

# THE CITY OF



# OWATONNA

**Troy Klecker**  
Community Development Director

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DATE: March 11, 2021  
TO: Mayor and City Council  
FROM: Community Development Dept. - Troy Klecker  
SUBJECT: Development Agreement with Owatonna Pearl, LLC

**Purpose:**

City Council to approve Resolution 40-21 to authorize signing the development agreement with Owatonna Pearl, LLC.

**Background:**

The City Council has approved the use of tax increment financing to assist with the costs associated with the construction of a 43-unit market rate apartment building on the 100 block of East Pearl Street by Owatonna Pearl, LLC. The TIF Plan calls for \$1,839,273 in TIF dollars to assist with eligible TIF expenditures on the project. There are substantial soils corrections needed to the site for this project. The development agreement states the City will be reimbursed \$609,500 from the TIF funds for costs incurred to purchase the property and demolish the homes on those properties for the site. Increment has already been generated from this TIF district and therefore there is only about 23 years left on the district.

**Budget Impact:**

There are consulting costs for writing the TIF plan and development agreement which will be paid for by the EDA. All costs incurred by the EDA would be reimbursed through tax increment financing over the life of the TIF district. The City will also be reimbursed \$609,500 throughout the remaining life of the TIF district for expenses incurred to purchase and demolish homes on the site.

**Staff Recommendation:**

Staff recommends approval of Resolution 40-21 authorizing this development agreement.

RESOLUTION NO. 40-21

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OWATONNA  
APPROVING A DEVELOPMENT AGREEMENT  
WITH OWATONNA PEARL LLC

BE IT RESOLVED by the City Council of the City of Owatonna, Minnesota (herein called the "City") as follows:

That the City hereby approves a Development Agreement to be entered into with Owatonna Pearl LLC and authorizes the Mayor and City Administrator to execute the Development Agreement on behalf of the City.

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

**AMENDED AND RESTATED  
DEVELOPMENT AGREEMENT  
BY AND BETWEEN  
OWATONNA, MINNESOTA,  
AND  
OWATONNA PEARL LLC**

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**AMENDED AND RESTATED  
DEVELOPMENT AGREEMENT**

**THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT**, made as of the \_\_\_\_\_ day of \_\_\_\_\_ 2021, by and between the city of Owatonna, Minnesota (the “City”), a municipal corporation organized and existing under and by virtue of and pursuant to the laws of the State of Minnesota and Owatonna Pearl LLC, a Minnesota Limited Liability Company (the “Developer”),

**WITNESSETH:**

The following recitals are a substantive part of this Agreement:

**WHEREAS**, pursuant to Minnesota statutes, sections 469.124 through 469.133, the City has established and modified Development District No. 10 on September 19, 2017 and February 16, 2021, respectively (the “Development District”) and has adopted a development program therefor (the “Development Program”); and

**WHEREAS**, pursuant to the provisions of Minnesota statutes, sections 469.174 through 469.1794, as amended, (the “Tax Increment Act”), the City has created and amended Tax Increment Financing District No. 10-1 on September 19, 2017 and February 16, 2021, respectively (the “Tax Increment District”), and has adopted a tax increment financing plan therefor (the “Tax Increment Financing Plan”) which provides for the use of tax increment financing in connection with development within the Development District; and

**WHEREAS**, the acquisition of the Development Property and construction of the Site Improvements (as defined herein) are objectives of the Development Program and Tax Increment Financing Plan; and

**WHEREAS**, on October 13, 2017 the City entered into a Development Agreement by and between Owatonna, Minnesota and Steven M. Nicolai (the “Original Agreement”) for the redevelopment of certain property located within Tax Increment Financing District No. 10-1 with a 33-unit, market rate rental apartment project; and

**WHEREAS**, the City and Stephen M. Nicolai after having determined that the redevelopment of the property with a 33-unit, market rate rental apartment project in accordance with the terms and conditions of the Original Agreement would not proceed mutually agreed to the transfer of the Original Agreement; and

**WHEREAS**, pursuant to City Council Resolution No. 104-18 adopted November 5, 2018 the City authorized transfer of the Original Agreement between Owatonna, Minnesota and Stephen M. Nicolai to Uptown Owatonna, LLC; and

**WHEREAS**, Uptown Owatonna, LLC on or before May 31, 2021 agreed to sell, transfer and assign the Development Property, including the entire right, title, and interest, to Owatonna Pearl LLC under the terms of the Purchase Agreement dated December 23, 2020 between Uptown Owatonna, LLC and Owatonna Pearl LLC; and

**WHEREAS**, the parties now desire to amend and completely restate the Original Agreement in its entirety to, among other things, modify the Original Agreement to increase to 43-units the size of the Project, to authorize additional expenditures of Tax Increment and to establish a time frame for the commencement and completion of the Project; and

