

THE CITY OF



OWATONNA

Troy Klecker
Community Development Director

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Owatonna, MN 55060-4794
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DATE: March 12, 2020
TO: Mayor and City Council
FROM: Troy Klecker, Community Development Director
SUBJECT: Assignment of Purchase Agreement, 409 Cherry Street.

Purpose: Council to adopt Resolution 38-20 to accept the Assignment and Assumption of Purchase Agreement for 409 Cherry Street.

Background: Staff has been working with LWO Properties, LLC to develop another workforce housing project in Owatonna. LWO Properties, has received tax credits to construct a 36-unit workforce housing project on Cherry Street, behind Domino's Pizza.

To obtain the necessary points in the scoring system to be awarded tax credits, last May, City Council approved a financial commitment of \$450,000 by way of purchasing the Regan property. The City Council also approved applying for a grant from the state for environmental cleanup of the property. A Tax Increment Financing District can be established to reimburse the City for its upfront contribution of \$450,000.

Property at 409 Cherry Street is adjacent to the former Regan property and also part of this project. The developer has a purchase agreement to purchase 409 Cherry Street for \$135,000. With the grant, the demolition work and the environment work will be done to this site. It will simplify things if the City owns the site and transfers the whole site to the developer. To do this, the City would accept an Assignment of the Purchase Agreement from the developer for the property. The resolution states the City would accept assignment of the purchase agreement and will sell this to the developer for \$1.

Budget Impact: No additional impact. Last May, the City approved up-fronting \$450,000 to purchase the Regan property and adding this property does not change the City's financial commitment. The developer will compensate the difference of the price and the City's commitment. Tax Increment Financing would be used to reimburse the City for these up-front costs over the life of the district. The City would still retain a portion of the property for a future project.

Staff Recommendation: Staff recommends adoption of Resolution 38-20 to accept the Assignment and Assumption of Purchase Agreement for 409 Cherry Street. The City will be entering into a Development Agreement with LWO Properties, LLC to formalize the project details.

RESOLUTION NO. 38-20

A RESOLUTION AUTHORIZING PROPERTY
PURCHASE FOR WORKFORCE HOUSING

WHEREAS, The City of Owatonna has identified a need for affordable workforce housing in the City; and

WHEREAS, LWO Development LLC proposes to develop a 36-unit apartment building with 9 One-Bedroom and 27 two-bedroom apartments with underground parking just outside of Downtown; and

WHEREAS, the development requires the assistance of the City of Owatonna to be financially viable; and

WHEREAS, the Minnesota Housing Finance Agency will look favorably on local contributions; and

WHEREAS, LWO Limited Partnership #116 has entered into a purchase agreement with the owner of the property legally described with Parcel Identification Number 17-122-0502

WHEREAS, LWO Limited Partnership #116 desires to assign the purchase agreement to The City of Owatonna; and

WHEREAS, the purchase agreement between LWO Limited Partnership #116 and the current owner is conditioned upon receipt of Housing Tax Credits from the State of Minnesota; and

WHEREAS, The City of Owatonna desires to financially aid the development of "Owatonna Workforce Housing"; and

WHEREAS, it is expected that the proposed development site will require soil abatement and site improvements to make it suitable for construction of the proposed housing.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Owatonna, Minnesota, that the City of Owatonna hereby authorizes City staff to assume the purchase agreement for the property legally described by the Parcel Identification Number 17-122-0502 with LWO Limited Partnership #116 for the purchase price of \$1 and for the price of \$1 the City of Owatonna agrees to provide a clean and improved site with regards to the property.

Passed and adopted this ___ day of _____, 2020, with the following vote:

Aye ____; No ____; Absent ____.

Approved and signed this ___ day of _____, 2020.

ATTEST:

Thomas A. Kuntz, Mayor

Kris M. Busse, City Administrator/City Clerk

ASSIGNMENT AND ASSUMPTION OF PURCHASE AGREEMENT

(409 Cherry Street, Owatonna, Minnesota)

THIS ASSIGNMENT AND ASSUMPTION OF PURCHASE AGREEMENT ("Assignment") is entered into and effective as of _____, 2020, by and between LWO LIMITED PARTNERSHIP #116, a Minnesota limited partnership ("Assignor"), and The City of Owatonna, Minnesota (the "Assignee"), and is consented to by the Seller (as defined herein).

