

**AGENDA**  
**SPECIAL CITY COUNCIL MEETING**  
**CITY OF CARTER LAKE**  
950 Locust St. Carter Lake, Iowa  
Wednesday, September 3, 2014 - 5:00 p.m.

**Roll Call**

1. Resolution authorizing signatures on Collateral Assignment and Subordination of Agreement for Private Development for Owen Industries expansion project.

**Adjourn**

08-30-14  
dm

**RESOLUTION NO. \_\_\_\_\_**

**WHEREAS, the City of Carter Lake desires to enter into Collateral Assignment and Subordination of Agreement for Private Development with Owen Industries, Inc. and Wells Fargo Bank, NA; and**

**NOW THEREFORE BE IT RESOLVED by the City Council of the City of Carter Lake, Iowa:**

**That we do hereby approve the Collateral Assignment and Subordination of Agreement for Private Development with Owen Industries, Inc. and Wells Fargo Bank, NA and designate Doreen Mowery, City Clerk and/or Gerald Waltrip, Mayor as the Authorized Representatives for the City of Carter Lake to execute said agreement with the Owen Industries, Inc. and Wells Fargo Bank, NA.**

**Passed and approved this 3<sup>rd</sup> day of Sept. 2014.**

\_\_\_\_\_  
**Gerald Waltrip, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Doreen Mowery, City Clerk**

**COLLATERAL ASSIGNMENT AND SUBORDINATION OF AGREEMENT FOR  
PRIVATE DEVELOPMENT**

THIS COLLATERAL ASSIGNMENT AND SUBORDINATION OF AGREEMENT FOR PRIVATE DEVELOPMENT (this "Assignment"), is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2014, by and among the CARTER LAKE, IOWA, a municipal corporation duly organized and existing under the laws of the State of Iowa (the "City"), OWEN INDUSTRIES, INC., an Iowa corporation (the "Borrower"), and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association (the "Lender").

W I T N E S S E T H:

WHEREAS, the City and the Borrower have entered into that certain Agreement for Private Development dated as of December 30, 2013, as the same may be amended from time to time in accordance with the terms set forth herein (the "Development Agreement"), providing for the development of property legally described on Exhibit A attached hereto (the "Property"); and

WHEREAS, pursuant to the Development Agreement, the Borrower has agreed to construct the Minimum Private Improvements and to pay for the Public Improvements (as each is defined in the Development Agreement), and in exchange the City has agreed to make payments of up to \$4,000,000 in twelve (12) annual installments derived from the Tax Increments generated by the Property; and

WHEREAS, the Lender has agreed to make a loan to the Borrower to finance the construction of a steel service center on the Property pursuant to the terms of that certain Credit Agreement of even date herewith (the "Credit Agreement"), by and between the Borrower and the Lender; and

WHEREAS, the obligation of the Borrower to repay amounts advanced under the Credit Agreement is evidenced by (a) that certain Construction Loan Note of even date herewith executed by the Borrower and made payable to the order of the Lender (the "Construction Note"), (b) that certain Real Estate Term Note (Term Loan) of even date herewith executed by the Borrower and made payable to the order of the Lender (the "Term Note"), and (c) that certain Real Estate Term Note (Term Loan No. 2) of even date herewith executed by the Borrower and made payable to the order of the Lender ("Term Note No. 2," and together with the Construction Note and the Term Note, collectively, the "Notes"); and

WHEREAS, the Notes are secured by, among other things, those certain Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Financing Statements of even date herewith (collectively, the "Mortgages"), executed by the Borrower in favor of the Lender and encumbering certain parcels of real property owned by the Borrower, including without limitation, the Property; and

WHEREAS, the Lender has required, as an express condition to providing the financing contemplated by the Credit Agreement, (a) the Borrower to assign to the Lender all of the Borrower's rights under the Development Agreement with respect to the Redevelopment Grants to secure the obligations of the Borrower to the Lender under the Notes, the Credit Agreement and the documents related thereto (collectively, the "Loan Documents"), (b) certain rights of the

City under the Development Agreement to be subordinated to the Mortgages encumbering the Property, and (c) the City to agree to certain other matters, all as more fully contained herein.