**WHEREAS**, in order to achieve the objectives of the Development Program and Tax Increment Financing Plan and particularly to make the land in the Development District available for development by private enterprise in conformance with the Development Program, the City has determined to provide substantial aid and assistance in connection with the Development Program through the tax increment financing of the acquisition of the Development Property and completion of the Site Improvements within the Development District; and

**WHEREAS**, a major objective of the Development Program and Tax Increment Financing Plan is to stimulate growth in the Development District into a viable residential area by the redevelopment of certain property; and

**WHEREAS**, the City believes that the development of a certain Project (as defined herein) and the construction of the Project, and fulfillment of this Agreement are vital and are in the best interests of the City and the health, safety, morals and welfare of residents of the City and in accordance with the public purpose and provisions of the applicable state and local laws and requirements under which the Project has been undertaken and is being assisted.

**NOW, THEREFORE**, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

## **ARTICLE I**

### **DEFINITIONS**

**Section 1.1. Definitions.** All capitalized terms used and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

**Agreement** means this Agreement, as the same may be from time to time modified, amended or supplemented;

**Business Day** means any day except a Saturday, Sunday or a legal holiday or a day on which banking institutions in the City are authorized by law or executive order to close;

**Certificate of Completion** means the certification in the form of the certificate attached hereto as Exhibit D and hereby made a part of this Agreement, provided to the pursuant to Section 3.1 of this Agreement;

**City** means the City of Owatonna, Minnesota;

**City Redevelopment Costs** means the \$609,500 of property acquisition, demolition and site clearance costs previously incurred by the City needed to facilitate the Project, which the City is entitled to reimbursements from Tax Increment;

**County** means Steele County, Minnesota;

**Developer** means Owatonna Pearl LLC, its successors and assigns;

**Development District** means the real property located within Owatonna Development District No. 10;

**Development Program** means the development program approved for the Development District;

**Development Property** means the development property described in Exhibit A of this Agreement.

**Event of Default** means any of the events described in Section 4.1;

**Interfund Loan** means the Interfund Loan authorized pursuant to City Council Resolution No. 23-21 adopted February 16, 2021;

**Note Payment Dates** means Note Payment Dates as set forth in Exhibit B of this Agreement; provided, that if any such Note Payment Date should not be a Business Day, the Note Payment Date shall be the next succeeding Business Day;

**Project** means 43-unit, market rate, rental apartment project to be constructed by the Developer on the Development Property;

**Site Improvements** means redevelopment activities as described and limited in Minnesota statutes, section 469.176, subdivision 4j., that include but are not limited to building demolition, fill, environmental abatement, site preparation and engineering, design and project management costs related thereto to be undertaken by the Developer on the Development Property;

**State** means the State of Minnesota;

**Tax Increment** means the Tax Increment derived from the Tax Increment District created in accordance with the provisions of Minnesota statutes, section 469.177;

**Tax Increment Act** means the Tax Increment Financing Act, Minnesota statutes, sections 469.174 through 469.1794, as amended;

**Tax Increment District** means Tax Increment Financing District No. 10-1, as adopted by the City on September 19, 2017 and modified February 16, 2021 and qualified as a redevelopment district under the Tax Increment Act;

**Tax Increment Financing Plan** means the plan approved by City resolution on February 16, 2021, for the Tax Increment District;

**Tax Increment Note** or **Note** means the Tax Increment Revenue Note of 2021 (Owatonna Pearl LLC) to be executed by the City and delivered to the Developer pursuant to Article III hereof, a copy of which is attached hereto as Exhibit B;

**Unavoidable Delays** means delays, outside the control of the party claiming its occurrence, which are the direct result of strikes, other labor troubles, unusually severe or prolonged bad weather, acts of God, fire or other casualty to the Project, litigation commenced by third parties which, by injunction or other similar judicial action or by the exercise of reasonable discretion, directly results in delays, or acts of any federal, state or local governmental unit which directly result in delays.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

**Section 2.1. Representations and Warranties of the City.** The City makes the following representations and warranties:

(1) The City is a municipal corporation and has the power to enter into this Agreement and carry out its obligations hereunder.

(2) The Tax Increment District is a “redevelopment district” within the meaning of Minnesota statutes, section 469.174, subdivision 10(a)(1), and was created, amended, adopted and approved in accordance with the terms of the Tax Increment Act.

(3) The Project contemplated by this Agreement is in conformance with the development objectives set forth in the Development Program.

