



City of Leavenworth
 100 N. 5th Street
 Leavenworth, Kansas 66048

CITY COMMISSION REGULAR MEETING
COMMISSION CHAMBERS
TUESDAY, SEPTEMBER 8, 2020 7:00 P.M.

Welcome to your City Commission Meeting – Please turn off or silence all cell phones during the meeting

Meetings are televised everyday on Channel 2 at 7 p.m. and midnight and available for viewing on YouTube and Facebook Live

The Leavenworth City Commission meeting will be open to the public with limited seating capacity.

To reserve a seat, email cwilliamson@firstcity.org no later than 4:00 pm on September 8. Seats will be available on a first come first serve basis. To mitigate the spread of COVID-19 face coverings and social distancing are REQUIRED to attend the meeting. In accordance with Kansas Open Meetings Act (KOMA), the meeting can be viewed on Channel 2 and via Facebook Live. The public is encouraged to continue to view the meeting via Facebook Live or Channel 2 and to submit public comments to be read during the Public Comments portion of the meeting and questions on agenda items to be read during discussion on that topic. Submit your comments or questions to cwilliamson@firstcity.org no later than 6:00 pm on September 8. For call in options related to commenting on agenda items, submit your inquiry to cwilliamson@firstcity.org

Call to Order – Pledge of Allegiance Followed by Silent Meditation

PROCLAMATION:

- 1. Constitution Day, September 17, 2020 (pg. 2)

OLD BUSINESS:

Consideration of Previous Meeting Minutes:

- 2. Minutes from August 25, 2020 Regular Meeting & September 1, 2020 Special Meeting **Action:** Motion (pg. 3)

Second Consideration Ordinance and Development Agreement:

- 3. Community Improvement District (CID) – Luxury & Imports (pg. 9)
 - a. Second Consideration Ordinance 8143 Establishing the District **Action:** Roll Call
 - b. Approve Development Agreement **Action:** Motion

Amended Agenda
Add: #7
Consider Purchase of
711 S 3rd & 226 Olive St

NEW BUSINESS:

Public Comment: *(i.e. Items not listed on the agenda or receipt of petitions- **Please state your name and address**)*
Any emails received by the public for public comment on non-agenda items will be read at this time.

Bids, Contracts and Agreements:

- 4. Consider The Compliance Engine/Brycer LLC Agreement for Services **Action:** Motion (pg. 40)

First Consideration Ordinances:

- 5. First Consideration Ordinance Adopt 2020 Uniform Public Offense Code **Action:** Consensus (pg. 47)
- 6. First Consideration Ordinance Adopt 2020 Intersection Traffic Control Device Master Index **Action:** Consensus (pg. 53)

Other:

- 7. Consider Purchase of 711 S 3rd & 226 Olive Street **Action:** Motion (pg. 55)

Consent Agenda:

Claims for August 22, 2020 through September 4, 2020 in the amount of \$1,785,462.70; Net amount for Payroll #18 effective August 28, 2020 in the amount of \$353,209.76 (Includes Police & Fire Pension in the amount of \$11,839.36). **Action:** Motion

Adjournment

Action: Motion

City of Leavenworth, Kansas



Proclamation

WHEREAS, *September 17, 2020 marks the two hundred thirty-third anniversary of the drafting of the Constitution of the United States of America by the Constitutional Convention; and*

WHEREAS, *It is fitting and proper to accord official recognition to this magnificent document, its memorable anniversary, and the patriotic celebrations which will commemorate the occasion; and*

WHEREAS, *Public Law 915 guarantees the issuing of a proclamation each year by the President of the United States of America designating September 17-23 as Constitution Week.*

NOW, THEREFORE, *I Myron J. (Mike) Griswold, Mayor of the City of Leavenworth, Kansas hereby proclaim September 17-23, 2020 as:*

Constitution Week

and urge all citizens to study the constitution and reflect on the privilege of being an American with all the rights and responsibilities which that privilege involves.

IN WITNESS WHEREOF, *I set my hand and have affixed the Great Seal of the City of Leavenworth, Kansas this eighth day of September in the year of two-thousand and twenty.*

Myron J. (Mike) Griswold, Mayor

ATTEST:

Carla K. Williamson, CMC, City Clerk



CALL TO ORDER - The Governing Body met for a regular meeting and the following commission members were present in the commission chambers: Mayor Myron J. (Mike) Griswold, Commissioners Camalla Leonhard and Mark Preisinger. The following commission members were present via teleconference: Mayor Pro-Tem Nancy Bauder and Commissioner Jermaine Wilson.

Others present in the commission chambers: City Manager Paul Kramer, Assistant City Manager Taylour Tedder, Human Resources Director Lona Lanter and City Clerk Carla K. Williamson.

Other members participating via teleconference: Public Works Director Mike McDonald, Deputy Public Works Director Mike Hooper, Operations Superintendent Curtis Marks Sr., Solid Waste Foreman Steve King and Catherine (Katie) Logan of Lathrop GPM as acting City Attorney.

Mayor Griswold read the following statement from the agenda index:

The Leavenworth City Commission meeting will be open to the public with limited seating capacity. To reserve a seat, email cwilliamson@firstcity.org no later than 4:00 pm on August 25. Seats will be available on a first come first service basis. To mitigate the spread of COVID-19 face coverings and social distancing are REQUIRED to attend the meeting. In accordance with Kansas Open Meetings Act (KOMA), the meeting can be viewed on Channel 2 and via Facebook Live. The public is encouraged to continue to view the meeting via Facebook Live or Channel 2 and to submit public comments to be read during the Public Comments portion of the meeting and questions on agenda items to be read during discussion on that topic. Submit your comments or questions to cwilliamson@firstcity.org no later than 6:00 pm on August 25. For call in options related to commenting on agenda items, submit your inquiry to cwilliamson@firstcity.org

Mayor Griswold asked everyone to stand for the pledge of allegiance followed by silent meditation.

Presentation:

The Mayor presented a Mayor's Award to Bill Geiger of Geiger Ready-Mix for his support of the community and donating the material required for the new parking lot and trail at Stubby Park.

OLD BUSINESS:

Consideration of Previous Meeting Minutes:

Commissioner Preisinger moved to approve the minutes from the August 11, 2020 regular meeting. Commissioner Leonhard seconded the motion and the motion was unanimously approved. The Mayor declared the motion carried 5-0.

Amend Minutes from June 23, 2020 Regular Meeting: City Manager Paul Kramer presented the minutes from the June 23, 2020 meeting for amendment to the motion on the 1145 Vilas Street right-of-way appeal. Due to audio difficulties during the meeting, the motion made by Commissioner Preisinger was

not accurately reflected in the minutes. The following amendment is presented for approval by the Commission:

Commissioner Preisinger moved to compromise on the appeal of the Stewart's at 1145 Vilas **to direct staff to work directly with the Stewarts to arrange landscaping as discussed tonight and come to an agreement.** ~~on the lower wall of the landscaping blocks east to west to two (2) landscaping blocks and~~ Request for the retaining wall on east side of driveway is denied. This will include authorizing staff to work with the Stewarts to enter into a hold harmless agreement to be recorded and filed with the property. Commissioner Bauder seconded the motion and the motion was unanimously approved. The Mayor declared the motion carried 5-0.

Commissioner Preisinger moved to amend the June 23, 2020 City Commission minutes as presented. Commissioner Leonhard seconded the motion and the motion was unanimously approved. The Mayor declared the motion carried 5-0.

NEW BUSINESS:

Public Comment: *emails received by the public for public comment on non-agenda items will be read at this time.* None

Public Hearing – Consider Creation of a Community Improvements District (CID) Luxury & Imports

- **Open Public Hearing:** Commissioner Preisinger moved to open the public hearing. Commissioner Leonhard seconded the motion and the motion was unanimously approved. The Mayor declared the motion carried 5-0.

- **Staff Comments:**
 - Assistant City Manager Taylour Tedder reviewed the following:
 - The issue before the Commission is a public hearing for the creation of a Community Improvement District (CID) in the area generally located at the northeast corner of 4th Street and Eisenhower Road in the City of Leavenworth. The estimated cost of the project is \$1,108,787.68 plus interest accrued and borrowed money.
 - Petition and Notice:
 - On May 1, 2020 a petition signed by Ted A. Rea, Rea Holdings, LLC, was filed with the City Clerk proposing the creation of a Community Improvement District.
 - The Improvement District is generally located at 5239 S. 4th Street (the northeast corner of 4th Street and Eisenhower Road).
 - The petition requests that the City levy a CID sales tax with the Improvement District. The CID sales tax would be imposed on the selling of tangible personal property at retail or rendering or furnishing services within the CID at 0.40% for a period of no more than 22 years. The policy report stated 0.45% however that amount was incorrect.
 - The petition proposed method is a CID pay-as-you-go financing to pay for or reimburse costs of the project.
 - On July 28, 2020, the City Commission adopted Resolution B-2258 setting the Public Hearing as August 25, 2020 for the proposed Community Improvement District.

- Notice of Public Hearing, Resolution B-2258 was published once each week for two (2) consecutive weeks in The Leavenworth Times on August 8 and August 15, 2020.
- On August 6, 2020, Resolution B-2258 was sent via certified mail to all property owners in CID. Following the public hearing, the City Commission may approve the CID by ordinance (first reading) by consensus.
Second Consideration (second reading) will follow on September 8, 2020 to adopt the ordinance by majority vote. A correction will be made to the ordinance at second reading to reflect the 0.40% CID.
- **Public Comments:** None
- **Close Public Hearing:** Commissioner Preisinger moved to close the public hearing. Commissioner Leonhard seconded the motion and the motion was unanimously approved. The Mayor declared the motion carried 5-0.
- **First Consideration Ordinance Establishing a Community Improvement District** – There was a consensus by the Commission to place on first consideration.

General Items:

Consider Employee Benefits Plan Renewal – Human Resources Director Lona Lanter presented for consideration and approval renewal of employees benefits with current providers. United HealthCare (UHC) provides both medical and vision coverage and Delta Dental provides dental coverage. UHC medical coverage for 2021 will have a 6.5% increase with no plan design change and UHC vision and Delta Dental will not have rate increases or plan design changes. The 6.5% increase to medical coverage is below the 8% budgeted for 2021. If approved the plans go into effect December 1, 2020.

Commissioner Preisinger moved to renew the employee benefits plan as presented. Commissioner Leonhard seconded the motion and the motion was unanimously approved. The Mayor declared the motion carried 5-0.

Mayor’s Appointments: City Planning Commission, Community Development Advisory Board and Deer Management Advisory Committee

Mayor Griswold moved to appoint to the City Planning Commission Joseph Burks and James E. Diggs to unexpired terms ending May 1, 2023; and reappoint to the Community Development Advisory Board Charles Davis, Sister Paula Rose Jauernig and Mike Seufert to terms ending August 31, 2023; and appoint Brian Keeley to a term ending August 31, 2023; and appoint to the Deer Management Advisory Committee Jamie A. Whitworth to an unexpired term ending January 31, 2022. Commissioner Preisinger seconded the motion and the motion was unanimously approved. The Mayor declared the motion carried 5-0.

Bids, Contracts and Agreements:

Approve 2021 Landfill Services Contract with Waste Management – Public Works Director Mike McDonald presented for consideration and approval the 2021 contract with Waste Management for

disposal services in the amount of \$25.96 per ton. If approved the contract will be effective January 1, 2021. The City disposes about 11,500 tons of municipal solid waste each year.

Commissioner Preisinger moved to approve the contract for landfill services with Waste Management for 2021 as presented. Commissioner Leonhard seconded the motion and the motion was unanimously approved. The Mayor declared the motion carried 5-0.

CONSENT AGENDA:

Commissioner Leonhard moved to approve claims for August 8, 2020 through August 21, 2020 in the amount of \$825,324.44; Net amount for Payroll #17 effective August 14, 2020 in the amount of \$340,556.48 (No Police & Fire Pension). Commissioner Preisinger seconded the motion and the motion was unanimously approved. The Mayor declared the motion carried 5-0.

Adjournment:

Commissioner Preisinger moved to adjourn the meeting. Commissioner Leonhard seconded the motion and the motion was unanimously approved.

Time Meeting Adjourned 7:42 p.m.

Minutes taken by City Clerk Carla K. Williamson, CMC



Open Special Meeting:

Commissioner Preisinger moved to open a special meeting. Commission Wilson seconded the motion and the motion was unanimously approved. The Mayor declared the motion carried 5-0.

The Governing Body opened a Special Meeting and the following commission members were present in the commission chambers: Mayor Myron J. (Mike) Griswold, Commissioners Camalla Leonhard, Mark Preisinger and Jermaine Wilson. The following commission member was present virtually: Mayor Pro-Tem Nancy Bauder.

Others present in the commission chambers: City Manager Paul Kramer, Assistant City Manager Tylour Tedder and City Clerk Carla Williamson.

Executive Session:

Executive Session – Security Matters Exception per K.S.A. 75-4319 (b) (12) (D)

Mayor Griswold moved to recess into executive session to discuss economic development opportunities per K.S.A. 75-4319 (b) (4) to discuss data relating to financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorships. The open meeting to resume in the City Commission Chambers at 8:25 p.m. by the clock in the City Commission Chambers. City Manager Paul Kramer and Assistant City Manager Taylor Tedder are requested to be present during the Executive Session. Commission Preisinger seconded the motion and the motion was unanimously approved. The Mayor declared the motion carried 5-0.

The City Commission returned to open session at 8:25 p.m. with no action taken.