WITNESSETH:

WHEREAS, Assignor entered into that certain Purchase Agreement (the "Agreement") dated as of April 19, 2019, with [_____] (collectively, the "Seller"), regarding the purchase of that certain real property located in the City of Owatonna, Steele County, Minnesota, described in more detail in Exhibit A attached hereto (the "Property");

WHEREAS, Assignor would like to assign its interest in the Agreement to Assignee in order to improve the Property and to expedite the future development of a multifamily apartment complex located on the Property;

WHEREAS, Assignee and Assignor jointly selected the Property for affordable housing in the City of Owatonna, Minnesota;

WHEREAS, Assignor entered into the Agreement with Seller because Assignor could not timely obtain a the Agreement; and

WHEREAS, Assignor now desires to assign certain rights under the Agreement to Assignee, and Assignee desires to accept the same.

AGREEMENT

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

1. Any capitalized term not defined herein shall have the meaning given to it in the Agreement.
2. Assignor does hereby transfer, assign, convey and grant to Assignee, Assignor's right, title, and interest under the Agreement.

3. Assignee shall pay Assignor One Dollar (\$1) for the right to purchase the Property. Assignee agrees that for the purchase price of One Dollar (\$1) it shall provide clean, improved site with regards to the Property.

4. Assignor and Assignee may enter into a development agreement to further contemplate terms of the future development upon the Property.

5. Assignee, for itself and its successors and assigns, hereby assumes the right, title, and interest of Assignor under the Agreement and agrees to be bound by all of the terms, conditions, obligations and restrictions relating to the Agreement and agrees to fully, promptly and properly perform, observe, satisfy and discharge all of the terms, conditions, obligations and restrictions of the Agreement.

6. Assignee shall not transfer, assign or convey its interest in the Agreement or this Assignment to any other party without the written consent of the Assignor.

7. The parties may execute this Assignment separately and deliver their separately executed instruments to the other party. This Assignment is fully executed and delivered when each party has executed a separate copy of this Assignment and delivered their executed copy to the other party. The separately executed copies of this Assignment, when taken together, shall constitute one in the same Assignment. The parties may deliver their signed copies of this Assignment to the other parties electronically by emailing PDF files of the signed Assignment and electronic delivery of signed copies has the same force and effect as delivery of a signed original.

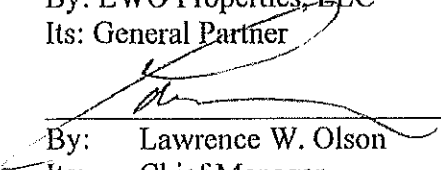
(Signature Page to Follow)

IN WITNESS WHEREOF, the parties have caused this Assignment to be executed on their behalf effective as of the day and year first above written.

ASSIGNOR:

LWO Limited Partnership #116

By: LWO Properties, LLC
Its: General Partner



By: Lawrence W. Olson
Its: Chief Manager

ASSIGNEE:

The City of Owatonna, Minnesota

By: _____
Name: Kris M. Busse
Its: City Administrator

IN WITNESS WHEREOF, the undersigned, by signing below, hereby consent to this Assignment.

SELLER: *Kim*

Vanora McCowan

Exhibit A

The Property

409 Cherry Street, Owatonna, MN 55060



**ADDENDUM TO PURCHASE AGREEMENT:
COUNTEROFFER**

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1. Date _____
2. Page 1

3. Addendum to Purchase Agreement between parties, dated 4-19, 2019,
4. pertaining to the purchase and sale of the Property located at 419 Cherry Street
5. Quintana, MN 55060

6. *This Counteroffer does not include the terms or conditions in any previous Counteroffer(s).*

7. The Purchase Agreement is rejected and the following Counteroffer is hereby made. All terms and conditions remain
8. the same, as stated in the Purchase Agreement, except the following:

9. *(Select appropriate changes from original offer.)*

- 10. Sale price shall be \$ 135,000.00.
- 11. Earnest money shall be a total of \$ _____.
- 12. Cash of at least _____ percent (%) of the sale price, which includes the earnest money; PLUS;
- 13. Financing, the total amount secured against the Property to fund the purchase, not to exceed _____
- 14. percent (%) of the sale price.
- 15. Closing date shall be _____, 20 _____.
- 16. Seller agrees to complete all FHA/Lender required repairs, not to exceed \$ _____.
- 17. Seller shall pay Buyer's closing costs, prepaids, insurance and _____
- 18. not to exceed \$ _____.
- 19. Other: _____
- 20. _____
- 21. _____
- 22. _____
- 23. _____
- 24. _____
- 25. _____
- 26. _____
- 27. _____