(4) To finance the redevelopment costs on the Development Property, the City shall reimburse itself for the acquisition cost of the Development Property and the site improvements on a portion of the Development Property from the Interfund Loan, which is to be repaid by Tax Increment as further provided in this Agreement. In addition, the City shall reimburse the Developer for Site Improvements from the Tax Increment as further provided in this Agreement.

(5) The City has not received any notice from any local, state or federal official that the activities of the Developer or the City with respect to the Project may or will be in violation of any environmental law or regulation (other than those notices, if any, of which the Developer have been notified). The City is not aware of any state or federal claim filed and, without any investigation or review, the City is not aware of any state or federal claim planned to be filed by any party relating to any violation of any local, state or federal environmental law, regulation or review procedure, and, without any investigation or review, the City is not aware of any violation of any local, state or federal law, regulation or review procedure which would give any

person a valid claim under the Minnesota Environmental Rights Act or other state or federal environmental statute.

(6) Except as expressly set forth in this agreement, the City makes no representation or warranty, either express or implied, as to the Development Property or its condition or the soil conditions thereon, or that the Development Property shall be suitable for the Developer's purposes or needs.

(7) The City has made the findings required by Minnesota statutes, section 469.175, Subdivision 3, of the Tax Increment Financing Act for the Tax Increment District, and has set forth in writing the reasons and supporting facts for each determination.

**Section 2.2. Representations and Warranties of the Developer.** The Developer makes the following representations and warranties:

(1) The Developer has power to enter into this Agreement and to perform its obligations hereunder and is not in violation of the laws of the State.

(2) The Developer is a Minnesota Limited Liability Company having full power and authority to enter into this Agreement and carry out the covenants contained herein.

(3) The Developer will cause the Project to be constructed in accordance with the terms of this Agreement, the Development Program and all local, state and federal laws and regulations (including, but not limited to, environmental, zoning, energy conservation, building code and public health laws and regulations).

(4) The Developer will obtain or cause to be obtained, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, state, and federal laws and regulations which must be obtained or met before the Project may be lawfully constructed.

(5) The Developer has not received any notice or communication from any local, state or federal official that the activities of the Developer or the City with respect to the Project may or will be in violation of any environmental law or regulation.

(6) The construction of the Project would not be undertaken by the Developer, and in the opinion of the Developer would not be economically feasible within the reasonably foreseeable future, without the assistance and benefit to the Developer provided for in this Agreement.

(7) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provision of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(8) The Developer will cooperate fully with the City with respect to any litigation commenced with respect to the Project.

(9) The Developer agrees to pay the total amount of any costs, charges, expenses and attorneys' fees reasonably incurred or paid at any time by City because of any Event of Default by the Developer as to any stipulation, agreement, and covenant of this Agreement, resulting in any suit or proceeding at law or in equity to which the City shall become a party in reference to the Developer's interest in the Development Property or the Project.

(10) The Developer will cooperate fully with the City in resolution of any traffic, parking, trash removal or public safety problems, which may arise in connection with the construction and operation of the Project.

(11) Barring Unavoidable Delays, the Project will be substantially completed by December 31, 2022.

### ARTICLE III

#### UNDERTAKINGS BY DEVELOPER AND CITY

**Section 3.1. Basis for Assistance.** The Developer's proposal, for development of the Project, will enhance the City's tax base. The Developer has represented that without City assistance it would not proceed with the construction of the Project. Therefore, the City believes that it is in its best interests to enter into this Agreement, and to assist the Developer in its development efforts. Upon completion of the Project contemplated by this Development Agreement, the City shall deliver to the Developer a Certificate of Completion in substantially the form as attached as Exhibit D.

**Section 3.2. Site Improvements and Construction of Project.** The parties agree that the completion of the Site Improvements on the Development Property by the Developer is essential to the successful completion of the Project. The Site Improvements are estimated to be at least \$1,137,809. The Developer agrees that it will (i) complete the Site Improvements on the Development Property and (ii) construct the Project on the Development Property in conformance with construction plans approved by the City. The construction of the Project will commence on or before October 1, 2021 and, barring Unavoidable Delays, the Project will be substantially completed by December 31, 2022.

**Section 3.3. Reimbursement: Tax Increment Revenue Note.** The City shall reimburse the Developer for Site Improvements through the issuance of the City's Tax Increment Note in substantially the forms attached to this Agreement as Exhibit B subject to the following conditions:

(1) The Note shall be dated, issued and delivered when the Developer has demonstrated in writing to the reasonable satisfaction of the City that the Site Improvements have been completed, that the Developer has incurred and paid all costs, as described in and limited by Section 3.2, and that the Developer has otherwise complied with all City requirements for the Project and the terms and conditions of this Agreement.

(2) The City shall enter each cost on the Ledger attached to the Note. The Note shall have as its maximum stated amount \$1,137,809 or the sum of the costs entered on the Ledger.