Other:

Paul Kramer

- Free household waste disposal offered on September 5th behind the Municipal Service Center
- Free mask give away by the City/Fire Department on Saturday September 12 at Haymarket Square
- Labor Day holiday September 7 City facilities closed and Trash pickup delayed 1 day

Commissioner Preisinger

- Annual Doggie Dash September 8 at Wollman Pool end of season pre-registration required; Dogs only in the pool
- Concerned with the COVID numbers reported by the County today at 10% positivity. May need to look at policies if the numbers continue in this manner

Commissioner Bauder

- Wants to look at the granite seal streets and would like an update from Public Works

Mayor Griswold:

- Mayors town hall on Thursday with Mr. Jamie Miller of the County Health Department to discuss COVID and Taylor Tedder Assistant City Manager to discuss Lovingworth Events

Adjournment:

Commissioner Preisinger moved to adjourn the meeting. Commissioner Wilson seconded the motion and the motion was unanimously approved.

Time Meeting Adjourned 8:35 p.m.

Minutes taken by City Clerk Carla K. Williamson, CMC

**POLICY REPORT
SECOND CONSIDERATION ORDINANCE 8143
CREATION OF A COMMUNITY IMPROVEMENT DISTRICT
LUXURY AND IMPORTS 5239 S. 4TH STREET**

AUGUST 11, 2020



Taylour Tedder
Assistant City Manager



Paul Kramer
City Manager

BACKGROUND:

At the August 25, 2020 City Commission Regular meeting the City Commission reviewed and placed on first consideration:

AN ORDINANCE OF THE CITY OF LEAVENWORTH, KANSAS CREATING A COMMUNITY IMPROVEMENT DISTRICT IN THE CITY; AUTHORIZING THE MAKING OF CERTAIN PROJECT IMPROVEMENTS RELATING THERETO; APPROVING THE ESTIMATED COSTS OF SUCH PROJECT IMPROVEMENTS; AND PROVIDING FOR THE METHOD OF FINANCING THE SAME.

Changes from first consideration include:

- The proposed CID sales tax percentage is now .40%.
- The total projected cost of the four phases eligible for CID reimbursement amount to \$1,610,000.

The development agreement is also presented to the Commission and requires separate action from Ordinance No. 8143. The development agreement outlines performance measures and benchmarks for receiving disbursements of eligible project costs within the CID. Highlights of the development agreement related to benchmarks and caps include:

- Phase 1 (front/side lot): \$254,000 (75% reimbursement cap of actual project cost or \$190,500)
- Phase 2 (side lot): \$106,000 (75% reimbursement cap of actual project cost or \$79,500)
- Phase 3 (new building and additional lot): \$750,000 (75% reimbursement cap of actual project cost or \$562,500)
- Phase 4 (renovation of existing building, office, service areas and existing lots/landscaping) \$500,000 (75% reimbursement cap of actual project cost or \$375,000)
- Total cap of disbursements not to exceed \$1,207,500 or 75% of actual project costs. After reaching disbursement of actual project costs that were completed at the rate of 75% reimbursement, or the cap of \$1,207,500 the CID would be dissolved.

ACTION:

- Ordinance No. 8143 is presented for second consideration and requires a roll call vote.
- The development agreement is presented for approval requiring a motion.

ATTACHMENTS:

- Ordinance No. 8143
- Development Agreement

(Published in *The Leavenworth Times* on _____, 2020)

ORDINANCE NO. 8143

AN ORDINANCE OF THE CITY OF LEAVENWORTH, KANSAS CREATING A COMMUNITY IMPROVEMENT DISTRICT IN THE CITY; AUTHORIZING THE MAKING OF CERTAIN PROJECT IMPROVEMENTS RELATING THERETO; APPROVING THE ESTIMATED COSTS OF SUCH PROJECT IMPROVEMENTS; AND PROVIDING FOR THE METHOD OF FINANCING THE SAME.

WHEREAS, pursuant to K.S.A. 12-6a26 *et seq.*, as amended (the "Act"), cities and counties are authorized to create community improvement districts for economic development purposes and any other purpose for which public money may expended, and to levy a community improvement district sales tax and/or levy special assessments upon the property within such community improvement districts; and

WHEREAS, a petition (the "Petition") signed by Rea Holdings, LLC, and/or Ted A. Rea, Inc., d/b/a Luxury & Imports (together, the "Petitioners"), was filed with the City Clerk of the City of Leavenworth, Kansas (the "City") in accordance with the Act, which Petition proposed the creation of a community improvement district (the "District") under the Act and the imposition of a community improvement district (CID) sales tax therein (the "CID Sales Tax"), in order to assist in financing costs of the Project (defined below); and

WHEREAS, the Petition was signed by the required number of owners of record, whether resident or not, as required by the Act; and

WHEREAS, the City Commission of the City of Leavenworth, Kansas (the "City Commission") intends to create the District and to levy a community improvement sales tax therein in the amount of four-tenths of one percent (0.40%) (the "CID Sales Tax"); and

WHEREAS, the Act provides that prior to creating any community improvement district and imposing a community improvement district sales tax, the governing body shall, by resolution, direct and order a public hearing on the advisability of creating such community improvement district and the construction of such community improvement district projects therein, and to give notice of the hearing by publication at least once each week for two (2) consecutive weeks in the official City newspaper and by certified mail to all property owners within the proposed community improvement district, the second publication to be at least seven (7) days prior to the hearing and such certified mail sent at least ten (10) days prior to such hearing; and

WHEREAS, the City Commission adopted Resolution No. B-2258 on July 28, 2020, directing that a public hearing on the proposed District within the City be held on August 25, 2020, declaring its intent to impose the CID Sales Tax, and requiring that the Clerk for the City of Leavenworth, Kansas provide for notice of such public hearing as set forth in the Act; and

WHEREAS, notice of the public hearing containing the following information: (a) the time and place of the hearing, (b) the general nature of the Project, (c) the estimated cost of the Project, (d) the proposed method of financing the Project, (e) the proposed amount of the CID Sales Tax, (f) a map of the proposed District, and (g) a legal description of the proposed District, was mailed to all property owners within the proposed District on August 6, 2020, and published once each

week for two (2) consecutive weeks in *The Leavenworth Times*, the official City newspaper, on August 8, 2020 and August 15, 2020; and

WHEREAS, on August 25, 2020, the City Commission conducted a public hearing on the proposed District, the proposed Project, and estimated costs thereof and the method of financing the same, all in accordance with the Act; and

WHEREAS, the City Commission hereby finds and determines it to be advisable to create the District, authorize the Project, approve the estimated cost of the Project, and approve the method of financing the same, all in accordance with the provisions of the Act.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF LEAVENWORTH, KANSAS:

Section 1. Creation of District. The City Commission hereby finds and determines that it is advisable to create, in accordance with the provisions of the Act, the District within the City. Provided, that the City Commission's approval and creation of the District is conditioned and contingent upon the proposed developers of the Project, the above-named Petitioners, and the City of Leavenworth, Kansas, entering into and fully-executing a Development Agreement by no later than September 11, 2020, on terms which are mutually satisfactory to City and such developers. A map generally outlining the boundaries of the District is attached hereto as **Exhibit A** and incorporated herein by reference. The legal description of the District is set forth on **Exhibit B**, attached hereto and incorporated herein by reference.

Section 2. Authorization of Project. The general nature of the project to be funded by the proposed community improvement district (the "**Project**") is to redevelop and improve certain real property generally located at the northeast corner of 4th Street/U.S. Hwy. 7 and Eisenhower Road in the City of Leavenworth, Kansas. The Project may be described in a general manner as consisting of improvements to and expansion of an automobile dealership and service center, and all associated site work, infrastructure, utilities, storm water control, access, street improvements, landscaping, lighting, parking facilities, and any other items allowable under K.S.A. 12-6a26 *et seq.*, which Project is hereby authorized.

Section 3. Approval of Estimated Cost of the Project. Notwithstanding the contents of the above-described Petition, and as presented to the City Commission at the above-described public hearing, the estimated or probable cost of the Project is approximately \$1,610,000.00, plus interest accrued on borrowed money, which is hereby approved.

Section 4. Method of Financing. It is proposed that the Project be financed through a combination of private equity, private debt, and CID pay-as-you-go financing (as defined in the Act). This method of financing is hereby approved.

Section 5. Imposition of CID Sales Tax. In order to provide for the payment of the Project, the City Commission hereby levies the CID Sales Tax within the District in an amount of 0.40% for a period of 22 years, as authorized under the Act.

Section 6. Effective Date. This Ordinance shall take effect and be in full force from and after its passage by the City Commission and publication once in the official City newspaper. Provided, that this Ordinance shall not be published unless and until the above condition regarding the development agreement has been satisfied. If the above condition has not been satisfied by

September 11, 2020, this Ordinance shall not be effective, and shall be deemed revoked without further action on the part of the City Commission

**ADOPTED BY THE CITY COMMISSION OF THE CITY OF LEAVENWORTH, KANSAS
ON SEPTEMBER 8, 2020.**

Myron J. "Mike" Griswold, Mayor

[SEAL]

ATTEST:

Carla K. Williamson CMC, City Clerk

EXHIBIT B

Legal Description of District

NEW TRACT 1

A TRACT OF LAND IN THE NORTHWEST QUARTER OF SECTION 18, TOWNSHIP 9 SOUTH, RANGE 23 EAST OF THE 6TH P.M. IN THE CITY OF LEAVENWORTH, LEAVENWORTH COUNTY, KANSAS.

COMMENCING AT THE SOUTHWEST CORNER OF SAID NORTHWEST QUARTER; THENCE N88°29'59"E, ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 33.00 FEET; THENCE N01°34'51"W, A DISTANCE OF 67.91 FEET TO A POINT OF INTERSECTION WITH THE NORTH RIGHT OF WAY LINE OF EISENHOWER ROAD AS IT NOW EXISTS AND SAID RIGHT OF WAY OF K-7, ALSO KNOWN TO BE THE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT; THENCE N01°34'51"W, ALONG SAID EAST RIGHT OF WAY LINE, A DISTANCE OF 249.66 FEET; THENCE S83°32'31"E, A DISTANCE OF 151.68 FEET; THENCE N88°55'48"E, A DISTANCE OF 171.43 FEET; THENCE N01°28'13"W, A DISTANCE OF 306.48 FEET; THENCE N87°30'02"E, A DISTANCE OF 292.70 FEET; THENCE S01°16'11"E, A DISTANCE OF 368.27 FEET; THENCE S88°29'59"W, A DISTANCE OF 18.76 FEET; THENCE S01°36'40"E, A DISTANCE OF 201.99 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF SAID EISENHOWER ROAD; THENCE S88°29'59"W ALONG SAID NORTH RIGHT OF WAY LINE, A DISTANCE OF 38.61 FEET; THENCE N01°36'40"W, CONTINUING ALONG SAID NORTH RIGHT OF WAY LINE, A DISTANCE OF 5.00 FEET; THENCE S88°29'51"W, CONTINUING ALONG SAID NORTH RIGHT OF WAY LINE, A DISTANCE OF 526.88 FEET; THENCE N01°34'51"W, CONTINUING ALONG SAID NORTH RIGHT OF WAY LINE, A DISTANCE OF 5.81 FEET; THENCE S88°29'51"W, CONTINUING ALONG SAID NORTH RIGHT OF WAY LINE, A DISTANCE OF 12.84 FEET; THENCE N39°17'13"W, CONTINUING ALONG SAID NORTH RIGHT OF WAY LINE, A DISTANCE OF 25.96 FEET TO THE POINT OF BEGINNING.

CONTAINS 5.60 ACRES MORE OR LESS

DEVELOPMENT AGREEMENT

between the

CITY OF LEAVENWORTH, KANSAS

and

REA HOLDINGS, LLC

and

TED A. REA, INC. d/b/a Luxury & Imports

DATED AS OF SEPTEMBER 8, 2020

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is made and entered into as of the 8th day of September, 2020 (the "**Effective Date**"), by and between the **CITY OF LEAVENWORTH, KANSAS**, a municipal corporation organized according to Kansas law (the "**City**") and **REA HOLDINGS, LLC**, a Kansas limited liability company, and **TED A. REA, INC.**, a Missouri corporation, d/b/a "Luxury & Imports" (together, and jointly and severally, the "**Developers**"). The City and the Developers are hereinafter collectively referred to as the "**Parties**" and each a "**Party**."

RECITALS

A. The Developers, or one of them, is the owner of certain real property in the City of Leavenworth, Kansas, as legally described in Exhibit A and depicted on Exhibit B (the "**Property**").

B. The Developer seeks to improve the Property by renovating, expanding, and improving an existing automobile dealership and service center, and all associated site work, infrastructure, utilities, storm water control, access, landscaping, lighting, parking facilities, and any other items allowable under the CID Act (as defined below) (collectively, the "**Project**"). The Project is as described on Exhibit C attached hereto and incorporated herein by this reference, and shall consist of separate phases ("**Phase 1**", "**Phase 2**", "**Phase 3**", and "**Phase 4**"), as described on Exhibit C.

C. The Parties agree that construction and improvement of the Project is to their mutual benefit.

D. The City has authority to create a community improvement district ("**CID**"), pursuant to the Kansas Community Improvement District Act, as set forth in K.S.A. § 12-6a26 *et seq.* (the "**CID Act**"), for the purpose of financing certain public and private improvements as defined therein.

E. To promote the general and economic welfare of the City and facilitate the construction and improvement of the Project, the City has authorized the creation of a CID and the imposition of the CID Sales Tax (as such term is defined herein), for the Project.

F. The Developers have submitted a petition (the "**CID Petition**") to the City requesting the formation of a community improvement district ("**CID**"), which includes the Property and is coterminous with the boundaries of the Property, as described in the CID Petition (the "**CID District**").