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

1. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Development Agreement.
2. The Borrower hereby collaterally assigns to the Lender all of the Borrower's right, title and interest in and to the Development Agreement with respect to the Redevelopment Grants to secure the Borrower's obligations to the Lender under the Loan Documents. Notwithstanding this Assignment, the Borrower shall remain liable for payment and performance of all of its obligations under the Development Agreement.
3. Upon the City's receipt of written notice of an Event of Default under the Credit Agreement or any document executed by the Borrower in connection therewith from the Lender, the City shall make all payments of Redevelopment Grants as the same become due and payable directly to the Lender at the address set forth herein. The City shall be fully protected in making payments of the Redevelopment Grants to the Lender, as collateral assignee thereof, and the City shall have no responsibility or liability to the Borrower for complying with the provisions of this Section. The Borrower indemnifies and holds the City harmless for any losses, claims, liabilities, and expenses incurred by the City arising from this Section.
4. The Borrower hereby represents and warrants that (a) there have been no prior assignments of the Development Agreement or the Redevelopment Grants, (b) the Development Agreement is a valid and enforceable agreement of the Borrower, (c) neither the City nor the Borrower is in default under the Development Agreement and (d) all covenants, conditions and agreements have been performed as required therein (except those not to be performed until after the date hereof). The Borrower hereby agrees not to sell, assign, pledge, mortgage, encumber or otherwise transfer its interest in the Development Agreement or the Redevelopment Grants as long as this Assignment is in effect. The Borrower hereby irrevocably constitutes and appoints the Lender as its attorney-in-fact to demand, receive and enforce the Borrower's rights with respect to the Development Agreement and the Redevelopment Grants for and on behalf of and in the name of the Borrower or, at the option of the Lender, in the name of the Lender, with the same force and effect as the Borrower could do if this Assignment had not been made.
5. This Assignment shall constitute a perfected, absolute and present assignment, provided that the Lender shall have no right under this Assignment to enforce any of the provisions of the Development Agreement or exercise any rights or remedies under this Assignment until an Event of Default (as that term is defined in the Credit Agreement) shall occur and be continuing.

6. Upon the occurrence of an Event of Default, the Lender may, without affecting any of its rights or remedies against the Borrower under any other instrument, document or agreement, exercise its rights under this Assignment as the Borrower's attorney-in-fact in any manner permitted by law and, in addition, the Lender shall have the right to exercise and enforce any and all rights and remedies available after a default to a secured party under the Uniform Commercial Code as adopted in the State of Minnesota. If notice to the Borrower of any intended disposition of collateral or of any intended action is required by law in any particular instance, such notice shall be deemed commercially reasonable if given at least ten (10) calendar days prior to the intended disposition or other action.
7. Notwithstanding any prohibition in the Development Agreement to the contrary, the City hereby consents to and approves of the Borrower's collateral assignment of the Development Agreement and the Redevelopment Grants to the Lender pursuant to the terms hereof. The City further represents and warrants to the Lender that (a) the City has not consented to any prior assignments of the Development Agreement or the Redevelopment Grants, (b) the Development Agreement is a valid and enforceable agreement of the City, (c) neither the City nor the Borrower is in default under the Development Agreement and (d) all covenants, conditions and agreements have been performed as required in the Development Agreement (except those not to be performed until after the date hereof).
8. The City hereby agrees that any of its right, title and interest in and to the Property pursuant to the Development Agreement or otherwise is and shall remain at all times be subject and subordinate to the liens of the Mortgages encumbering the Property; provided, that the City does not agree that its interests under any agreements or documents executed or created in connection with City planning approvals for Borrower's development are subject to or subordinate to the liens of the Mortgages.
9. The City hereby agrees that the agreement of the Borrower to construct the Minimum Private Improvements set forth in the Development Agreement are not the obligation of, nor shall any provisions in the Development Agreement impose any obligation upon, the Lender or any other holder of the Mortgages, its successors and/or assigns. The Lender acknowledges and agrees that the City's obligation to provide the Redevelopment Grants is governed by Section 8.1 of the Development Agreement and is subject to the satisfaction of certain conditions set forth in the Development Agreement.
10. The City hereby agrees to provide the Lender with copies of any notice or demand made on the Borrower under the Development Agreement. The City further agrees that the Lender shall have the right, but not the obligation, to cure any defaults on behalf of the Borrower within the periods of time set forth in the Development Agreement.
11. The City and the Borrower each agree that no termination, modification, change or amendment shall be made to the Development Agreement or the Redevelopment Grants without the prior written consent of the Lender, which consent shall not be unreasonably withheld, conditioned or delayed.