(3) The amounts of the Note payable by the City to Developer shall be solely pursuant to the formula set forth in the Note, and shall be payable solely from the Tax Increment, as defined in the Note.

(4) The payment dates of the Note shall be the Note Payment Dates. On each Note Payment Date and subject to the provisions of the Note, the City shall pay to the Developer Tax Increment not to exceed the cumulative amount of \$1,137,809. The City shall have no obligation to provide Developer reimbursement beyond the amount of Tax Increment on that specific Note Payment Date or at any future date.

(5) The Note shall be a special and limited obligation of the City and not a general obligation of the City and only Tax Increment shall be used to pay on the Note. The payment amounts due thereon shall be payable solely from Tax Increment from the Tax Increment District which are paid to the City and which the City is entitled to retain pursuant to the Tax Increment Act.

(6) The City's obligation to make payments on the Note on any Note Payment Date or any date thereafter shall be conditioned upon the requirement that (i) there shall not at that time be an Event of Default that has occurred and is continuing under this Agreement, (ii) this Agreement shall not have been rescinded pursuant to Section 4.2(2) and (iii) the Developer has paid its' property taxes and the City has received from the County the Tax Increment generated by the Project.

(7) The Note shall be governed by and payable pursuant to the additional terms thereof, as set forth in Exhibit B. In the event of any conflict between the terms of the Note and the terms of this Section 3.3, the terms of the Note shall govern. The issuance of the Note pursuant and subject to the terms of this Agreement, and the taking by the City of such additional actions as counsel for the City may require in connection therewith, are hereby authorized and approved by the City.

**Section 3.4. City Redevelopment Costs.**

(1) As consideration for the execution of this Agreement, the City previously incurred the \$609,500 of City Redevelopment Costs to assist in the redevelopment of the Development Property. The Redevelopment Costs shall be reimbursed from Tax Increment via the Interfund Loan. The Developer acknowledges that the primary source of money to pay debt service on the Interfund Loan is the Tax Increment derived from the Development Property and Project.

**Section 3.5. Reimbursement: Interfund Loan.**

(1) The parties agree that the City Redevelopment Costs are essential to the successful completion of the Project and meeting the objectives of the Development Program. The Redevelopment Costs are \$609,500.

(2) The City shall reimburse its Redevelopment Costs via the Interfund Loan beginning with taxes payable semiannually on July 15 and December 15 of each year commencing July 15, 2023 to and including December 15, 2045 pursuant to the Interfund Repayment Schedule attached to this Agreement as Exhibit C.

(3) The City shall retain Tax Increment in an amount sufficient to pay the semiannual debt service on the Interfund Loan. Tax Increment in excess of the semiannual debt service on the Interfund Loan shall be paid by the City to the Developer as reimbursement of the expenses of the Site Improvements as described in and limited by Section 3.2 semiannually on July 15 and December 15 of each year commencing July 15, 2023 to and including December 15, 2045. Notwithstanding the foregoing, in the event that in any year the annual Tax

Increment is less than what is necessary to pay the debt service on the Interfund Loan, but in subsequent years is greater than the annual debt service on the Interfund Loan, the annual Tax Increment shall, if such shortfall has not been paid by the Developer, first be used to reimburse the City for the amount that the annual Tax Increment is less than the annual service on the Interfund Loan and second paid to the Developer.

**Section 3.6. Duration of Tax Increment District.** The Tax Increment District shall exist no longer than through the collection, by the City, of the 2045 second half Tax Increment. The City may choose to decertify the Tax Increment District at an earlier date if the obligations of this Agreement have been met or an Event of Default causes the City to rescind or cancel this Agreement.

**Section 3.7 Change in Use of Project.** The Developer agrees that for himself, and its successors and assigns, it shall devote the Development Property to, and in accordance with, the uses specified in this Agreement. The Developer warrants the continued use of the Development Property as 43-unit market rate-rental apartment project. The conversion of any portion of the Project to any other use shall result in the termination of the use of the Tax Increment, unless the City first approves said change in use.

**Section 3.8. Prohibition against Transfer of Property and Assignment of Agreement.** The Developer represents and agrees that prior to the issuance of the certificate of occupancy the Developer shall not transfer in any form the Development Property or any part thereof or any interest therein, assign this Agreement or enter into any contract or agreement to do any of the same (a “Transfer of Development Obligations”) without the prior written approval of the City. A Transfer of Development Obligations to any party will require City approval, which approval shall not be unreasonably withheld, conditioned or delayed, and shall be subject to the following conditions:

(1) Any proposed transferee shall have the qualifications and financial responsibility, in the reasonable judgment of the City, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer. It shall be unreasonable for the City to withhold its consent pursuant to the factors in this Section 3.8, if the proposed transferee (a) is an entity that has reasonably sufficient experience in developments such as the Project and has assets reasonably sufficient to complete the Project, or (b) is willing to provide a payment and performance bond.