G. On July 28, 2020 the governing body of the City adopted Resolution No. 2258, giving notice of a public hearing on August 25, 2020, regarding the advisability of creating the CID District.

H. On September 8, 2020, the governing body of the City approved the creation of the CID District through the adoption of Ordinance No. 8143 (the "**CID Ordinance**"), which CID Ordinance (and notwithstanding the sales tax request in the CID Petition) approved certain public and private improvements related to the Project and within the CID District to be financed with Pay-As-You-Go Reimbursement (as defined herein) from the imposition of an additional four

tenths of one percent (.40%) sales tax on all taxable sales within the CID District (the "**CID Sales Tax**"), to commence as provided in this Agreement.

I. The Parties now desire to enter into this Agreement to formalize the development and financing of the Project.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Developer hereby state, confirm and agree as follows:

ARTICLE I DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.1 Rules of Construction. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction apply in construing the provisions of this Agreement. The terms defined in this Article include the plural as well as the singular.

B. All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with general accounting principles, consistently applied.

C. All references in this Agreement to designated "Articles," "Section" and other subdivisions are to be the designated Articles, Sections and other subdivisions of this instrument as originally executed.

D. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

E. The Article and Section headings herein are for convenience only and shall not affect the construction of this Agreement.

F. The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section. The resolutions and ordinances of the City introduced and adopted by the City Commission which approve the creation of the CID District, and the provisions of the CID Act (as defined herein and as amended), are hereby incorporated herein by reference and made a part of this Agreement, subject in every case to the specific terms hereof.

Section 1.2 Definitions of Words and Terms. Capitalized words used in this Agreement shall have the meanings set forth in the Recitals to this Agreement and the following meanings: "**Affiliate**" means any subsidiary or affiliate which is owned or controlled by the Developers (or either of them) or one or more of their principals (such principal or principals having at least a 51% ownership interest in both of the Developer entities); or any entity which is owned or controlled by the Developers (or either of them) or one or more of their respective principals (such principal or principals having at least a 51% ownership interest in both of the Developer entities); or an entity that owns or controls the Developers.

"**Agreement**" means this Development Agreement, as amended from time to time.

"Applicable Law and Requirements" means any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ determination, award, permit, license, authorization, directive, requirement or decision of or agreement with or by Governmental Authorities.

"Base Year Taxable Sales" means previous annual taxable sales from the Property in the stipulated and agreed amount of \$16,725,617.00.

"Certificate of Project Costs" means a certificate, substantially the form attached hereto as **Exhibit D**, to request reimbursement of Project Costs.

"CID Act" means K.S.A. 12-6a26 *et seq.*

"CID Revenue" means net sales tax revenue generated from the CID Sales Tax received by the City from the State.

"CID Sales Tax" shall have the meaning set forth in the Recitals.

"CID Sales Tax Fund" means the separate fund established by the City for deposit of the CID Sales Tax received from the State, net of amounts retained by the State pursuant to the CID Act, collected within the CID District, and that is used to reimburse Project Costs pursuant to the CID Act and this Agreement.

"City" means the City of Leavenworth, Kansas.

"City Administrative Fee" means an annual amount equal to the aggregate of 3% of the CID Revenue.

"City Expenses" shall have the meaning set forth in Section 3.3.

"City Event of Default" means any event or occurrence defined in Section 6.1B of this Agreement.

"City Representative" means the City Manager of the City, and such other person or persons at the time designated to act on behalf of the City in matters relating to this Agreement.

"Developers" means Rea Holdings, LLC, a Kansas limited liability company, and Ted A. Rea, Inc., a Missouri corporation, d/b/a "Luxury & Imports", jointly and severally, and their permitted successors and assigns.

"Developer Event of Default" means any event or occurrence defined in Section 6.1A of this Agreement.

"Developer Representative" means any Officer of Developers, or such other person or persons who represent to the City that they have been designated by the Developers in matters relating to this Agreement; provided, that Developers shall at all times be and remain responsible for any statements, representations, warranties, or certifications made by the Developer Representative, and any errors, omissions, or misstatements made by such designated Developer Representative.

"Developer Work" shall have the meaning set forth in Section 3.1.

"Event of Default" means a City Event of Default or a Developer Event of Default as defined in Article VI of this Agreement.

"Excusable Delay" means any delay in the performance of obligations under this Agreement which is beyond the reasonable control and without the fault of the Party affected and which the affected Party may not overcome despite good faith efforts and diligence, caused by damage or destruction by fire or other casualty, strike, war, riot, sabotage, act of public enemies, epidemics, pandemics, default of another party, freight embargoes, acts of God, including earthquake, adverse weather conditions such as, by way of illustration and not limitation, severe rain, snow or ice storms or below freezing temperatures of abnormal degree or abnormal duration, freezing temperatures that prevent the prudent installation of concrete or similar materials, tornadoes, floods, or other causes beyond the reasonable control or fault of the affected Party which in fact prevents the Party so affected from discharging its respective obligations hereunder.

"Financing Cost" means interest at the Prime Rate plus one percent (1%), compounded semiannually, incurred by the Developer in connection with private financing (which may include loans or other indebtedness) to pay Project Costs, including interest costs and fees associated with such private financing or the refunding or refinancing of any such private financing, from the time such costs are incurred until the time such costs are reimbursed from Project Funds.

"Governmental Approvals" means all plat approvals, re-zoning or other zoning changes, site plan approvals, conditional use permits, variances, building permits, architectural review, environmental regulatory or public health regulatory approvals or permits, or other subdivision, zoning or similar approvals required for the implementation of the Project and consistent with Applicable Law and Requirements and this Agreement.

"Governmental Authorities" means any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any type of any governmental unit (federal, state or local) whether now or hereafter in existence.

"Pay-As-You-Go Reimbursement" means the reimbursement of Project Costs with CID Revenue from the City to the Developers, from time to time as such expenses are documented and funds are available in the CID Sales Tax Fund, and as further provided in this Agreement.

"Permitted Subsequent Approvals" means the building permits and other governmental approvals customarily obtained prior to construction which have not been obtained on the date that this Agreement is executed, which the City or other governmental entity has not yet determined to grant.

"Phase 1", "Phase 2", "Phase 3", and "Phase 4" have the meaning set forth in **Exhibit C** hereto.

"Prime Rate" means the prime rate reported in the "Money Rates" column or any successor column of *The Wall Street Journal*, currently defined therein as the base rate on corporate loans posted by at least **75%** of the nation's **30** largest banks, or any successor thereto. If *The Wall Street Journal* ceases publication of the Prime Rate, then "Prime Rate" shall mean the "prime rate" or "base rate" announced by U.S. Bank, National Association, Kansas City, Missouri.

"Project" has the meaning set forth in the Recitals of this Agreement, and construction of Developer Work pursuant to this Agreement.

"**Project Budget**" means the preliminary budget for the development of the Project, attached hereto as **Exhibit C**.

"**Project Costs**" means all costs, to the extent authorized under the CID Act, that are associated with the Project, and consisting of, architectural and engineering costs, utility and infrastructure improvement fees and costs, signage and pylon costs, landscaping costs, inspection and testing expenses, roof and structural costs, parking lot repair and improvement costs, vertical improvement costs, ongoing rehabilitation costs, survey costs, geotechnical costs, environmental costs, taxes, insurance and appraisal costs, Financing Costs and Public Costs. Provided, that Project Costs shall not include acquisition costs or legal expenses.

"**Project Funds**" means, collectively, the CID Sales Tax Fund.

"**Public Assistance Cap**" means the maximum amount of CID Revenue available for Project Costs, which, in the aggregate, shall not exceed \$1,207,500.00, plus Financing Costs, provided, that each Phase within the Project shall further be subject to the following caps, and subject to the terms of Section 3.7 below:

- "**Phase 1 Cap**": \$190,500.00
- "**Phase 2 Cap**": \$79,500.00
- "**Phase 3 Cap**": \$562,500
- "**Phase 4 Cap**": \$375,000

"**Public Costs**" means the City Administrative Fee and City Expenses.

"**State**" means the state of Kansas.

ARTICLE II PURPOSE OF AGREEMENT REPRESENTATIONS

Section 2.1 Purpose of Agreement. The City hereby acknowledges that the completion of the Project is of significant importance to the City's economic development goals and further acknowledges that the City has authorized cooperation with Developers in the development of the Project. Representations of City. The City makes the following representations and warranties which to the best of the City's actual knowledge, are true and correct on the date hereof: *Due Authority*. The City has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, subject to the limitations expressed herein or otherwise imposed by law, and this Agreement has been duly and validly authorized and approved by all necessary City proceedings, findings and actions.

B. *No Defaults or Violation of Law*. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any agreement or instrument to which the City is now a party, and do not and will not constitute a default under any of the foregoing.

C. *No Litigation*. To the best of the City's knowledge, there is no litigation, proceeding or investigation pending or, to the knowledge of the City, threatened against the City with respect to the Project or this Agreement. In addition, no litigation, proceeding

or investigation is pending or, to the knowledge of the City, threatened against the City seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the City to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the City of the terms and provisions of this Agreement.

D. *No Default.* No default or City Event of Default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice or both, would constitute a default or an event of default in any material respect on the part of the City under this Agreement.

Section 2.3 Representations of the Developers. The Developers make the following representations and warranties, which to the best of the Developers' actual knowledge, are true and correct on the date hereof:*Due Authority.* The Developers have all necessary power and authority to execute and deliver and perform the terms and obligations of this Agreement and to execute and deliver the documents required of the Developers herein, and such execution and delivery has been duly and validly authorized and approved by all necessary proceedings.

B. *No Defaults or Violation of Law.* The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any organizational restriction or of any agreement or instrument to which the Developers are, or either of them is, now a party, and do not and will not constitute a default under any of the foregoing.

C. *No Litigation.* No litigation, proceeding or investigation is pending or, to the knowledge of the Developers, threatened against the Project or the Developers (or either of them) which would have a material and adverse impact on the Project or this Agreement, including the Developers' obligations hereunder. In addition, no litigation, proceeding or investigation is pending or, to the knowledge of the Developers, threatened against the Developers (or either of them) seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the Developers to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the Developers of the terms and provisions of this Agreement.

D. *No Default.* No default or Developer Event of Default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an event of default in any material respect on the part of the Developers (or either of them) under this Agreement, or any other material agreement or material instrument to which the Developers are, or either of them is, a party or by which the Developers are, or either of them is, or may be bound.

ARTICLE III CONSTRUCTION AND FINANCING REIMBURSEMENT OF PROJECT COSTS

Section 3.1 Developer Work. Subject to the terms and conditions of this Agreement, the Developers shall use reasonable efforts to construct, or cause to be constructed the Project (collectively, the "**Developer Work**" for purposes of this Agreement). The Developers may make

requests to the City for the reimbursement to the Developers for Project Costs in accordance with Section 3.7 and Section 3.8 of this Agreement. The Developers agree that any and all Developer Work will be performed and completed according to Applicable Law and Requirements and as provided in this Agreement. Project Budget. Attached as **Exhibit C** is the Project Budget setting forth in detail the total estimated cost of the Project and designating by category Project Costs and costs to be wholly or partially financed by Developers. Reimbursement of City Expenses. The City shall be reimbursed from Project Funds for third-party professional fees and expenses, including legal and audit, incurred by the City in connection with the creation of the CID, and this Agreement, and also including consultants engaged by the City, to implement, administer and enforce this Agreement (the "**City Expenses**"). City Expenses shall include any documented and applicable portion of fees or increased fees from City's auditors in connection with the implementation and administration of this Agreement and the funds established hereunder. The City shall submit to the Developers an itemized statement of actual reimbursements received for City Expenses on a regular periodic basis, but no more often than quarterly. City Administrative Fee. The City shall collect the City Administrative Fee on all the net CID Sales Tax received by the City. The City Administrative Fee shall be used to cover the administration and other City costs incurred for the duration of this Agreement and shall be in addition to the costs identified in Section 3.3. Term: Creation of Project Funds. The term of the CID District shall commence on the date the director of taxation for the State begins collecting the CID Sales Tax within the CID District and expire on the earlier of (i) the date this Agreement is otherwise terminated under its terms, (ii) the date that the Public Assistance Cap is met, or (iii) a date occurring twenty-two (22) years following the date the director of taxation for the State begins collecting the CID Sales Tax within the CID District (the "**CID Term**"). During the CID Term, the City shall establish and maintain a separate fund and account known as the CID Sales Tax Fund. All CID Sales Tax Revenues received by the City shall be deposited into the CID Sales Tax Fund for the purpose of reimbursing *first*, the City for Public Costs, and *second*, the Developers for other Project Costs, as provided in the CID Act and this Agreement. The City shall have sole control of disbursements from the CID Sales Tax Fund, subject to the City's obligations under this Agreement. Pay-As-You-Go Funding of Project Costs. Subject to the Public Assistance Cap (and the cap on any Phase of the Project), the City agrees to reimburse the Developers for Project Costs from the CID Sales Tax Fund on a Pay-As-You-Go Reimbursement basis in accordance with this Agreement. CID Revenue. The Developers acknowledge and agree that Developers' right to reimbursement for Project Costs, each year, is contingent upon, and does not arise prior to, Developers' gross annual sales from the Property that are subject to the CID Sales Tax (measured as of January 1 of the current year, based on sales from January 1 through December 31 of the previous calendar year) exceeding the Base Year Taxable Sales by at least five percent (5.00%); provided, however, that:

A. all CID Revenue collected shall continue to be deposited into the CID Sales Tax Fund and made available to reimburse the Developers for Project Costs as provided in this Section 3.7 and Section 3.8 below;

B. commencing as of January 1 of each year, and upon satisfaction of the annual sales contingency for the previous year, the CID Revenues in the CID Sales Tax Fund shall be available to Developer for Project Costs previously incurred and for Project Costs incurred during the current year following the year in which the sales contingency was satisfied, subject to the applicable Public Financing Cap;

C. if the annual sales contingency is not satisfied as to any one year, Developers shall not be entitled to reimbursement for any Project Costs incurred during the following calendar year and until such annual sales contingency is satisfied, but shall

be entitled to reimbursement for Project Costs previously incurred during a calendar year for which the sales contingency had been deemed to have been satisfied; and

D. the above sales contingency shall not apply as to sales from the Property during the year 2020 or Project Costs incurred during the year 2021.