27. [Signature] 4-19-19 [Signature] 4-19-19
(Buyer) (Date) (Seller) (Date)
*CHIEF MANAGER
LWS PROPERTIES CP
AND LIMITED PARTNERSHIP #116*

28. [Signature] 4-19-19 _____ 5/10/19
(Buyer) (Date) (Date)

29. **ATTACH ONLY THE FINAL COUNTEROFFER ADDENDUM TO THE PURCHASE AGREEMENT.**
30. **THIS IS A LEGALLY BINDING CONTRACT BETWEEN BUYER(S) AND SELLER(S).**
31. **IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.**



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PURCHASE AGREEMENT

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1. Date 4/19/2012

2. Page 1

3. BUYER (S): LVO Limited Partnership 0116

4. _____

5. Buyer's earnest money in the amount of _____

6. One Thousand Two Hundred Fifty Dollars (\$ 1,250.00)

7. shall be delivered to listing broker, or, if checked, to _____ no later than two (2) Business Days after Final Acceptance Date of this Purchase Agreement. Buyer and Seller agree that earnest money shall be deposited in the trust account of Earnest Money Holder as specified above within three (3) Business Days of receipt of the earnest money or Final Acceptance Date of this Purchase Agreement, whichever is later.

8. _____
 9. _____
 10. _____

11. Said earnest money is part payment for the purchase of the property located at

12. Street Address: 409 Cherry Street

13. City of Owatonna, County of Steele

14. State of Minnesota, legally described as Block 5 Lot 2 Darts

15. Said purchase shall include all improvements, fixtures, and appurtenances on the property, if any, including but not limited to, the following (collectively the "Property"): garden bulbs, plants, shrubs, trees, and lawn watering system; shed; storm sash, storm doors, screens, and awnings; window shades, blinds; traverse, curtain, and drapery rods, valances, drapes, curtains, window coverings, and treatments; towel rods; attached lighting and bulbs; fan fixtures; plumbing fixtures; garbage disposals; water softener; water treatment system; water heating systems, heating systems; air exchange system; environmental remediation system (e.g., radon, vapor intrusion); sump pump; TV antenna/cable TV jacks and wiring/TV wall mounts; wall/ceiling-mounted speakers and mounts; carpeting; mirrors; garage door openers and all controls; smoke detectors; fireplace screens, door, and heaters; BUILT-INS; dishwashers; refrigerators; wine/beverage refrigerators; trash compactors; ovens; cook-top stoves; warming drawers; microwave ovens; hood fans; shelving; work benches; intercoms; speakers; air conditioning equipment; electronic air filter; humidifier/dehumidifier; liquid fuel tanks (and controls); pool/spa equipment; propane tank (and controls); security system equipment; TV satellite dish; AND the following personal property shall be transferred with no additional monetary value, and free and clear of all liens and encumbrances:

29. No Personal Property

30. Notwithstanding the foregoing, leased fixtures are not included.

31. Notwithstanding the foregoing, the following item(s) are excluded from the purchase:

32. N/A

PURCHASE PRICE:

34. Seller has agreed to sell the Property to Buyer for the sum of (\$ 125,000.00)

35. One Hundred Twenty-Five Thousand Dollars,

36. which Buyer agrees to pay in the following manner:

37. 1. _____ percent (%) of the sale price in CASH, or more in Buyer's sole discretion, which includes the earnest money;

38. 2. 100 percent (%) of the sale price in MORTGAGE FINANCING. (See following Mortgage Financing section.)

40. 3. _____ percent (%) of the sale price by ASSUMING Seller's current mortgage. (See attached Addendum to Purchase Agreement: Assumption Financing.)

42. 4. _____ percent (%) of the sale price by CONTRACT FOR DEED. (See attached Addendum to Purchase Agreement: Contract for Deed Financing.)

CLOSING DATE:

45. The date of closing shall be 4/30, 2012.



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PURCHASE AGREEMENT

46. Page 2 Date 4/19/2019

47. Property located at 409 Cherry Street Owatonna MN 55060

MORTGAGE FINANCING:

48. This Purchase Agreement IS IS NOT subject to the mortgage financing provisions below. If IS, complete the
(Check one.)