(2) Any proposed transferee, by instrument in writing reasonably satisfactory to the City and in form recordable among the land records, shall, for itself and its successors and assigns, and expressly for the benefit of the City, have expressly assumed all of the obligations of the Developer under this Agreement and agreed to be subject to all the conditions and restrictions to which the Developer is subject pursuant to this Agreement.

(3) There shall be submitted to the City, for review and prior written approval, all instruments and other legal documents involved in effecting the transfer of any interest in this Agreement or the Development Property (which shall be kept confidential by the City to the extent permitted by law).

(4) Upon any (a) Transfer of Development Obligations that is approved by the City pursuant to the foregoing provisions, and (b) the assumption of the obligations under this Agreement by the transferee, then the assigning Developer shall have no obligation as to any liabilities that arise from and after the date of the

such transfer under this Agreement, provided however, that Developer shall remain obligated as to liabilities that arose during the period of such Developer's ownership of the Development Property.

**Section 3.9 Business Subsidies Act.** The assistance provided to the Developer by the City pursuant to this Agreement is not a business subsidy under the provisions of Minnesota statutes, Section 116J.993 to 116J.995 because the Project is a redevelopment project that will provide assistance for housing.

## ARTICLE IV

### EVENTS OF DEFAULT

**Section 4.1. Events of Default Defined.** The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean whenever it is used in this Agreement any one or more of the following events:

(1) Failure by the Developer to pay timely any ad valorem real property taxes or special assessments assessed with respect to the Development Property.

(2) Failure by the Developer to cause the construction of the Project to be completed pursuant to the terms, conditions and limitations of this Agreement.

(3) The holder of any mortgage on the Development Property or any improvements thereon, or any portion thereof, commences foreclosure proceedings as a result of any default under the applicable mortgage documents.

(4) Failure by the Developer to substantially observe or perform any other covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement.

(5) If the Developer shall

(i) file any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act of 1978, as amended or under any similar federal or state law; or

(ii) make an assignment for the benefit of its creditors; or

(iii) admit in writing its inability to pay its debts generally as they become due; or

(iv) be adjudicated a bankrupt or insolvent; or if a petition or answer proposing the adjudication of the Developer, as a bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof; or a receiver, trustee or liquidator of the Developer, or of the Project, or part thereof, shall be appointed in any proceeding brought against the Developer, and shall not be

discharged within ninety (90) days after such appointment, or if the Developer, shall consent to or acquiesce in such appointment.

**Section 4.2. Remedies on Default.** Whenever any Event of Default referred to in Section 4.1 occurs and is continuing, the City or the Developer, as the case may be, may take any one or more of the following actions after the giving of thirty (30) days' written notice to the other, but only if the Event of Default has not been cured within said thirty (30) days.

(1) If the Developer defaults, the City may suspend its performance under this Agreement until it receives assurances from the Developer, deemed adequate by the City, that the Developer will cure the default and continue its performance under this Agreement.

(2) If the Developer defaults, the City may cancel and rescind this Agreement, except that no cancellation may be effective at any time that the Developer is proceeding in good faith to cure the defect and/or gives reasonable assurances to the City as required in (1) above, or if there exists a good faith dispute with the City as to an event of default as defined above, and the Developer posts a bond or other security as reasonably adequate to cure the alleged default.

(3) If the Developer defaults, the City may take any action, including legal or administrative action, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of the Developer under this Agreement.

**Section 4.3. No Remedy Exclusive.** No remedy herein conferred upon or reserved to the City or the Developer is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

**Section 4.4. No Implied Waiver.** In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

**Section 4.5. Agreement to Pay Attorney's Fees and Expenses.** Whenever any Event of Default occurs and the City employs attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement, the Developer agrees that it shall, on demand therefor, pay the reasonable fees of such attorneys and such other reasonable expenses so incurred by City.

**Section 4.6. Indemnification of City.**

(1) The Developer releases from and covenants and agrees that the City, its governing body members, officers, agents, including the independent contractors, consultants and legal counsel, servants and employees

thereof (hereinafter, for purposes of this Section, collectively the “Indemnified Parties”) shall not be liable for and agrees to indemnify and hold harmless the Indemnified Parties against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Project, provided that the foregoing indemnification shall not be effective for any actions of the Indemnified Parties that are not contemplated by this Agreement, and shall not relate to any event or occurrence that is a breach of the explicit representations or warranties of the City pursuant to this Agreement.