Section 3.8 Reimbursement of Project Costs from the Project Funds. All requests for reimbursement or payment of Project Costs from the Project Funds shall be made in a Certificate of Project Costs in substantially the form attached hereto as **Exhibit D**, which Certificate shall be signed by the Developer Representative. The Developers shall provide itemized invoices, receipts, any lien waivers from vendors, contractors or subcontractors, and evidence of completion of Developer Work, or other information reasonably requested by the City to confirm that such costs were incurred, and are eligible for reimbursement under this Agreement. The Developers may submit electronic documentation, provided that, if requested by the City, original documents will also be delivered to the City by mail or hand delivery or by reputable national overnight mail services (e.g., Federal Express or UPS). Certificates of Project Costs may be submitted not more frequently than once every calendar quarter and, except as provided in Section 3.7 above, payment of approved Project Costs shall occur once per calendar quarter.

B. The City reserves the right to have its engineer or other agents or employees inspect all work in respect of which a Certificate of Project Costs is submitted, to examine the supporting documentation and other records relating to all expenses related to the invoices to be paid to determine that (1) the request constitutes reimbursement for Project Costs reimbursable from the CID Sales Tax Fund under this Agreement; (2) the expense was incurred; (3) no Developer Event of Default is outstanding, and no fact or circumstance exists which upon notice and the passage of time, would ripen into a Developer Event of Default; and (4) there is no fraud on the part of the Developers. The City may request and obtain from the Developers and other parties such other information as is reasonably necessary for the City to evaluate compliance with the terms of this Agreement.

C. The City shall have thirty (30) days after receipt of a Certificate of Project Costs and accompanying documentation referred to in subsections A and B above to review and respond by written notice to the Developers indicating acceptance of the Certificate, disapproving the Certificate, or documenting any deficiency in such Certificate. If the submitted Certificate and supporting documentation are acceptable, and Developers are eligible for reimbursement under Section 3.7, the City shall approve the Certificate and make, or cause to be made, direct reimbursement of Project Costs paid by Developers from the CID Sales Tax Fund, if sufficient funds are available in the CID Sales Tax Fund, and in the event the Project Fund or Project Funds are at that time insufficient to reimburse the Developer for such approved Project Costs, the City shall promptly reimburse the Developer on the first (1st) day of each calendar quarter as funds become available. If the City notifies the Developers of any deficiency or of its disapproval of, or requests additional documentation not originally requested as provided in subsection A above relating to, a Certificate of Project Costs, the Developers shall have the opportunity to provide such additional documentation, cure any deficiency or demonstrate that no deficiency exists and respond in writing to the City. City shall notify Developers within ten (10) business days of the receipt of Developers' response of its acceptance of the response or of any remaining deficiency. If an outstanding deficiency remains, the City shall reimburse the Developers for any approved Project Costs described in such Certificate, minus the

disputed amount and the balance of the disputed amount shall carry forward until the deficiency is cured or otherwise resolved.

Section 3.9 Limitation on City's Payment Obligations. The City's obligations to reimburse Project Costs under this Agreement shall be limited by the amounts received by the City and properly deposited in the CID Sales Tax Fund as provided in the CID Act and this Agreement. City's obligations under this Agreement shall be subject to any requirements or limitations imposed by or provided under the Kansas Cash Basis Law (K.S.A. 10-1101, *et seq.*) or the Kansas Budget Law (K.S.A. 79-1935), both as amended. Right to Inspect and Audit. The Developers agree that, up to two (2) years after a Certificate of Project Costs is submitted to the City for reimbursement, with reasonable advance notice and during normal business hours, the City shall have the right and authority to review, audit, and copy, from time to time, all the Developers' books and records relating to such costs (including, but not limited to, general contractor's sworn statements, general contracts, subcontracts, material purchase orders, waivers of lien, and paid receipts and invoices, which relate to such cost). Sales Tax Information. Developers agree that they will provide, and that they will use commercially reasonable efforts to, by appropriate agreement, require all parties holding or operated by, through, or under them, or otherwise operating from the Property, to provide to the City: (i) documentation of sales tax receipts for each such business from the Property, indicating the type and amount of the CID Sales Taxes paid by such business; and (ii) true and correct copies of all sales tax and use tax returns filed with the State with respect to sales in, on, or from the Property, the same to be provided simultaneously with, or within ten (10) days after such filing.

B. For any and all portions of the Property which are leased and operated by operators or other third parties who are not Affiliates of Developers, Developers shall use good faith attempts to negotiate lease, covenants or other applicable agreements requiring that such businesses operating within the Property provide within a reasonable period of time (but in no event more than ten (10) days after filing), the City with true and correct copies of all sales tax and use tax returns filed with the State with respect to sales in, on or from the Property for each business in the Property. If applicable and upon request, Developers shall, to the extent allowed by Applicable Laws and Requirements, provide to the Kansas Department of Revenue the names of all vendors operating in, on or from the Property, their Kansas sales tax identification number, and their dates of operation.

ARTICLE IV GENERAL COVENANTS

Section 4.1 CID District Use Restriction. At all times while this Agreement is in effect, consistent with the CID Petition, the Project will operate as an automobile dealership and automobile service center. If Developer fails to use the portion of the Project in the CID District for one or more of the uses permitted hereunder, then the City may, in its sole and absolute discretion, (i) amend this Agreement to permit the changed use, and (ii) without such amendment, exercise any remedy set forth in Section 6.2 hereof. Operation of Project. The Project shall be constructed and operated in compliance with all Applicable Laws and Requirements. The Developers shall secure or cause to be secured any and all permits which may be required by the City and any other governmental agency having jurisdiction for the construction and operation of the Developer Work, including but not limited to, obtaining all necessary rental licenses and paying any necessary fees to obtain required permits and licenses. Taxes, Assessments, Encumbrances and Liens. For that portion of the Project owned by the Developers or any Affiliate, the Developers shall pay or cause to be paid when due all real estate taxes and assessments within the Project. The Developers shall be permitted to contest the validity or amounts of any

tax, assessment, encumbrance or lien as permitted by laws of the state of Kansas. The Developers shall promptly notify the City in writing of a protest of real estate taxes or valuation of the Property, or any portion thereof. Subject to the Developer's right to contest in good faith any mechanics' liens, as discussed below, the Developers agree that no mechanics' or other liens shall remain against the Property, for labor or materials furnished in connection with any acquisition, construction, additions, modifications, improvements, repairs, renewals or replacements so made. The Developers agree to indemnify and hold harmless the City in the event any liens are filed against the Property as a result of acts of the Developers, their respective agents or independent contractors, unless such liens are filed as a result of willful misconduct or negligence by the City or its officers, employees or agents.

Covenant for Non-Discrimination. The Developers agree, with respect to this Agreement and the Project, that they will observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001, *et seq.*) and shall not discriminate against any person in the performance of work under this Agreement because of race, religion, color, sex, national origin, ancestry or age and further covenant by and for themselves and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, familial status, marital status, age, handicap, national origin, sexual orientation, gender identity, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Developers themselves or any person claiming under or through them establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property. The covenant established in this Section shall, without regard to technical classification and designation, be binding for the benefit and in favor of the City, its successors and assigns and any successor in interest to the Property or any part thereof. The covenants contained in this Section shall remain for so long as this Agreement is in effect.

Indemnification. The Developers, and each of them, agree to indemnify and hold the City, its employees, agents and independent contractors and consultants (collectively, the "**City Indemnified Parties**") harmless, from and against any and all suits, claims, costs of defense, damages, injuries, liabilities, judgments, costs and/or expenses, including court costs and attorneys' fees incurred or suffered by or claimed against any of the City Indemnified Parties by any person or entity by reason of injury, death, loss or damage to any person, property, or business which arises or is alleged to have arisen due to the negligence or willful misconduct of the Developers, their respective employees, agents or independent contractors and consultants in connection with the management, design, development, redevelopment and construction of the Project. This Section 4.5 shall survive the expiration or termination of this Agreement.

Insurance. Developers agree to maintain or cause their tenant(s) to maintain reasonable insurance in connection with the Project for an entity of Developers' size and financial capacity, including, but not limited to, commercial general liability insurance covering the Property and Developers' use thereof with a combined single limit for property damage and bodily injury of not less than \$1,000,000.

Non-liability of Officials, Employees and Agents of the City. No recourse shall be had for the payment or reimbursement of any Project Costs or for any claim based thereon or upon any representation, obligation, covenant or agreement contained in this Agreement against any past, present or future official, officer, employee or agent of the City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officials, officers, employees or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

Construction of the Project. The Developers shall have the sole responsibility to contract for the design and construction of the Developer Work, subject to Applicable Laws and Requirements.

Evidence of Completion. Upon substantial completion of a definable portion of the Developer Work, the Developers shall deliver or cause to be delivered to the City Representative an engineer's certificate certifying that the same has been completed substantially in conformance

with this Agreement and the plans approved by the City, if evidence of such substantial completion thereof has not been previously provided to the City.

B. For purposes of this Section, "substantial completion" means the point at which the Project, or a definable portion of the Project, is sufficiently complete, in accord with the construction contract documents, so that the owner may have beneficial use or may occupy the Project or such definable portion thereof for the use for which it is designed and intended, without regard to occupancy permits that may be issuable under applicable law.

Section 4.10 Modifications. The construction of the Project may be modified or revised by written consent of the City and Developers to provide for other improvements generally consistent with the CID Petition. Developers may construct the Project and any Phase thereof in such order of Phases as Developer may determine. Public Bidding Not Required. Notwithstanding the fact that certain of the improvements herein, including portions of the Developer Work, will be financed or reimbursed in whole or in part with public funding sources and will be deemed public improvements, public bidding for the Project, and any component thereof, will not be required; however, all plans for public improvements shall require approval of City staff and comply with City inspection and testing requirements.

ASSIGNMENT; TRANSFER

Section 5.1 Transfer and Assignments. *Transfers and Assignments, Generally*. The qualifications and identity of the Developers are of particular concern to the City. It is in part because of the Developers' qualifications and identity that the City has entered into this Agreement with the Developers. Therefore, the Developers shall not assign or transfer all or any of their rights, duties or obligations under this Agreement nor convey fee title to any portion of the Property prior to completion of the Developer Work (except as described below) without the prior written approval of the City Representative. The City Representative shall provide such consent, and shall not unreasonably withhold, condition, or delay such consent, unless a proposed assignee does not have qualifications and financial responsibility, as reasonably determined by the City Representative, necessary and adequate to operate the Project and to otherwise fulfill the obligations of the Developers being assigned. Any proposed assignee of one or more obligations under this Agreement shall, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of the City, assume all of the obligations of the Developers being assigned.

B. *Permitted Transfers and Assignments*. Notwithstanding anything herein to the contrary, the Developers shall not be required to obtain prior written approval of the City for assignments, transfers and conveyances of any, all or substantially all of Developers' rights and duties under this Agreement and in and to the Property owned by the Developers (i) to an Affiliate, or (ii) for financing purposes, which expressly includes, but is not limited to, collateral assignments of the Developers' rights to reimbursement from the CID Sales Tax Revenue Fund to secure indebtedness of the Developers to finance the Project or Property owned by Developers (collectively, "**Permitted Transfer**"). In the event of a Permitted Transfer, the Developers shall provide written notice of the same to the City within five (5) business days of such transfer and shall provide evidence satisfactory to the City that the transferee is an entity described above, so that City consent is not required.

C. *Transfer of Obligations*. With the exception of Permitted Transfers, which do not require the prior written approval of the City, any proposed assignee of one or more

obligations under this Agreement shall, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of the City, assume all of the obligations of the Developers being assigned, and, with the exception of Permitted Transfers, the Developers shall not be relieved from any obligations set forth herein or any liabilities arising hereunder unless and until the City specifically agrees to release the Developers from their obligations under this Agreement. The Developers agrees to record all such assignments in the office of the Register of Deeds of Leavenworth County, Kansas, in a timely manner following the execution of such assignments.

D. *Assumptions of Developer Obligations.* The respective obligations of the City and the Developers under this Agreement, unless earlier satisfied, shall inure to and be binding upon the heirs, executors, administrators, successors and assigns (permitted or approved under this Section) of the respective Parties, and this Agreement shall be construed as a covenant running with the land.

ARTICLE VI DEFAULTS AND REMEDIES

Section 6.1 Event of Default.*Developer Event of Default.* Subject to Section 6.4, a "**Developer Event of Default**" shall mean a default in the performance of any obligation or breach of any covenant or agreement of the Developers, or either of them, in this Agreement, and continuance of such default or breach for a period of thirty (30) days after City has delivered to Developers a written notice specifying such default or breach and requiring it to be remedied; provided, that if such default or breach cannot be fully remedied within such thirty (30) day period, but can reasonably be expected to be fully remedied and the Developers are diligently attempting to remedy such default or breach, such default or breach shall not constitute an event of default if the Developers shall immediately upon receipt of such notice diligently attempt to remedy such default or breach and shall thereafter prosecute and complete the same with due diligence and dispatch.