49. MORTGAGE FINANCING section below. If IS NOT, proceed to the SELLER'S CONTRIBUTIONS TO BUYER'S COSTS section.

50. Such mortgage financing shall be: (Check one.)

51. FIRST MORTGAGE only FIRST MORTGAGE AND SUBORDINATE FINANCING.

52. Financing DOES DOES NOT include a grant, bond program, or other loan assistance program. If "DOES," please specify: _____

53. Buyer shall apply for and secure, at Buyer's expense, a: (Check all that apply.)

- 54. CONVENTIONAL
- 55. DEPARTMENT OF VETERANS' AFFAIRS ("DVA") GUARANTEED
- 56. FEDERAL HOUSING ADMINISTRATION ("FHA") INSURED
- 57. PRIVATELY INSURED CONVENTIONAL
- 58. UNITED STATES DEPARTMENT OF AGRICULTURE ("USDA") RURAL DEVELOPMENT

59. OTHER _____

60. mortgage in the amount stated in this Purchase Agreement, amortized over a period of not more than 30 years, with an initial interest rate at no more than 6 percent (%) per annum. The mortgage application IS TO BE MADE WITHIN FIVE (5) BUSINESS DAYS after the Final Acceptance Date of this Purchase Agreement. Buyer agrees to use best efforts to secure a commitment for such financing and to execute all documents required to consummate said financing.

61. **MORTGAGE FINANCING CONTINGENCY:** This Purchase Agreement is contingent upon the following and applies to the first mortgage and any subordinate financing. (Check one.)

- 62. If Buyer cannot secure the financing specified in this Purchase Agreement, and this Purchase Agreement does not close on the closing date specified, this Purchase Agreement is canceled. Buyer and Seller shall immediately sign a Cancellation of Purchase Agreement confirming said cancellation and directing all earnest money paid here to be REFUNDED TO BUYER FORFEITED TO SELLER.
(Check one.)

63. NOTE: If this Purchase Agreement is subject to DVA or FHA financing, FORFEITED TO SELLER may be prohibited. See the following DVA and FHA Escape Clauses.

64. Buyer shall provide Seller, or licensee representing or assisting Seller, with the Written Statement, on or before _____, 20____.

65. For purposes of this Contingency, "Written Statement" means a Written Statement prepared by Buyer's mortgage originator(s) or lender(s) after the Final Acceptance Date that Buyer is approved for the loan(s) specified in this Purchase Agreement, including both the first mortgage and any subordinate financing, if any, and stating that an appraisal, satisfactory to the lender(s), has been completed and stating conditions required by lender(s) to close the loan.

66. Upon delivery of the Written Statement to Seller, or licensee representing or assisting Seller, the obligation for satisfying all conditions required by mortgage originator(s) or lender(s), except those conditions specified below, are deemed accepted by Buyer:

- 67. (a) work orders agreed to be completed by Seller;
- 68. (b) any other financing terms agreed to be completed by Seller here; and
- 69. (c) any contingency for the sale and closing of Buyer's property pursuant to this Purchase Agreement.





90. Property located at 409 Cherry Street Owatonna MN 55060

91. Upon delivery of the Written Statement, if this Purchase Agreement does not close on the stated closing date for
92. ANY REASON relating to financing, including, but not limited to interest rate and discount points, if any, then Seller
93. may, at Seller's option, declare this Purchase Agreement canceled, in which case this Purchase Agreement is
94. canceled. If Seller declares this Purchase Agreement canceled, Buyer and Seller shall immediately sign a
95. Cancellation of Purchase Agreement confirming said cancellation and directing all earnest money paid here to be
96. forfeited to Seller as liquidated damages. In the alternative, Seller may seek all other remedies allowed by law.

97. Notwithstanding the language in the preceding paragraph, Seller may not declare this Purchase Agreement canceled
98. if the reason this Purchase Agreement does not close was due to:
99. (a) Seller's failure to complete work orders to the extent required by this Purchase Agreement;
100. (b) Seller's failure to complete any other financing terms agreed to be completed by Seller here; or
101. (c) any contingency for the sale and closing of Buyer's property pursuant to this Purchase Agreement, except as
102. specified in the contingency for sale and closing of Buyer's property.