(2) Except for any willful misrepresentation or any willful or wanton misconduct of the Indemnified Parties, the Developer agrees to protect and defend the Indemnified Parties, now and forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of the Developer (or if other persons acting on its behalf or under its direction or control) under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Project; provided, that this indemnification shall not apply to the warranties made or obligations undertaken by the City in this Agreement or to any actions undertaken by the City which are not contemplated by this Agreement but shall, in any event and without regard to any fault on the part of the City, apply to any pecuniary loss or damages (including interest thereon from the date the loss is incurred or damages is paid by the City at a rate equal to the “Prime Rate” as set forth from time to time in The Wall Street Journal) as a result of the Project causing the Tax Increment District to not qualify or cease to qualify as a “redevelopment district” under section 469.174, subdivision 10(a)(1), of the Act or to violate limitations as to the use of Tax Increment as set forth in section 469.176, subdivision 4.

(3) All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any governing body member, officer, agent, servant or employee of the City, as the case may be.

(4) The Developer further agrees that it will indemnify and guarantee payment of City administrative expenses in an amount not to exceed Eight Thousand Five Hundred Dollars (\$8,500) in the event that the Developer fails to initiate the construction of the Project by October 1, 2021.

## ARTICLE V

### ADDITIONAL PROVISIONS

**Section 5.1. Conflicts of Interest.** No member of the governing body or other official of the City shall participate in any decision relating to the Agreement, which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is directly or indirectly interested. No member, official or employee of the City shall be personally liable to the City in the event of any default or breach by the Developer or successor or on any obligations under the terms of this Agreement.

**Section 5.2. Titles of Articles and Sections.** Any titles of the several parts, articles and sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

**Section 5.3. Notices and Demands.** Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by any party to any other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

(1) in the case of the Developer is addressed to or delivered personally to:

Owatonna Pearl LLC  
4057 28<sup>th</sup> St. NW, Suite 200  
Rochester, MN 55901

(2) in the case of the City is addressed to or delivered personally to the City at:

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

or at such other address with respect to any such party as that party may, from time to time, designate in writing and forward to the other, as provided in this Section.

**Section 5.4. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

**Section 5.5. Law Governing.** This Agreement will be governed and construed in accordance with the laws of the State of Minnesota.

**Section 5.6. Term.** The term of this Agreement and the requirements on the Developer set forth in this Agreement shall commence on the day and year first above written until the earlier of (i) the date this Agreement is terminated pursuant to Section 4.2 or Section 6.1, (ii) payment in full or expiration of the City's Tax Increment Note, or (iii) the date of termination of the Tax Increment District.

## ARTICLE VI

### DEVELOPER'S OPTION TO TERMINATE AGREEMENT

**Section 6.1. Developer's Option to Terminate.** This Agreement may be terminated by the Developer, if (i) the Developer is in compliance with all material terms of this Agreement and no Event of Default has occurred; and (ii) the City fails to comply with any material term of this Agreement, and, after written notice by the Developer of such failure, the City has failed to cure such noncompliance within thirty (30) days of receipt of such notice, or, if such noncompliance cannot reasonably be cured by the City within thirty (30) days, of receipt of such notice, the City has not provided assurances, reasonably satisfactory to the Developer, that such noncompliance will be cured as soon as reasonably possible.

**Section 6.2. Action to Terminate.** Termination of this Agreement pursuant to Section 6.1 must be accomplished by written notification by the Developer to the City within thirty (30) days after the date when such option to terminate may first be exercised. A failure by the Developer to terminate this Agreement within such period constitutes a waiver by the Developer of its rights to terminate this Agreement due to such occurrence or event.

**Section 6.3. Effect of Termination.** If this Agreement is terminated pursuant to this Article VI, this Agreement shall be from such date forward null and void and of no further effect; provided, however, the termination of this Agreement shall not affect the rights of either party to institute any action, claim or demand for damages suffered as a result of breach or default of the terms of this Agreement by the other party, or to recover amounts which had accrued and become due and payable as of the date of such termination. Upon termination of this Agreement pursuant to this Article VI, the Developer shall be free to proceed with the Project at its own expense and without regard to the provisions of this Agreement; provided, however, that the City shall have no further obligations to the Developer with respect to reimbursement of the expenses set forth in Section 3.3.

**IN WITNESS WHEREOF**, the City has caused this Agreement to be duly executed in its name and on its behalf and its seal to be hereunto duly affixed, and the Developer has caused this Agreement to be duly executed in its name and on its behalf, on or as of the date first above written.