B. *City Event of Default.* Subject to Section 6.4, a "**City Event of Default**" shall mean a default in the performance of any obligation or breach of any other covenant or agreement of the City in this Agreement, and the continuance of such default or breach for a period of thirty (30) days after there has been given to the City by the Developer a written notice specifying such default or breach and requiring it to be remedied; provided, that if such default or breach cannot be fully remedied within such thirty (30) day period, but can reasonably be expected to be fully remedied and the City is diligently attempting to remedy such default or breach, such default or breach shall not constitute an event of default if the City shall immediately upon receipt of such notice diligently attempt to remedy such default or breach and shall thereafter prosecute and complete the same with due diligence and dispatch.

Section 6.2 Remedies Upon a Developer Event of Default. Upon the occurrence and continuance of a Developer Event of Default, the City shall have the following rights and remedies, in addition to any other rights and remedies provided under this Agreement or by law:

1. The City shall have the right to terminate this Agreement or terminate the Developers' rights under this Agreement.
2. The City may refuse to make any disbursements from the CID Sales Tax Revenue Fund until such Event of Default is cured.

3. The City may pursue any available remedy at law or in equity by suit; action, mandamus, injunction or other proceeding to enforce the duties and obligations of the Developers as set forth in this Agreement; to enforce or preserve any other rights or interests of the City under this Agreement or otherwise existing at law or in equity and to recover any damages incurred by the City resulting from such Developer Event of Default.

B. If the City has instituted any proceeding to enforce any right or remedy under this Agreement by suit or otherwise, and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the City, then and in every case the City and the Developers shall, subject to any determination in such proceeding, be restored to their former positions and rights hereunder, and thereafter all rights and remedies of the City shall continue as though no such proceeding had been instituted.

C. Any delay by the City in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section shall not operate as a waiver of such rights or limit it in any way. No waiver in fact made by the City of any specific default by the Developers shall be considered or treated as a waiver of the rights with respect to any other defaults, or with respect to the particular default except to the extent specifically waived.

Section 6.3 Remedies Upon a City Event of Default. Upon the occurrence and continuance of a City Event of Default the Developers shall have the following rights and remedies, in addition to any other rights and remedies provided under this Agreement or by law:

1. The Developers shall have the right to terminate this Agreement or the Developers' obligations under this Agreement;

2. The Developers may pursue any available remedy at law or in equity by suit; action, mandamus, injunction or other proceeding to enforce and compel the performance of the duties and obligations of the City as set forth in this Agreement; to enforce or preserve any other rights or interests of the Developers under this Agreement or otherwise existing at law or in equity and to recover any damages incurred by the Developers resulting from such City Event of Default. Such remedies shall be cumulative. Notwithstanding anything in this Agreement to the contrary, the City shall not be liable for any special, punitive, remote or consequential damages, including (without limitation) lost profits.

B. If the Developers have instituted any proceeding to enforce any right or remedy under this Agreement by suit or otherwise, and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Developers, then and in every case the Developers and the City shall subject to any determination in such proceeding, be restored to their former positions and rights hereunder, and thereafter all rights and remedies of the Developers shall continue as though no such proceeding had been instituted.

C. Any delay by the Developers in instituting or prosecuting any such actions or proceedings or otherwise asserting their rights under this paragraph shall not operate as a waiver of such rights or limit such rights in any way. No waiver in fact made by the Developers of any specific default by the City shall be considered or treated as a waiver

of the rights with respect to any other defaults, or with respect to the particular default except to the extent specifically waived.

Section 6.4 Excusable Delays; Extension of Times of Performance. Neither the City nor the Developers shall be deemed to be in default of this Agreement because of an Excusable Delay and all performance and other dates specified in this Agreement shall be extended, where the Party seeking the extension has acted diligently and delays and defaults are due to Excusable Delays. Any Party affected by an Excusable Delay shall use diligent effort to remove the cause or condition of the Excusable Delay and shall notify the other Party as soon as it discovers the cause or condition of Excusable Delay. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the City and the Developers, to which each Party shall reasonably agree at the request of another Party. Legal Actions. Any legal actions related to or arising out of this Agreement must be instituted in the District Court of Leavenworth County, Kansas or, if federal jurisdiction exists, in the United States District Court for the District of Kansas.
INTENTIONALLY OMITTED

ARTICLE VIII GENERAL PROVISIONS

Section 8.1 Development of Project. *Scope*. The Project shall be developed within and subject to Applicable Law and Requirements, as any of the forgoing may be amended.

B. *Governmental Approvals*. The Project shall be subject to Governmental Approvals from Governmental Authorities having jurisdiction over the Project.

C. *City Approval of Zoning, Planning, Platting*. The City agrees to consider and act on zoning, planning and platting applications submitted by the Developers related to the Project in due course and in good faith.

D. *City and Other Governmental Permits*. Before beginning construction or development of any buildings, structures or other work or improvement related to the Project, the Developers shall, at their own expense, secure or cause to be secured any and all Governmental Approvals (excepting Permitted Subsequent Approvals) applicable to such construction, development or work. The City will cooperate with and provide all usual assistance to Developers in securing such permits and approvals and diligently and in good faith process, review and consider all such permits and approvals as may be required by law.

E. *Rights of Access*. For the purpose of ensuring compliance with this Agreement, representatives of the City shall have the right of access to the Property, without charge or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, for the inspection of the work being performed in constructing, improving, repairing and installing the Project. Representatives of the City shall comply with all applicable safety rules in so doing. Except in case of emergency, before making such access, representatives of the City shall make a good faith effort to check in with the Developers' on-site manager or other of Developers' representative prior to any such access. The City representatives shall carry proper identification, shall come upon the Property at their risk, shall insure their own safety and shall not interfere with construction activity, except in the enforcement of Applicable Laws and Requirements.

F. *Local, State and Federal Laws.* The Developers shall carry out the provisions of this Agreement in conformity with all Applicable Laws and Requirements.

Section 8.2 Mutual Assistance. The City and the Developers agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may be necessary or appropriate to carry out the terms, provisions and intent of this Agreement. City further agrees to provide certification that no default exists hereunder by Developers (if there is no such default) in a mutually agreeable form, upon the reasonable request of Developers.No Partnership. Nothing contained herein shall be construed as creating a partnership between the Developers and the City.Time of Essence. Time is of the essence of this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.Amendments. This Agreement may be amended only by the mutual consent of the Parties, by the adoption of a resolution or ordinance of the City approving said amendment, as provided by law, and by the execution of said amendment by the Parties or their successors in interest. Agreement Controls. The Parties agree that the Project will be implemented as agreed in this Agreement. This Agreement specifies the rights, duties and obligations of the City and Developers with respect to constructing the Project, the payment of Project Costs and all other methods of implementing the Project. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and are a full integration of the agreement of the Parties.Conflicts of Interest.No member of the City's governing body or of any branch of the City's government that has any power of review or approval of any of the Developers' undertakings shall participate in any decisions relating thereto which affect such person's personal interest or the interests of any corporation or partnership in which such person is directly or indirectly interested. Any person having such interest shall immediately, upon knowledge of such possible conflict disclose, in writing, to the City the nature of such interest and seek a determination with respect to such interest by the City and, in the meantime, shall not participate in any actions or discussions relating to the activities herein proscribed.

B. The Developers warrant that they have not paid or given and will not pay or give any officer, employee or agent of the City any money or other consideration for obtaining this Agreement. The Developers further represent that, to their best knowledge and belief, no officer, employee or agent of the City who exercises or has exercised any functions or responsibilities with respect to the Project during his or her tenure, or who is in a position to participate in a decision making process or gain insider information with regard to the Project, has or will have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof for work to be performed in connection with the Project, or in any activity, or benefit therefrom, which is part of the Project at any time during or after such person's tenure

Section 8.8 Term. Unless earlier terminated as provided herein, this Agreement shall remain in full force and effect until the later of expiration of the CID Term. In the event this Agreement is terminated prior to the expiration of the CID Term, the City shall take any and all actions necessary to cease imposition of the CID Sales Tax and terminate the CID District.Validity and Severability. It is the intention of the Parties that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of the State, and that the unenforceability (or modification to conform to such laws or public policies) of any provision hereof shall not render unenforceable, or impair, the remainder of this Agreement. Accordingly, if any provision of this Agreement shall be deemed invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary,

the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable. Required Disclosures. The Developers shall immediately notify the City of the occurrence of any material event which would cause any of the information furnished to the City by the Developers in connection with the matters covered in this Agreement to contain any untrue statement of any material fact or to omit to state any material fact required to be stated therein or necessary to make any statement made therein, in the light of the circumstances under which it was made, not misleading. Tax Implications. The Developers acknowledge and represent that (i) neither the City nor any of its officials, employees, consultants, attorneys or other agents has provided to the Developers any advice regarding the federal or state income tax implications or consequences of this Agreement and the transactions contemplated hereby, and (ii) the Developers are relying solely upon their own tax advisors in this regard. Authorized Parties. Whenever under the provisions of this Agreement and other related documents, instruments or any supplemental agreement, a request, demand, approval, notice or consent of the City or the Developers is required, or the City or the Developers are required to agree or to take some action at the request of the other Party, such approval or such consent or such request shall be given for the City, unless otherwise provided herein, by the City Manager and for the Developers by any principal or officer of the Developers so authorized; and any person shall be authorized to act on any such agreement, request, demand, approval, notice or consent or other action and neither Party shall have any complaint against the other as a result of any such action taken. The City Manager may seek the advice, consent or approval of the City Commission before providing any supplemental agreement, request, demand, approval, notice or consent for the City pursuant to this Section. Notice. All notices and requests required pursuant to this Agreement shall be sent as follows: To the City:

City of Leavenworth, Kansas
Attn: City Manager
100 N. 5th Street
Leavenworth, Kansas 66048
pkramer@firstcity.org

With a copy to:

Lathrop GPM LLP
Attn: David E. Waters
10851 Mastin Boulevard, Building 82, Suite 1000
Overland Park, KS 66210
david.waters@lathropgpm.com

To the Developers:

Rea Holdings, LLC
Attn: Ted A. Rea
5239 S. 4th St.
Leavenworth, KS 66048
tedrea@luxuryandimports.com

or at such other addresses as the Parties may indicate in writing to the other either by personal delivery, courier, or by registered mail, return receipt requested, with proof of delivery thereof, or by electronic mail with hardcopy to follow on the next business day. Mailed notices

shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

Section 8.14 Kansas Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement. Hand signatures transmitted by electronic mail in portable document format (PDF) or similar format are also permitted as binding signatures to this Agreement. *The balance of this page intentionally left blank*

IN WITNESS WHEREOF, this Agreement is executed by City and Developers effective as of the Effective Date.

CITY OF LEAVENWORTH, KANSAS

By: _____
Myron J. "Mike" Griswold, Mayor

ATTEST:

Carla K. Williamson CMC, City Clerk

{Seal}

APPROVED AS TO LEGAL FORM:

David E. Waters, City Attorney

ACKNOWLEDGEMENT

STATE OF KANSAS)
) ss.
COUNTY OF LEAVENWORTH)

Now on this _____ day of _____, 2020, before me, a notary public in and for said county and state, came Myron J. "Mike" Griswold and Carla K. Williamson, Mayor and City Clerk, respectively, of the City of Leavenworth, Kansas, a Kansas municipal corporation duly authorized, incorporated and existing under and by virtue of the Constitution and laws of the State of Kansas, who are personally known to me to be the same persons who executed, as such officers, the within instrument on behalf of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public

My Commission Expires:

EXHIBIT A

[Legal Description of the Property]

NEW TRACT 1

A TRACT OF LAND IN THE NORTHWEST QUARTER OF SECTION 18, TOWNSHIP 9 SOUTH, RANGE 23 EAST OF THE 6TH P.M. IN THE CITY OF LEAVENWORTH, LEAVENWORTH COUNTY, KANSAS.

COMMENCING AT THE SOUTHWEST CORNER OF SAID NORTHWEST QUARTER; THENCE N88°29'59"E, ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 33.00 FEET; THENCE N01°34'51"W, A DISTANCE OF 67.91 FEET TO A POINT OF INTERSECTION WITH THE NORTH RIGHT OF WAY LINE OF EISENHOWER ROAD AS IT NOW EXISTS AND SAID RIGHT OF WAY OF K-7, ALSO KNOWN TO BE THE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT; THENCE N01°34'51"W, ALONG SAID EAST RIGHT OF WAY LINE, A DISTANCE OF 249.66 FEET; THENCE S83°32'31"E, A DISTANCE OF 151.68 FEET; THENCE N88°55'48"E, A DISTANCE OF 171.43 FEET; THENCE N01°28'13"W, A DISTANCE OF 306.48 FEET; THENCE N87°30'02"E, A DISTANCE OF 292.70 FEET; THENCE S01°16'11"E, A DISTANCE OF 368.27 FEET; THENCE S88°29'59"W, A DISTANCE OF 18.76 FEET; THENCE S01°36'40"E, A DISTANCE OF 201.99 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF SAID EISENHOWER ROAD; THENCE S88°29'59"W ALONG SAID NORTH RIGHT OF WAY LINE, A DISTANCE OF 38.61 FEET; THENCE N01°36'40"W, CONTINUING ALONG SAID NORTH RIGHT OF WAY LINE, A DISTANCE OF 5.00 FEET; THENCE S88°29'51"W, CONTINUING ALONG SAID NORTH RIGHT OF WAY LINE, A DISTANCE OF 526.88 FEET; THENCE N01°34'51"W, CONTINUING ALONG SAID NORTH RIGHT OF WAY LINE, A DISTANCE OF 5.81 FEET; THENCE S88°29'51"W, CONTINUING ALONG SAID NORTH RIGHT OF WAY LINE, A DISTANCE OF 12.84 FEET; THENCE N39°17'13"W, CONTINUING ALONG SAID NORTH RIGHT OF WAY LINE, A DISTANCE OF 25.96 FEET TO THE POINT OF BEGINNING.

