d. If the Non-Terminating Party disputes the Terminating Party's right to terminate this Agreement, the Non-Terminating Party will so notify the Terminating Party, in writing, within five (5) business days of the Non-Terminating Party's receipt of the Terminating Party's notice of termination.

e. If the Non-Terminating Party does not dispute the Terminating Party's right to terminate this Agreement, Buyer will execute and deliver to Seller a recordable quit claim deed conveying the Property to Seller, and on the receipt of such a quit claim deed, Seller will return or instruct the Earnest Money Agent to return the Earnest Money and any interest which the Earnest Money has earned to Buyer.

f. If the Parties dispute the validity of an attempted termination of this Agreement, either Party may initiate a civil action in a court of competent jurisdiction to determine the status of this Agreement, and the Party that prevails in any such action will be entitled to recover the costs excluding attorneys' fees which such Party incurs in the action from the non-prevailing Party.

18. **Time.** Time is of the essence for all provisions of this Agreement.

19. **Survival of Terms.** The Parties' obligations under this Agreement and the representations and warranties which the Parties have recited in this Agreement will survive Closing and Seller's delivery of a deed to Buyer.

20. **Notices.** All notices provided for in this Agreement will be in writing. The notice will be effective as of the date three (3) days after the Party sending such notice deposits the notice with the United States Postal Service with all necessary postage paid, for delivery to the other Party via certified mail, return receipt requested, at the address set forth in **Section 1** above. If Party delivers a notice provided for in this Agreement in a different manner than described in the preceding sentence, notice will be effective as of the date the other Party actually receives the notice. The Party sending the notice will also mail a copy of the notice to the Parties' respective attorneys via first class United States mail at the addresses set forth below:

Seller: City of Owatonna  
540 West Hills Circle  
Owatonna, MN 55060  
Attn: Kris Busse

Buyer: LWO Properties, LLC  
1600 University Ave. #212  
St. Paul, MN 55104  
Attn: Lawrence W. Olson

21. **Full Agreement.** The Parties acknowledge that this instrument and any and all attachments or exhibits hereto represents the full and complete agreement of the Parties relating to the purchase and sale of the Property and all matters related to the purchase and sale of the Property. This Agreement supersedes and replaces any prior agreements, either oral or written, and any amendments or modifications to this Agreement must be in writing and executed by both Parties to be effective.

22. **Governing Law.** This Agreement has been made under the laws of the State of Minnesota and such laws will control its interpretation.

23. **No Contra Proferentem Presumption.** Both Seller and Buyer have participated in the drafting of this Agreement. Each has had the advice of its own separate legal counsel. In case of any issue as to the interpretation of this Agreement the *doctrine of contra proferentem* shall not apply and there shall be no presumption against either party as the drafter of this Agreement.

24. **Access and Construction License.** An affiliate of Buyer, LWO Limited Partnership #116, a Minnesota limited partnership (the "Phase I Developer") is developing real

property that this adjacent to the Property (the “Adjacent Project”). Seller hereby grants a non-exclusive temporary license for construction purposes (“Temporary License”) on, over and across the Property (“License Area”). The grant of the Temporary License herein shall be for the benefit of Buyer and its successors, assigns, agents, employees, contractors and subcontractors (each a “Grantee Party” and together, the “Grantee Parties”). It is understood that the Temporary License herein granted does not convey any right or interest in the License Area, except as stated herein, nor prevent Seller from the use of said property; provided, however that such use does not interfere with the limited rights granted by this Section. The Temporary License includes the right of the Buyer and the Grantee Parties to enter upon License Area at all reasonable times for parking, storage, changing topography and landscaping, construction and staging purposes on the License Area (“Scope of Work”), and all purposes ancillary thereto, together with the right to move equipment and supplies and to perform other work necessary for the development and construction of the Adjacent Project. Buyer shall keep License Area clean of trash and shall mow the grass as needed on the site. Buyer shall cause the lawn to be mowed on the Property. The Temporary License granted by this Section shall terminate upon the earlier of either: (i) Buyer, its successors or assigns, providing a written termination notice to Seller, or (ii) upon Closing the purchase and sale contemplated by this Agreement. Phase I Developer anticipates granting an easement for the benefit of the development of the Property. If the development contemplated by this Agreement does not occur by Buyer or this Agreement is terminated, then Phase I Developer may unilaterally terminate such easement.

[Signature Page Immediately Follows.]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above.

Dated: \_\_\_\_\_

**SELLER:**

**CITY OF OWATONNA**

By: \_\_\_\_\_  
Kris M. Busse  
Its: City Administrator

By: \_\_\_\_\_  
Thomas A. Kuntz  
Its: Mayor

Dated: \_\_\_\_\_

**BUYER:**

**LWO PROPERTIES, LLC**

By: \_\_\_\_\_  
Lawrence W. Olson  
Its: Chief Manager

**EXHIBIT A**  
**Legal Description of the Property**

**PHASE I\* will take the west 30 feet of Parcel 4**

**PHASE II will take the balance of Parcel 4**

**Parcel 4**

**PID #17-122-0513**

Legal Description:

The East 198 feet of Lot 12, Block 5, Dartts Addition to the City of Owatonna, Minnesota.

**Parcel 3**

**PID #17-122-0512**

Legal Description:

Lot 11, in Block 5 in Dartt's Addition to the City of Owatonna, Minnesota.

Extras

Commencing at the Northwest Corner of Lot 1, Block 5, in Dartt's Addition to the City of Owatonna, Minnesota, running thence West to the East line of Sublot 1 of Lot 6 in the Southeast Quarter of Northwest Quarter of Section 10, Township 107, Range 20, thence Southerly on the East line of said Sublot 1 to a point directly west of the Southwest corner of said Lot 1 of Block 5, thence East to the Southwest Corner of said Lot 1 of Block 5, thence Northerly to the place of beginning, being a part of Lot 12 in Block 5 in Dartt's Addition to the City of Owatonna.

Both parties agree that the above description is subject to a survey and may be adjusted by mutual agreement.

\*Phase I is not part of this the Agreement

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