12. This Assignment can be waived, modified, amended, terminated or discharged only explicitly in a writing signed by the Lender, the City and the Borrower. A waiver by the Lender shall be effective only in a specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of the Lender's rights or remedies hereunder. All rights and remedies of the Lender shall be cumulative and may be exercised singularly or concurrently, at the Lender's option, and any exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other.
13. No provision of this Assignment shall be deemed or construed to alter, amend or modify, in any way, the rights and obligations of the City with respect to the Borrower and the Borrower with respect to the City as contained in the Development Agreement.
14. Any notice, request, demand or other communication hereunder shall be deemed fully given if delivered or postage prepaid, certified or registered, addressed to the party as set forth below:

If to the City:

City of Carter Lake  
950 Locust Street  
Carter Lake, Iowa 51510  
Attn: City Clerk

With a copy to:

Smith Peterson Law Firm, LLP.  
35 Main Place, Suite 300  
P.O. Box 249  
Council Bluffs IA 51502-0249  
Attn: Joseph D. Thornton, Partner

If to the Borrower:

Owen Industries, Inc.  
PO Box 1085  
Omaha, Nebraska 68101-1085  
Attn: John Sunderman

If to the Lender:

Wells Fargo Bank, National Association  
13625 California Street, Suite 200  
Omaha, Nebraska 68154-5233  
Attn: David Wise

15. This Assignment shall be governed by and construed in accordance with the laws of the State of Iowa.
16. This Assignment may be executed in any number of counterparts, each of which shall be an original with the same effect as if the signatures thereto and hereto were upon the same document.
17. The agreements herein contained shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors, successors-in-interest and assigns.

**[SIGNATURE PAGE TO COLLATERAL ASSIGNMENT AND SUBORDINATION OF AGREEMENT FOR PRIVATE DEVELOPMENT]**

IN WITNESS WHEREOF, the parties hereto have made and entered into this Assignment as of the day and year first above written.

CITY OF CARTER LAKE, IOWA

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF IOWA                    )  
  ) ss  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014, by \_\_\_\_\_ and \_\_\_\_\_, the \_\_\_\_\_ and \_\_\_\_\_ of the City of Carter Lake, Iowa, a municipal corporation duly organized and existing under the laws of the State of Iowa, for and on behalf of the municipal corporation.

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

**[SIGNATURE PAGE TO COLLATERAL ASSIGNMENT AND SUBORDINATION OF AGREEMENT FOR PRIVATE DEVELOPMENT]**

OWEN INDUSTRIES, INC.

By: \_\_\_\_\_  
Name: Robert E. Owen  
Its: Chief Executive Officer

STATE OF MINNESOTA    )  
  ) ss  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014, by Robert E. Owen, the Chief Executive Officer of Owen Industries, Inc., an Iowa Corporation, for and on behalf of the corporation.

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

**[SIGNATURE PAGE TO COLLATERAL ASSIGNMENT AND SUBORDINATION OF AGREEMENT FOR PRIVATE DEVELOPMENT]**

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: \_\_\_\_\_  
Name: David Wise  
Its: Vice President

STATE OF MINNESOTA    )  
  ) ss  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014, by David Wise, the Vice President of Wells Fargo Bank, National Association, a national banking association, for and on behalf of the national banking association.

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

THIS INSTRUMENT WAS DRAFTED BY:

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

**EXHIBIT A**

**(Legal Description)**