CONTAINS 5.60 ACRES MORE OR LESS

EXHIBIT B

[Map of the Property]

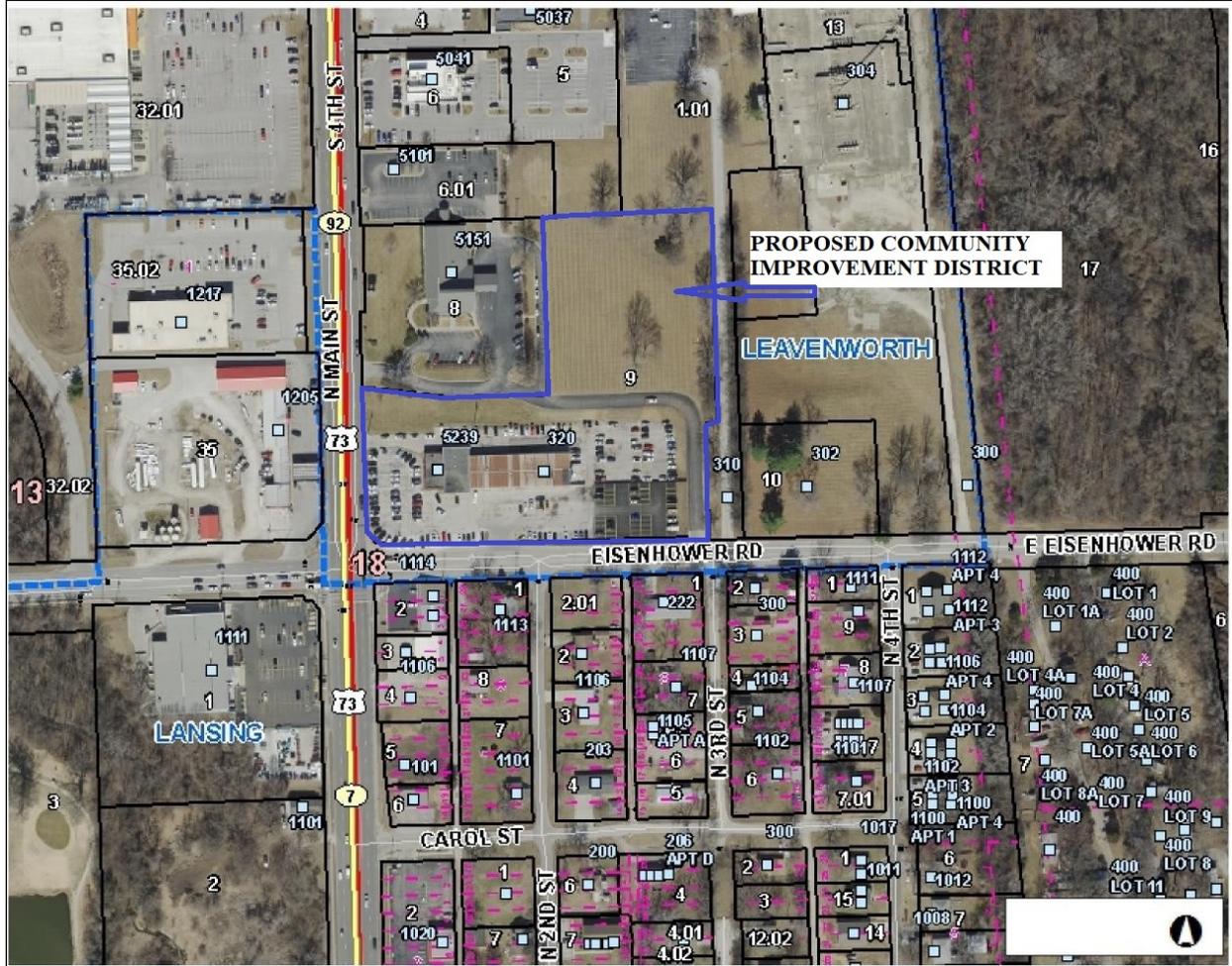


EXHIBIT C

[Description of Project and Project Budget]

Project Phase 1:

Front and Side Lot Improvements [Development costs for items related to new parking area for car sales located on the northwest portion of the property with frontage on 4th Street to include related items estimated to include design, mobilization, removals, earthwork, 4" rock base, 6" concrete pavement, curb & gutter type A, storm sewer, 6" pervious concrete & 12" clean rock drainage layer, light poles, striping, and retaining wall]: \$254,000.00.

Project Phase 2:

Side Lot Improvements [Development costs for items related to reconstructed parking area for car sales located on the north side of the existing building located on the property to include related items estimated to include 6" concrete paving and curb at service bays (includes removals and grading), and storm sewer at service bay area (inlet and pipe to junction box)]: \$106,000.00.

Project Phase 3:

New Building and Additional Lot [Development costs for items related to new parking area for car sales, preparation and service located on the northeast portion of the property behind the existing bank property to the west to include related items estimated to include design, mobilization, removals, earthwork, 4" rock base, 6" concrete pavement, curb & gutter type A, storm sewer, 6" pervious concrete & 12" clean rock drainage layer, light poles, striping, related retaining walls, sidewalk, trash enclosure, landscaping, and a newly constructed 20,000 square foot building]: \$750,000.00.

Project Phase 4:

Renovation of Existing Building, Office, Service Areas, and Existing Lots and Landscaping [Development costs for items related to refurbishment of existing parking area for car sales, located at 5239 S 4th Street on the west, south and east areas of the property to include related items estimated to include design, mobilization, removals, earthwork, 4" rock base, 6" concrete pavement, curb & gutter type A, storm sewer, 6" pervious concrete & 12" clean rock drainage layer, light poles, striping, related retaining walls, landscaping, and associated costs related to renovation and refurbishment of the existing building, sales area, service bay area, exterior façade, and office space]: \$500,000.00.

EXHIBIT D

[Form Certificate of Project Costs]

CERTIFICATE OF PROJECT COSTS

To: City Manager
Leavenworth, Kansas

RE: Development Agreement for the Luxury & Imports Community Improvement District

Terms used in this Certificate and not otherwise defined here shall have the meanings given them in the Development Agreement dated as of _____, 2020 ("Agreement") between the City of Leavenworth, Kansas, Rea Holdings, LLC, and Ted A. Rea, Inc.

In connection with the Agreement, the undersigned Developer Representative hereby certifies that, to the best of his or her actual knowledge:

1. Each item listed in Schedule I hereto is a Project Cost and was incurred in connection with the Project.
2. These costs shown on Schedule I have been paid by the Developers and are reimbursable under the Agreement from the specific Project Fund identified on Schedule I.
3. Itemized invoices, receipts or other evidence of such costs are enclosed.
4. Each item listed in Schedule I has not previously been paid or reimbursed from money derived from any Project Fund, and no part thereof has been included in any other certificate previously filed with the City.
5. There has not been filed with or served upon the Developers any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith.
6. All necessary permits and approvals required for the work for which this certificate relates were issued and were in full force and effect at the time such work was being performed.
7. All work for which payment or reimbursement is requested has been performed in a good and workmanlike manner and in accordance with the Agreement and the approved plans for the work.
8. The Developers are not in default or breach of any term or condition of the Agreement, and no event has occurred and no condition exists which constitutes a Developer Event of Default under the Agreement.
9. All of the Developer's representations set forth in the Agreement remain true and correct as of the date hereof.

Dated this ____ day of _____, _____.

REA HOLDINGS, LLC

TED A. REA, INC.

By: _____
Printed Name: _____
Title: _____

By: _____
Printed Name: _____
Title: _____

Approved for payment this ____ day of _____, _____.

By _____

SCHEDULE I OF CERTIFICATE OF PROJECT COSTS

[List of Project Costs]

Hard Costs:

Sitework
Signage
Lighting
Landscaping
New Construction
Renovation

Soft Costs:

Architecture
Engineering
Geotech
Environmental
Survey
Commissions
Developer Fees

POLICY REPORT NO. 20-006
ADOPTION OF BRYCER THE COMPLIANCE ENGINE
September 08, 2020

Prepared by:

Reviewed by:

Reviewed by:

Andy Brooks
Fire Marshal

Gary Birch,
Fire Chief



Paul Kramer,
City Manager

INTRODUCTION:

The Leavenworth Fire Department is committed to having a safer community for all citizens and visitors. Risk Reduction in our community is one of our primary goals in accomplishing this objective. Enhancing code compliance is a major step towards achieving this goal.

Many of our commercial structures are required by code to have some form of fire alarm, fire suppression system, along with other safety requirements. These systems require routine inspections by a third party contractor to identify any deficiencies and make repairs in order to be certified.

“The Compliance Engine” is a tool to assist fire departments with tracking code required systems, to assure they are and remain in working order to drive code compliance. By adopting “The Compliance Engine” through a Service Level Agreement (SLA), we will have access to a database designed specifically for the City of Leavenworth to identify and track buildings that have protection systems that are required by code.

The Service Level Agreement to adopt “The Compliance Engine” Terms and conditions are as follows:

- There is no cost to the fire department or city
- Initial term is for three years
- The Service Level Agreement automatically renews for successive three-year periods unless:
 - terminated by Brycer or Client in writing at least 90 days prior to the expiration of the then current term

COMMISSION ACTION:

Authorize the City Manager to enter into a Service Level Agreement with Brycer, LLC, providers of “The Compliance Engine”.

BRYCER, LLC
4355 Weaver Parkway
Suite 230
Warrenville, IL 60555

~~July 27th, 2020~~

September 15, 2020

Leavenworth Fire Department
3600 S 20th St
Leavenworth, KS 66048

Re: **“The Compliance Engine”**

Dear Leavenworth Fire Department:

We look forward to providing you with “The Compliance Engine” (the “Solution”). This proposal letter provides the basic terms by which Brycer, LLC (“Brycer”) will provide you, the Leavenworth Fire Department (“Client”), with the Solution. The use of the Solution and all matters between Brycer and Client will be subject to the standard “Terms and Conditions” attached to this proposal as Exhibit A. The basic terms are as follows:

1. **Term**: Brycer will provide Client with the Solution for three years, commencing _____ (the “Initial Term”). Thereafter, the Term shall automatically renew for successive three-year periods unless terminated by Brycer or Client in writing at least 90 days prior to the expiration of the then current Term (each, a “Renewal Term” and together with the Initial Term, the “Term”). Following the expiration or termination of the Term (as provided in the Terms and Conditions), Client shall stop using the Solution; provided, however, Brycer shall make available, and Client shall have the right to download, Client’s data from the Solution for a period of 60 days after the expiration or termination of the Term. Client shall have the right to terminate this agreement upon giving 90 days written notice to Brycer.
2. **Fees**: Client shall not pay any fees for use of the Solution. Brycer will collect all fees due and payable by third party inspectors in connection with activities relating to the Solution.
3. **Brycer Responsibilities**: During the Term, Brycer shall be responsible for the following in connection with Client’s use of the Solution:
 - ***Availability***. Brycer shall make the Solution available to Client as set forth on Exhibit B. The maintenance schedule and minimum service levels for the Solution are set forth on Exhibit B.
 - ***Service Level***. Brycer shall provide commercially reasonable levels of customer service with respect to the Solution to all third parties who transact business with Client and access the Solution.
 - ***Backup***. Brycer shall backup the database used in connection with the Solution to a separate server located within the same web hosting firm which the Solution is being hosted on a real time basis. Upon request by Client (which can be no more than once a month) or made prior to or within 60 days after the effective date of termination of the Term, Brycer will make available to Client a complete and secure (i.e. encrypted and appropriately authenticated) download file of Client data in XML format including all schema and attachments in their native format. Brycer shall maintain appropriate administrative,

physical and technical safeguards for protection of the security, confidentiality and integrity of Client data. Brycer shall not (a) modify Client data or (b) disclose Client data except as required by law.

- **Retention of Information.** Brycer will maintain all information entered into the database by third party inspectors for at least five years from the time such information is entered into the database.
- **Notices.** Brycer will be responsible for generating and delivering the following notices to third parties in connection with the Solution: (a) reminders of upcoming inspections that are due; (b) notices that an inspection is past due; and (c) notices of completed inspection reports which contain one or more deficiencies.
- **Call Center** Phone calls by Brycer on behalf of the Client to the property for EACH life-safety system overdue for service based on dates automatically tracked within the TCE database. Brycer is not an agent of the Client and all scripts for the overdue calls will be approved by the Client.
- **Updates and Enhancements.** In the event Brycer releases any updates, corrections, or enhancements to the Solution during the Term, Brycer shall promptly provide such updates or corrections to Client free of any charge or fee.

4. **Client Responsibilities:** During the Term, Client shall be responsible for the following in connection with Client's use of the Solution:

- **Operating System.** Client shall be solely responsible for providing a proper operating environment, including computer hardware or other equipment and software, for any portion of the Solution installed on the Client's equipment (the "Client Access Software") and for the installation of network connections to the Internet. In addition to any other Client Access Software requirements, Client must use version Internet Explorer 11.0, Edge, Firefox version 37, Chrome 40 or Safari 7.1 (or more recent versions), in addition to having a .pdf reader installed on machines to view attachments.
- **Training.** Client shall allow Brycer at Client's facilities to train all applicable personnel of Client on the use of the Solution.
- **Information.** Client shall promptly provide Brycer with all appropriate information necessary for Brycer to create the database for the Solution, including without limitation: (a) all commercial building addresses within **[jurisdiction]** for Brycer's initial upload; and (b) quarterly updates to in a format acceptable to Brycer in its discretion.
- **Enforcement.** Client shall take all actions necessary to require (e.g. resolution, ordinance, fire policy, code amendment) the use of the Solution by third party inspection companies.
- **Reports.** Client will require all compliant and deficient test results to be submitted.