**OWATONNA PEARL LLC**

**CITY OF OWATONNA, MINNESOTA**

By \_\_\_\_\_

By \_\_\_\_\_  
Its Mayor

By \_\_\_\_\_  
Its City Administrator

STATE OF MINNESOTA )  
  ): ss  
COUNTY OF STEELE )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by Thomas Kuntz and Kris Busse the Mayor and the City Administrator, respectively, of the Owatonna, Minnesota, a municipal corporation.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA )  
  ): ss  
COUNTY OF STEELE )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_ the \_\_\_\_\_ of Owatonna Pearl LLC.

\_\_\_\_\_  
Notary Public

This is a signature page to the Development Agreement dated as of \_\_\_\_\_, 2021, by and between the City of Owatonna, Minnesota, and Owatonna Pearl LLC.

## **EXHIBIT A**

### **DESCRIPTION OF DEVELOPMENT PROPERTY**

The Development Property includes Lots 3,4,5,6 and 7 Block 20, Original Town, City Of Owatonna, Steele County Minnesota and is further described as Tax Parcel Number 17-100-2003.

**EXHIBIT B**

**Form of Tax Increment Note**

**UNITED STATES OF AMERICA  
STATE OF MINNESOTA  
CITY OF OWATONNA**

**TAX INCREMENT REVENUE NOTE OF 2021**

The City of Owatonna, Minnesota (the "City"), hereby acknowledges itself to be indebted and, for value received, hereby promises to pay the amounts hereinafter described (the "Payment Amounts") to Owatonna Pearl LLC (the "Developer") or its registered assigns (the "Registered Owner"), but only in the manner, at the times, from the sources of revenue, and to the extent hereinafter provided.

The principal amount of this Note shall equal from time to time \$\_\_\_\_\_, as reduced to the extent that such principal installments shall have been paid in whole or in part pursuant to the terms hereof; provided that the sum of the principal amount listed above shall in no event exceed \$1,137,809 as provided in that certain Development Agreement, dated as of \_\_\_\_\_, 2021, as the same may be amended from time to time (the "Development Agreement"), by and between the City and the Developer. The Note is a principal only obligation of the City and all payments made by the City under this Note shall be applied to reducing the balance of the Note.

The amounts due under this Note shall be payable on July 15, 2023, and on each July 15 and December 15 thereafter to and including December 15, 2045, or, if the first should not be a Business Day (as defined in the Development Agreement), the next succeeding Business Day (the "Payment Dates"). On each Payment Date, and subject to the provisions of Section 3.5(3) of the Development Agreement, the City shall pay by check or draft mailed to the person that was the Registered Owner of this Note at the close of the last business day of the City preceding such Payment Date an amount equal to the sum of the Tax Increment (hereinafter defined) received by the City during the six month period preceding such Payment Date that remain after payment of debt service on the Interfund Loan as provided in Section 3.5(3) of the Development Agreement. All payments made by the City under this Note shall be applied to accrued interest and then to principal.

The Payment Amounts due hereon shall be payable solely from 95.0% of Tax Increment (the "Tax Increment") from the Tax Increment Financing District (as defined in the Development Agreement) within the City's Tax Increment Financing District No. 10-1 (the "Tax Increment District") within its Development District No. 10 which are paid to the City and which the City is entitled to retain pursuant to the provisions of Minnesota Statutes, Sections 469.174 through 469.1794, as the same may be amended or supplemented from time to time (the "Tax Increment Act"). This Note shall terminate and be of no further force and effect following the last Payment Date defined above, on any date upon which the City or Developer shall have terminated the Development Agreement under Article IV or VI thereof, or on the date that all payment amounts payable hereunder shall have been paid in full, whichever occurs earliest.

The City makes no representation or covenant, express or implied that the Tax Increment will be sufficient to pay, in whole or in part, the amounts which are or may become due and payable hereunder.

The City's payment obligations hereunder shall be further conditioned on the fact that no Event of Default under the Development Agreement shall have occurred and be continuing at the time payment is otherwise due hereunder, but such unpaid amounts shall become payable if said Event of Default shall thereafter have been cured; and, further, if pursuant to the occurrence of an Event of Default under the Development Agreement the City elects to cancel and rescind the Development Agreement, the City shall have no further debt or obligation under this Note whatsoever. Reference is hereby made to all of the provisions of the Development Agreement, including without limitation Section 3.3 thereof, for a fuller statement of the rights and obligations of the City to pay the principal of this Note, and said provisions are hereby incorporated into this Note as though set out in full herein.

**This Note is a special, limited revenue obligation and not a general obligation of the City and is payable by the City only from the sources and subject to the qualifications stated or referenced herein. This Note is not a general obligation of the City and neither the full faith and credit nor the taxing powers of the City are pledged to the payment of the principal of this Note and no property or other asset of the City, save and except the above referenced Tax Increment, is or shall be a source of payment of the City's obligations hereunder.**

This Note is issued by the City in aid of financing a project pursuant to and in full conformity with the City Charter, the Constitution and laws of the State of Minnesota, including the Tax Increment Act.