103. If the Written Statement is not provided by the date specified on line 77, Seller may, at Seller's option, declare this
104. Purchase Agreement canceled by written notice to Buyer at any time prior to Seller receiving the Written Statement,
105. in which case this Purchase Agreement is canceled. In the event Seller declares this Purchase Agreement canceled,
106. Buyer and Seller shall immediately sign a Cancellation of Purchase Agreement confirming said cancellation and
107. directing all earnest money paid here to be refunded to Buyer.

108. If the Written Statement is not provided, and Seller has not previously canceled this Purchase Agreement, this
109. Purchase Agreement is canceled as of the closing date specified in this Purchase Agreement. Buyer and Seller
110. shall immediately sign a Cancellation of Purchase Agreement confirming said cancellation and directing all earnest
111. money paid here to be refunded to Buyer.

112. **LOCKING OF MORTGAGE INTEREST RATE ("RATE"):** The Rate shall be locked with the lender(s) by Buyer:
113. (Check one)

114. WITHIN FIVE (5) BUSINESS DAYS OF FINAL ACCEPTANCE DATE OF THIS PURCHASE AGREEMENT; OR
115. AT ANY TIME PRIOR TO CLOSING OR AS REQUIRED BY LENDER(S).

116. **LENDER COMMITMENT WORK ORDERS:** Nothing in this Purchase Agreement shall be construed as a warranty
117. that Seller shall make repairs required by the lender commitment. However, Seller agrees to pay up to
118. \$ 0.00 to make repairs as required by the lender commitment. If the lender commitment
119. is subject to any work orders for which the cost of making said repairs shall exceed this amount, Seller shall have the
120. following options:

121. (a) making the necessary repairs; or
122. (b) negotiating the cost of making said repairs with Buyer; or
123. (c) declaring this Purchase Agreement canceled, in which case this Purchase Agreement is canceled, Buyer and Seller
124. shall immediately sign a Cancellation of Purchase Agreement confirming said cancellation and directing all earnest
125. money paid here to be refunded to Buyer, unless Buyer provides for payment of the cost of said repairs or escrow
126. amounts related thereto above the amount specified on line 118 of this Purchase Agreement.

127. SELLER BUYER agrees to pay any reinspection fee required by Buyer's lender(s).
(Check one)

128. **FHA ESCAPE CLAUSE (FHA Financing only):** "It is expressly agreed that, notwithstanding any other provisions
129. of this contract, the purchaser shall not be obligated to complete the purchase of the Property described here or to incur
130. any penalty by forfeiture of earnest money deposits or otherwise, unless the purchaser has been given in accordance
131. with the Department of Housing and Urban Development ("HUD")/FHA or DVA requirements a written statement by the
132. Federal Housing Commissioner, Department of Veterans' Affairs, or a Direct Endorsement lender setting forth the
133. appraised value of the Property as not less than \$ _____

(sales price)

134. The purchaser shall have the privilege and option of proceeding with consummation of the contract without regard
135. to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage
136. HUD will insure; HUD does not warrant the value nor the condition of the Property. The purchaser should satisfy himself/
137. herself that the price and condition of the Property are acceptable."



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AMENDMENT TO PURCHASE AGREEMENT

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1. Date 05/30/19

2. The undersigned parties to a Purchase Agreement, dated 4/19/2019, pertaining to
3. the purchase and sale of the property at 409 Cherry Street
4. Owatonna, MN 55060

5. hereby mutually agree to amend said Purchase Agreement as follows:

6. Line 455 of the purchase agreement stating "This purchase agreement is
7. subject to bankruptcy court approval, The sellers are required to seek
8. and obtain bankruptcy court approval by 06/30/2019." is removed in
its entirety.

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30. All other terms and conditions of the Purchase Agreement to remain the same.

31. [Signature] 5/31/2019 Authentisign
Larry Olson
May 30 2019
[5/30/2019 10:50:54 AM CDT] _____ (Date) _____ (Date)

32. [Signature] 5-31-19 _____ (Date) _____ (Date)

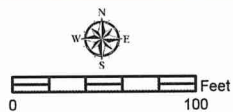
33. **THIS IS A LEGALLY BINDING CONTRACT BETWEEN BUYERS AND SELLERS.**
34. **IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.**

Property Sites

City of Owatonna



May 17, 2019



This drawing is neither a legally recorded map nor a survey and is not intended to be used as one. This information is a compilation of records, information, and data located in various city, county, and state offices and other sources, affecting the area shown, and is to be used for reference purposes only.