5. **Ownership of Data.** Client owns all the data provided by Client and received from third party contractors for Client. Brycer shall maintain appropriate administrative, physical and technical safeguards for protection of the security, confidentiality and integrity of Client's data.

Please acknowledge your acceptance of this proposal and our standard Terms and Conditions by counter-signing this proposal below. We look forward to a long-term and mutually beneficial relationship with you.

Brycer, LLC

By: _____
Its: _____

Acknowledged and Agreed to this
__ day of _____, 20__:

[Leavenworth Fire Department]

By: _____
Its: _____

Exhibit A

Terms and Conditions

Any capitalized terms not defined in these Terms and Conditions shall have the meaning assigned to it in that certain Letter Agreement attached hereto by and between Brycer, LLC and Client (the "Agreement").

1. **Restrictions on Use.** Client shall not copy, distribute, create derivative works of or modify the Solution in any way. Client agrees that: (a) it shall only permit its officers and employees (collectively, the "Authorized Users") to use the Solution for the benefit of Client; (b) it shall use commercially reasonable efforts to prevent the unauthorized use or disclosure of the Solution; (c) it shall not sell, resell, rent or lease the Solution; (d) it shall not use the Solution to store or transmit infringing or otherwise unlawful or tortious material, or to store or transmit material in violation of third party rights; (e) it shall not interfere with or disrupt the integrity or performance of the Solution or third-party data contained therein; (f) it shall not reverse engineer, translate, disassemble, decompile or otherwise attempt to create any source code which is derived from the Solution (g) it shall not permit anyone other than the Authorized Users to view or use the Solution and any screen shots of the Solution and (h) it shall not disclose the features of the Solution to anyone other than the Authorized Users. Client is responsible for all actions taken by the Authorized Users in connection with the Solution.
2. **Proprietary Rights.** All right, title and interest in and to the Solution, the features of the Solution and images of the Solution as well any and all derivative works or modifications thereof (the "Derivative Works"), and any accompanying documentation, manuals or other materials used or supplied under this Agreement or with respect to the Solution or Derivative Works (the "Documentation"), and any reproductions works made thereof, remain with Brycer. Client shall not remove any product identification or notices of such proprietary rights from the Solution. Client acknowledges and agrees that, except for the limited use rights established hereunder, Client has no right, title or interest in the Solution, the Derivative Works or the Documentation.
3. **Independent Contractor.** Nothing in the Agreement may be construed or interpreted as constituting either party hereto as the agent, principal, employee or joint venturer of the other. Each of Client and Brycer is an independent contractor. Neither may assume, either directly or indirectly, any liability of or for the other party. Neither party has the authority to bind or obligate the other party and neither party may represent that it has such authority.
4. **Reservation of Rights.** Brycer reserves the right, in its sole discretion and with prior notice to Client, to discontinue, add, adapt, or otherwise modify any design or specification of the Solution and/or Brycer's policies, procedures, and requirements specified or related hereto. All rights not expressly granted to Client are reserved to Brycer, including the right to provide all or any part of the Solution to other parties.
5. **Use of Logos.** During the term of this Agreement, Brycer shall have the right to use Client's logos for the purpose of providing the Solution to Client.
6. **Confidential Information.** Brycer and Client acknowledge and agree that in providing the Solution, Brycer and Client, as the case may be, may disclose to the other party certain confidential, proprietary trade secret information ("Confidential Information"). Confidential Information may include, but is not limited to, the Solution, computer programs, flowcharts, diagrams, manuals, schematics, development tools, specifications, design documents, marketing information, financial information or business plans. Each party agrees that it will not, without the express prior written consent of the other party, disclose any Confidential Information or any part thereof to any third party. Notwithstanding the foregoing, the parties acknowledge that Client and Brycer shall be permitted to comply with any all federal and state laws concerning disclosure provided that any such required disclosure will not include any of Brycer's screen shots. The disclosing party shall provide prior written notice of any required disclosure of the nondisclosing party's Confidential Information to the nondisclosing party and shall disclose only the information that is required to be disclosed by law. In the event that Client requests from Brycer any reports or other information for purposes of complying with federal and state disclosure laws, Brycer shall provide such information within five business day following such request. Confidential Information excludes information: (a) that is or becomes generally available to the public through no fault of the receiving party; (b) that is rightfully received by the receiving party from a third party without limitation as to its use; or (c) that is independently developed by receiving party without use of any Confidential Information. At the termination of this Agreement, each party will return the other party all Confidential Information of the other party. Each party also agrees that it shall not duplicate, translate, modify, copy, printout, disassemble, decompile or otherwise tamper with any Confidential Information of the other party or any firmware, circuit board or software provided therewith.
7. **Brycer Warranty.** Brycer represents and warrants to Client that Brycer has all rights necessary in and to any patent, copyright, trademark, service mark or other intellectual property right used in, or associated with, the Solution, and that Brycer is duly authorized to enter into this Agreement and provide the Solution to Client pursuant to this Agreement.
8. **Disclaimer.** All information entered into Brycer's database is produced by third party inspectors and their agents. **THEREFORE, BRYCER SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY AS TO THE ACCURACY OR COMPLETENESS OF ANY INFORMATION ENTERED INTO BRYCER'S DATABASE BY EITHER CLIENT OR THIRD PARTY INSPECTORS. EXCEPT AS SET FORTH IN SECTION 7, BRYCER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SOLUTION OR ANY OTHER INFORMATION AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ARE HEREBY DISCLAIMED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. BRYCER'S SOLE LIABILITY FOR BREACH OF THE REPRESENTATION AND WARRANTY SET FORTH IN SECTION 7, AND CLIENT'S SOLE REMEDY, SHALL BE THAT BRYCER SHALL INDEMNIFY AND HOLD RECIPIENT HARMLESS FROM AND AGAINST ANY LOSS, SUIT, DAMAGE, CLAIM OR DEFENSE ARISING OUT OF BREACH OF THE REPRESENTATION AND WARRANTY.**
9. **LIMITATION ON DAMAGES.** **BRYCER SHALL ONLY BE LIABLE TO CLIENT FOR DIRECT DAMAGES PURSUANT TO THE AGREEMENT. EXCEPT AS OTHERWISE PROVIDED IN SECTION 7, IN NO EVENT SHALL BRYCER BE LIABLE FOR OR OBLIGATED IN ANY MANNER FOR SPECIAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, LOSS OF PROFITS OR SYSTEM DOWNTIME. CLIENT ACKNOWLEDGES AND AGREES THAT IN NO CASE SHALL BRYCER'S LIABILITY FOR ANY LOSS OF DATA OR DATA INTEGRITY EXCEED THE REPLACEMENT COST OF THE MEDIA ON WHICH THE DATA WAS STORED.**
10. **Risks Inherent to Internet.** Client acknowledges that: (a) the Internet is a worldwide network of computers, (b) communication on the Internet may not be secure, (c) the Internet is beyond the control of Brycer, and (d) Brycer does not own, operate or manage the Internet. Client also acknowledges that there are inherent risks associated with using the Solution, including but not limited to the risk of breach of security, the risk of exposure to computer viruses and the risk of interception, distortion, or loss of communications. Client assumes these risks knowingly and voluntarily releases Brycer from all liability from all

such risks. Not in limitation of the foregoing, Client hereby assumes the risk, and Brycer shall have no responsibility or liability of any kind hereunder, for: (1) errors in the Solution resulting from misuse, negligence, revision, modification, or improper use of all or any part of the Solution by any entity other than Brycer or its authorized representatives; (2) any version of the Solution other than the then-current unmodified version provided to Client; (3) Client's failure to timely or correctly install any updates to the Client Access Software; (4) problems caused by connecting or failure to connect to the Internet; (5) failure to provide and maintain the technical and connectivity configurations for the use and operation of the Solution that meet Brycer's recommended requirements; (6) nonconformities resulting from or problems to or caused by non-Brycer products or services; or (7) data or data input, output, accuracy, and suitability, which shall be deemed under Client's exclusive control.

11. **Indemnity.** Brycer (the "Indemnifying Party") will defend and indemnify Client against any damages, losses, liabilities, causes of action, costs or expenses arising from Brycer's breach of this Agreement, gross negligence or intentional misconduct. Client will defend and indemnify Brycer against any damages, losses, liabilities, costs or expenses (including reasonable attorneys' fees) arising from Client's breach of this Agreement, gross negligence or intentional misconduct. Client acknowledges that Brycer does not create any of the data and information included in the Solution and is not responsible for and does not assess or make any suggestions or recommendations with respect to any such data or information. Client will defend and indemnify Brycer against any damages, losses, liabilities, costs or expenses (including reasonable attorneys' fees), claims, demands, suits or proceedings made or brought against Brycer by a third party in connection with Client's or an Authorized User's use of the Solution, or any action or inaction taken by a third party, including, but not limited to, third party inspectors, in connection with such third party providing services for Client or otherwise at Client's or an Authorized User's request or direction.
12. **Breach.** Brycer shall have the right to terminate or suspend this Agreement, and all of Client's rights hereunder, immediately upon delivering written notice to Client detailing Client's breach of any provision of this Agreement. If Client cures such breach within 5 days of receiving written notice thereof, Brycer shall restore the Solution and Client shall pay any fees or costs incurred by Brycer in connection with the restoration of the Solution.
13. **Illegal Payments.** Client acknowledges and agrees that it has not received or been offered any illegal or improper bribe, kickback, payment, gift or anything of value from any employee or agent of Brycer in connection with the Agreement.
14. **Beneficiaries.** There are no third party beneficiaries to the Agreement.
15. **Force Majeure.** Neither party shall be responsible for any failure to perform due to unforeseen, non-commercial circumstances beyond its reasonable control, including but not limited to acts of God, war, riot, embargoes, acts of civil or military authorities, fire, floods, earthquakes, blackouts, accidents, or strikes. In the event of any such delay, any applicable period of time for action by said party may be deferred for a period of time equal to the time of such delay, except that a party's failure to make any payment when due hereunder shall not be so excused.
16. **Notices.** All notices required in the Agreement shall be effective: (a) if given personally, upon receipt; (b) if given by facsimile or electronic mail, when such notice is transmitted and confirmation of receipt obtained; (c) if mailed by certified mail, postage prepaid, to the last known address of each party, three business days after mailing; or (d) if delivered to a nationally recognized overnight courier service, one business day after delivery.
17. **JURISDICTION AND VENUE.** THE AGREEMENT SHALL BE GOVERNED BY, CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, AND ENFORCEABLE UNDER, THE LAWS OF THE STATE IN WHICH CLIENT EXISTS APPLICABLE TO CONTRACTS MADE IN SUCH STATE AND THAT ARE TO BE WHOLLY PERFORMED IN SUCH STATE WITHOUT REFERENCE TO THE CHOICE-OF-LAW PRINCIPLES OF SUCH STATE. THE PARTIES IRREVOCABLY AGREE THAT ALL ACTIONS OR PROCEEDINGS IN ANY WAY, MANNER OR RESPECT ARISING OUT OF OR FROM OR RELATED TO THE AGREEMENT SHALL BE LITIGATED ONLY IN COURTS LOCATED WITHIN THE STATE IN WHICH CLIENT EXISTS. THE PARTIES HEREBY CONSENT AND SUBMIT TO THE EXCLUSIVE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN SAID STATE. THE PARTIES HEREBY WAIVE ANY RIGHTS THEY MAY HAVE TO TRANSFER OR CHANGE VENUE OF ANY SUCH ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT. THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY ON ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THE AGREEMENT, AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.
18. **Attorneys' Fees.** The prevailing party in any proceeding in connection with the Agreement shall be entitled to recover from the non-prevailing party all costs and expenses, including without limitation, reasonable attorneys' and paralegals' fees and costs incurred by such party in connection with any such proceeding.
19. **Entire Agreement.** The Agreement sets out the entire agreement between the parties relative to the subject matter hereof and supersedes all prior or contemporaneous agreements or representations, oral or written.
20. **Amendment.** The Agreement may not be altered or modified, except by written amendment which expressly refers to the Agreement and which is duly executed by authorized representatives of both parties. The waiver or failure by either party to exercise or enforce any right provided for in the Agreement shall not be deemed a waiver of any further right under the Agreement. Any provision of the Agreement held to be invalid under applicable law shall not render the Agreement invalid as a whole, and in such an event, such provision shall be interpreted so as to best accomplish the intent of the parties within the limits of applicable law. The Agreement may be executed by facsimile and in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.
21. **Expiration.** The rights and obligations contained in these Terms and Conditions shall survive any expiration or termination of the Agreement.

Exhibit B

Maintenance Schedule and Minimum Service Levels

1. **Uptime and Maintenance.**

The Solution shall be available 24 hours per day during the term of this Agreement. The Solution shall be fully functional, timely and accessible by Client at least 99.5% of the time or better and Brycer shall use reasonable efforts to provide Client with advance notice of any unscheduled downtime.

2. **Response Time.**

Brycer shall respond to telephone calls from Client within two hours of the call and/or message and all emails from Client within two hours of the receipt of the email.