This Note may be assigned only with the consent of the City which consent shall not be unreasonably withheld. In order to assign the Note, the assignee shall surrender the same to the City either in exchange for a new fully registered note or for transfer of this Note on the registration records for the Note maintained by the City. Each permitted assignee shall take this Note subject to the foregoing conditions and subject to all provisions stated or referenced herein.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions, and things required by the City Charter, the Constitution and laws of the State of Minnesota to be done, to have happened, and to be performed precedent to and in the issuance of this Note have been done, have happened, and have been performed in regular and due form, time, and manner as required by law; and that this Note, together with all other indebtedness of the City outstanding on the date hereof and on the date of its actual issuance and delivery, does not cause the indebtedness of the City to exceed any charter, constitutional or statutory limitation thereon.

IN WITNESS WHEREOF, City of Owatonna, Minnesota, by its City Council, has caused this Note to be executed by the manual signatures of its Mayor and City Administrator and has caused this Note to be issued on and dated \_\_\_\_\_, 2021.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Administrator

**CERTIFICATION OF REGISTRATION**

It is hereby certified that the foregoing Note, as originally issued on \_\_\_\_\_, 2021, was on said date registered in the name of Owatonna Pearl LLC and that, at the request of the Registered Owner of this Note, the undersigned has this day registered the Note in the name of such Registered Owner, as indicated in the registration blank below, on the books kept by the undersigned for such purposes.

Name and Address of  
Registered Owner \_\_\_\_\_

Date of  
Registration \_\_\_\_\_

Signature of  
City Executive \_\_\_\_\_

Owatonna Pearl LLC  
4057 28<sup>th</sup> St. NW, Suite 200  
Rochester, MN 55901

\_\_\_\_\_, 2021

\_\_\_\_\_



## EXHIBIT C

### INTERFUND LOAN REPAYMENT SCHEDULE

As consideration for the execution of this Agreement, the City previously incurred the \$609,500 of City Redevelopment Costs to assist in the redevelopment of the Development Property. The Redevelopment Costs shall be reimbursed from Tax Increment via the Interfund Loan. The Developer acknowledges that the primary source of money to pay debt service on the Interfund Loan is the Tax Increment derived from the Development Property and Project. Pursuant to Resolution No. 23-21, adopted February 16, 2021, the City approved the terms of the Interfund Loans in connection with Tax Increment Financing District No. 10-1, which are summarized as follows:

The City authorized the advance of up to \$609,500 to Tax Increment Financing District No. 10-1. The City shall reimburse itself for such advances together with interest at the rate of 0.00% that will not fluctuate.

Principal and interest on the Interfund Loans shall be paid semi-annually on each July 15 and December 15 (each a "Payment Date") commencing with the Payment Date on which the City has Available Tax Increment (defined below), or on any other dates determined by the City, through the last receipt of tax increment from the TIF District.

Payments on the Interfund Loans are payable solely from "Available Tax Increments" which shall mean, on each Payment Date, all of the tax increment available before other obligations have been paid, generated in the preceding six (6) months with respect to the property within the TIF District and remitted to the City by Steele County. **Payments on the Interfund Loans are unsecured to any outstanding or future bonds, notes or contracts secured in whole or in part with Available Tax Increments, and are senior to any other outstanding or future interfund loans secured in whole or in part with Available Tax Increments.**

The principal sum and all accrued interest payable under the Interfund Loans are pre-payable in whole or in part at any time by the City without premium or penalty. No partial prepayment shall affect the amount or timing of any other regular payment otherwise required to be made under these Interfund Loans.

The City may amend the terms of the Interfund Loans at any time by resolution of the City, including a determination to forgive the outstanding principal amount and accrued interest to the extent permissible under law.



**EXHIBIT D**

**CERTIFICATE OF COMPLETION AND RELEASE OF FORFEITURE**

The City of Owatonna, Minnesota (the "City"), a municipal corporation hereby certifies that all building construction and other physical improvements specified to be done and made by Owatonna Pearl LLC have been completed and the above covenants and conditions in said Development Agreement have been performed by Owatonna Pearl LLC therein and that the provisions for breach of condition subsequent by the City, contained therein, are hereby released absolutely and forever insofar as they apply.

THE CITY OF OWATONNA

BY \_\_\_\_\_  
Kris Busse  
ITS City Administrator

STATE OF MINNESOTA )  
  ): ss  
COUNTY OF STEELE    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 202\_\_,  
by Kris Busse the City Administrator of the City of Owatonna, Minnesota, a municipal corporation.

\_\_\_\_\_  
Notary Public