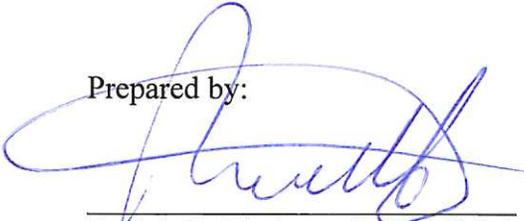
3. **Customer Support**

Customer support hours are 24/7/365. The toll free number is 1-855-279-2371

Brycer will assign client a dedicated customer representative with direct access to their email and work number.

Policy Report No. 8-2020
2020 Uniform Public Offense Code
September 8, 2020

Prepared by:



Patrick R. Kitchens, Police Chief

Approved by:



Paul Kramer, City Manager

ISSUE:

The Police Department is requesting the commission place an ordinance on first consideration that adopts the 2020 Uniform Public Offense Code for Kansas Cities for use by the City of Leavenworth.

STAFF RECOMMENDATION:

Staff recommends approval.

BACKGROUND:

Every year the League of Kansas Municipalities produces a Uniform Public Offense Code for cities in Kansas. It is designed to provide a comprehensive public offense ordinance and the City of Leavenworth has used it for many years. It does not take effect in a city until the governing body has passed and published an ordinance incorporating it as prescribed in Kansas Statutes.

The following changes are noted:

Section 1.1 – Definitions

Added: Explosives

Section 5.7 – Selling, Giving or Furnishing Cigarettes or Tobacco Products to a Minor

Section 6.24 – Typo Corrected

Section 10.1 – Criminal Use of a Weapon

Section 10.2 – Deleted

Section 10.3– Deleted

Section 10.29 – Violation of a Public Health Order

“It shall be unlawful for any person to violate, refuse, or fail to comply with a written order of the County Health Officer, Board of Health, or Director of Health issued under their respective authorities.”

Additionally, staff is recommending that we opt out and not include the following Sections of the Uniform Public Offense Code for 2020. A recent decision by the Kansas Court of Appeals ruled these type of offenses must be adjudicated in a court of record in order to satisfy the requirement of registration as a sexual offender. These cases will be prosecuted in District Court.

Sec. 3.2.1 – Sexual Battery

Sec. 4.1 – Lewd and Lascivious Behavior

Sec. 4.3 – Selling Sexual Relations

Sec. 4.5 – Buying Sexual Relations

BUDGET IMPACT:

There is no budget impact.

COMMISSION ACTION:

Place an ordinance on first consideration that adopts the 2020 Uniform Public Offense Code for Kansas Cities for use by the City of Leavenworth including the noted exemptions.

(Summary Published in the Leavenworth Times on _____, 2020)

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 30 OF THE CODE OF ORDINANCES REGULATING PUBLIC OFFENSES WITHIN THE CORPORATE LIMITS OF THE CITY OF LEAVENWORTH, KANSAS; INCORPORATING BY REFERENCE THE "UNIFORM PUBLIC OFFENSE CODE FOR KANSAS CITIES" EDITION OF 2020, WITH CERTAIN OMISSIONS AND CHANGES.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAVENWORTH, KANSAS:

Section 1. That the Code of Ordinances, City of Leavenworth, Kansas, Chapter 30, Offenses, Sections 30-1, 30-2 and 30-3, are hereby deleted in its entirety and amended to read as follows:

Sec. 30-1. Uniform Public Offense Code adopted; amendments.

- (a) *Adoption.* There is hereby incorporated by reference for the purpose of regulating public offenses within the corporate limits of the city that certain code known as the Uniform Public Offense Code for Kansas Cities, edition of 2020, prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, save and except such articles, sections, parts or portions as are hereinafter omitted, deleted, modified or changed. One official copy of said Uniform Public Offense Code shall be marked or stamped "Official Copy as Adopted by Ordinance No. _____" with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of Ordinance No. _____ and filed with the city clerk to be open to inspection and available to the public at all reasonable hours.
- (b) *Amendments and omissions.*
 - (1) Notwithstanding the foregoing, section 5.7 and section 10.6 of the adopted Uniform Public Offense Code are deleted in their entirety and amended to read as provided in sections 30-2 and 30-3.
 - (2) Section 3.2.1, pertaining to sexual battery, of said Uniform Public Offense Code is hereby declared to be omitted and deleted.
 - (3) Section 4.1, pertaining to lewd, lascivious behavior, of said Uniform Public Offense Code is hereby declared to be omitted and deleted.
 - (4) Section 4.3, pertaining to selling sexual relations, of said Uniform Public Offense Code is hereby declared to be omitted and deleted.
 - (5) Section 4.4, pertaining to buying sexual relations, of said Uniform Public Offense Code is hereby declared to be omitted and deleted.
 - (6) Section 11.15, pertaining to permitting a dangerous animal to be at large, of said Uniform Public Offense Code is hereby declared to be omitted and deleted.

Sec. 30-2. Selling, giving or furnishing cigarettes or tobacco products to a person under 21 years of age.

- (a) It shall be unlawful for any person to:
 - (1) Sell, furnish or distribute to any person under the age of 21 years any cigarettes, electronic cigarettes, or tobacco products; or
 - (2) Buy any cigarettes, electronic cigarettes, or tobacco products for any person under 21 years of age.
- (b) It shall be a defense to a prosecution under subsection (a) of this section if:
 - (1) The defendant is a licensed retail dealer, or employee thereof, or a person authorized by law to distribute samples;
 - (2) The defendant sold, furnished or distributed the cigarettes, electronic cigarettes, or tobacco products to the person under 21 years of age with reasonable cause to believe the person was of legal age to purchase or receive cigarettes, electronic cigarettes or tobacco products; and
 - (3) To purchase or receive the cigarettes, electronic cigarettes, or tobacco products, the person under 21 years of age exhibited to the defendant a driver's license, Kansas non-driver's identification card or other official or apparently official document containing a photograph of the person and purporting to establish that the person was of legal age to purchase or receive cigarettes, electronic cigarettes, or tobacco products.
- (c) It shall be a defense to a prosecution under subsection (a) of this section if:
 - (1) The defendant engages in the lawful sale, furnishing or distribution of cigarettes, electronic cigarettes, or tobacco products by mail; and
 - (2) The defendant sold, furnished or distributed the cigarettes, electronic cigarettes, or tobacco products to the person by mail only after the person had provided to the defendant an unsworn declaration, conforming to K.S.A. 53-601, that the person was 21 or more years of age.
- (d) For purposes of this section, the person who violates this section shall be the individual directly selling, furnishing or distributing the cigarettes, electronic cigarettes, or tobacco products to any person under 21 years of age, or the retail dealer who has actual knowledge of such selling, furnishing or distributing by such individual or both.
- (e) Notwithstanding any separate definition in section 1.1 of the Uniform Public Offense Code for Kansas Cities, the term electronic cigarette means a device that delivers nicotine or other substances to the person inhaling from the device, including but not limited to any electronic cigarette, cigar, pipe, or hookah, including any component, part, or accessory of such a device, whether or not sold separately. Electronic cigarette shall not include any products that have been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

- (f) As used in this section, sale means any transfer of title or possession or both, exchange, barter, distribution or gift of cigarettes or tobacco products, with or without consideration.
- (g) It is unlawful for any person who is a retail dealer to fail to post and maintain in a conspicuous place in the dealer's establishment the following notice: "BY LAW, CIGARETTES AND TOBACCO PRODUCTS MAY BE SOLD ONLY TO PERSONS 21 YEARS OF AGE AND OLDER." Retailer shall mean any person, firm or corporation engaged in the business of selling tobacco products, alternative nicotine products, or vapor products by personal handling to an ultimate customer or consumer.
- (h) Violation of this section is a class B violation punishable by a minimum fine of \$200.00.

Sec. 30-3. Air guns, air rifles, bows and arrows, slingshots and BB guns.

- (a) The unlawful operation of an air gun, air rifle, bow and arrow, slingshot or BB gun is the shooting, discharging or operating of any air gun, air rifle, bow and arrow, slingshot or BB gun, within the city, except by permit authorized by the city for deer hunting or within the confines of a building or other structure from which to projectiles cannot escape; provided, that a bow and arrow may be used in an open air archery range meeting the following requirements.
 - (1) An open, flat plain with a clear and unobstructed field of distance. The maximum distance between archer and target shall be no more than 40 yards.
 - (2) Target shall be situated so that any path, target, road or building is located with a 30 degree arc centered perpendicular with the shooter and target extending a minimum of 40 yards behind the target.
 - (3) A target backstop be constructed which is at least 12 feet wide and eight feet high behind each target. The backstop is to be constructed and maintained using a material which would capture and trap arrows shot into it. The material used must not cause arrows to be deflected in another direction.
 - (4) A secondary earthen backstop consisting of an earthen berm, material hill or excavated face shall be provided. The secondary backstop should be at least 30 feet wide and 16 feet high.
 - (5) Operation of an archery range shall be allowed between the hours of sunrise and sunset.
- (b) Unlawful operation of an air gun, air rifle, bow and arrow, slingshot or BB gun is a class C violation.

Section 3. REPEAL. Sections 30-1, 30-2, and 30-3 of Chapter 30, Offenses, of the Code of Ordinances of the City of Leavenworth, Kansas, in existence as of and prior to the adoption of this ordinance, are hereby repealed.

Section 4. EFFECTIVE DATE. This ordinance shall take effect and be in force from and after its publication in the official city newspaper.

PASSED and APPROVED by the Governing Body on this _____ day of _____ 2020.

Myron J. "Mike" Griswold, Mayor

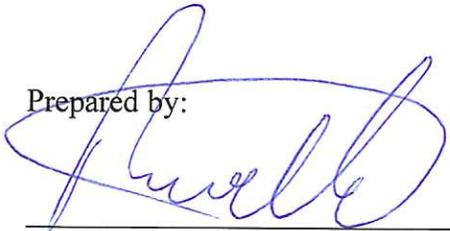
{Seal}

ATTEST:

Carla K. Williamson, CMC, City Clerk

Policy Report No. 9-2020
2020 Intersection Traffic Control Device Master Index
September 8, 2020

Prepared by:



Patrick R. Kitchens, Police Chief

Approved by:



Paul Kramer, City Manager

ISSUE:

Place an ordinance on first consideration that adopts the 2020 Intersection Traffic Control Device Master Index.

STAFF RECOMMENDATION:

Staff recommends approval.

BACKGROUND:

On an annual basis the Intersection Traffic Control Device is presented to the City Commission for approval. (Master list attached)

No changes

BUDGET IMPACT:

There is no budget impact.

COMMISSION ACTION:

Place an ordinance on first consideration that adopts the 2020 Intersection Traffic Control Device Master Index.

ORDINANCE NO. xxxx

AN ORDINANCE AMENDING CHAPTER 44, SECTION 44-3 OF THE CODE OF ORDINANCES REGULATING INTERSECTION TRAFFIC CONTROL DEVICES WITHIN THE CORPORATE LIMITS OF THE CITY OF LEAVENWORTH, KANSAS; INCORPORATING BY REFERENCE THE “2020 INTERSECTION TRAFFIC CONTROL DEVICE MASTER INDEX”.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAVENWORTH, KANSAS:

Section 1. That the Code of Ordinances, City of Leavenworth, Kansas Chapter 4, Traffic and Vehicles, Article I In General, Section 44-3 shall be amended to read as follows:

Section 44-3. Intersection traffic control device master index adopted by reference.

The “2020 Intersection Traffic Control Device Master Index” prepared and published by the city in book form for the purpose of regulating intersection traffic control devices within the city, is adopted as though fully set forth herein. One copy of the adopted index, marked “Official Copy as Adopted by ordinance _____” and to which shall be attached a copy of said ordinance, shall be filed with the city clerk and available to the public for inspection at all reasonable business hours.

Section 2. That Section 44-3 amended herein and all ordinances found to be in conflict are hereby repealed.

Section 3. That this ordinance shall take effect and be in force from and after its passage, approval, and publication as provided by law.

PASSED and APPROVED by the Governing Body on this _____ day of _____ 2020.

{SEAL}

Myron J. “Mike” Griswold, Mayor

ATTEST:

Carla K. Williamson, CMC City Clerk

POLICY REPORT PWD NO. 20-43

CONSIDER THE PURCHASE OF THE
PROPERTY AT 711 S. 3RD STREET AND 226 OLIVE STREET

Project 2018-895

September 8, 2020

Prepared by:



Michael G. McDonald,
Director of Public Works

Reviewed by:



Paul Kramer,
City Manager

ISSUE:

Consider purchase of the vacant property at 711 S. 3rd Street and 226 Olive Street for the 2nd & Chestnut Stormwater Repair Project.

BACKGROUND:

Staff worked with Wilson & Co. to design this project. The two vacant properties are next to the recently purchased property at 713 S. 3rd Street. Wilson & Co. and staff reviewed design options and determined that including this property in the design will improve the project. It will increase detention basin effectiveness and enhance overall water quality values. Staff has had contact with the owner over the last two months regarding the purchase of the property. Funds allocated for the project would be used for the purchase.

POLICY:

The City Commission can reject the contract or proceed with the purchase of the property at the contract amount.

RECOMMENDATION:

Staff recommends that the City Commission approve the purchase of the property at 711 S. 3rd Street and 226 Olive Street for the amount of \$6,500.

MOTION:

Move to approve the acquisition of that certain real property commonly known as 711 S. 3rd Street and 226 Olive Street, for a price not to exceed \$6,500 (exclusive of title costs or closing fees) from David Sank, and directing the Mayor or City Manager to execute any documents that may be necessary for closing.

ATTACHMENTS:

Sank Memo
Site Map
Project Map

711 S. 3rd Street & 226 Olive Street - Dave S. Sank

Policy Report PWD No. 20-43

Leavenworth City Commission Meeting - September 8, 2020

