



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

CITY COMMISSION REGULAR MEETING
COMMISSION CHAMBERS
TUESDAY, JUNE 14, 2022 6:00 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 6 p.m. and midnight and available for viewing on YouTube

CALL TO ORDER – Pledge of Allegiance Followed by Silent Meditation

PROCLAMATION:

1. 2022 Celebration of Juneteenth (pg. 02)

OLD BUSINESS:

Consideration of Previous Meeting Minutes:

2. Minutes from May 24, 2022 Regular Meeting **Action:** Motion (pg. 03)

Second Consideration Ordinance:

3. Second Consideration Ordinance No. 8187 Rezoning 1830 S. Broadway Street from Planned Unit Development to Residential Mixed Use District
Action: Roll Call Vote (pg. 12)

NEW BUSINESS:

Public Comment: *(i.e. Items not listed on the agenda or receipt of petitions)-Public comment is limited to 2-3 minutes and no action will be taken by the Commission on public comment items - Please state your name and address. A signup sheet will be provided in the commission chambers for anyone wishing to speak.*

General Items:

4. Mayor's Appointment **Action:** Motion (pg. 15)

Resolutions:

5. Resolution B-2314 Redemption of Taxable General Obligation Bonds, Series 2015-B **Action:** Motion (pg. 16)

Bids, Contracts and Agreements:

6. Consider Approval of bid for the 2022 Pavement Management Project (Micro-Surfacing Program)
Action: Motion (pg. 19)

First Consideration Ordinance:

7. First Consideration Ordinance for Change of Speed Limits Eisenhower to Metropolitan **Action:** Consensus (pg. 24)

Leavenworth Land Bank:

8. Consider Development Agreement for 600 Cherokee Street **Action:** Motion (pg. 28)

Consent Agenda:

Claims for May 21, 2022, through June 10, 2022, in the amount of \$1,593,269.52; Net amount for Payroll #11 effective June 3, 2022 in the amount of \$338,632.66 (No Police & Fire Pension).

Action: Motion

Other:

Adjournment

Action: Motion

City of Leavenworth, Kansas



Proclamation

- WHEREAS,** *On January 1, 1863, President Abraham Lincoln signed the Emancipation Proclamation freeing "All Persons held as Slaves" in the Confederate States; and*
- WHEREAS,** *when Union Troops entered Galveston Bay, Texas on June 19, 1865, the enslaved black people of Galveston, Texas, finally learned that they had been free for two years; and*
- WHEREAS,** *June 19 became the recognized day of celebration, and called "Juneteenth" ("Freedom Day") by the former enslaved people of Galveston, Texas; and*
- WHEREAS,** *the newly freed people began to migrate to other parts of the country, they shared their celebration of Juneteenth in their new Black Communities, and the celebration has spread throughout our Country; and*
- WHEREAS,** *Juneteenth is a day of grave remembrance of a dark period in our Nation's history, it is also a day of recognition of hope for the descendants of the black people who survived enslavement; and*
- WHEREAS,** *our Country continues to heal, the recognition of Juneteenth as a Federal Holiday, renews the hope that our country's promise of freedom and equality for all American can come true; and*
- WHEREAS,** *the citizens of Leavenworth, Kansas will gather on June 18, 2022 to celebrate Juneteenth with a parade and festival because sharing traditions with fellow community members create strong bonds that transcend differences.*

NOW, THEREFORE, *I, Camalla M. Leonhard, Mayor of the City of Leavenworth, Kansas hereby congratulate and recognize:*

The 2022 Celebration of Juneteenth

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

Camalla M. Leonhard, Mayor

ATTEST:

Sarah Bodensteiner, 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 Camalla Leonhard, Mayor Pro-Tem Jermaine Wilson, Commissioners Nancy Bauder, Edd Hingula and Griff Martin.

Staff members present: City Manager Paul Kramer, Assistant City Manager Penny Holler, Finance Director Roberta Beier, Police Chief Patrick Kitchens, Public Works Director Brian Faust, Project Manager Michael Stephan, Planning & Community Development Director Julie Hurley, City Attorney David E. Waters and City Clerk Sarah Bodensteiner.

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

PROCLAMATIONS & AWARDS:

MARC 50 – Forward Day – Mayor Leonhard read the proclamation proclaiming June 10, 2022 as MARC 50 – Forward Day. The proclamation was accepted by MARC Director of Transportation and Environment Ron Achelpohl.

ACEC Engineering Excellence Award – Thornton Street Improvements – The City of Leavenworth was presented the American Council of Engineering Companies (ACEC) 2022 Engineering Excellence Award for the Thornton Street Improvements. City Manager Paul Kramer accepted the award. Mr. Kramer recognized former Public Works Director Mike McDonald and current staff on all their efforts on this project.

OLD BUSINESS:

Consideration of Previous Meeting Minutes:

Commissioner Martin moved to accept the minutes from the May 10, 2022 regular meeting. Commissioner Wilson seconded the motion and the motion was unanimously approved. Mayor Leonhard declared the motion carried 5-0.

Public Comment: *(Public comment on non-agenda items or receipt of petitions- limited to 2-3 minutes)*

Wyatt Galloway 713 Oak Street:

- At 3rd and Maple Street he is asking for the City to change Maple Street to Andrew Newton Street, who was the founder of American Legion Post 94
- Special Olympics hasn't been an event in years, would like to bring the event back
- There are no military discounts offered in Leavenworth at restaurants or stores
- Dougherty Park needs picnic tables, backstops at ballfield
- Stated the city of Nicodemus is the first city of Kansas

Commissioner Bauder:

- Advised that the Leavenworth County Special Olympics committee intends to have Special Olympics back this year

Karen Auxier 550 McDonald:

- Works at the Leavenworth Assistance Center Quilt Shop providing quilts to the homeless
- The Leavenworth Assistance Center is closing
- Providing a service for the community and throughout the country
- Need a free facility to move into after the Leavenworth Assistance Center is closed

General Items:

Mayor's Appointment

Mayor Leonhard moved to appoint to the Convention & Tourism Committee Marianne Tennant to a term ending January 31, 2025; to appoint to the Leavenworth Planning Commission Brian Stephens to a term ending May 1, 2025; to appoint to the Leavenworth Preservation Commission Kenneth Bateman to a term ending April 15, 2025; to appoint to the Parks & Community Activities Advisory Board Jeffery Porter to a term ending January 15, 2025; to reappoint to Grow Leavenworth County Development Corporation Board Lisa Weakley, Wendy Scheidt, Ted Davis and Thomas Meier to terms ending May 31, 2024. Commissioner Bauder seconded the motion and the motion was unanimously approved. Mayor Leonhard declared the motion carried 5-0.

7 Brew Coffee Site Plan Appeal – 4900 S. 4th St. – Planning & Community Development Director Julie Hurley presented an appeal of the decision of the Development Review Committee(DRC) to reject the submitted site plan for 7 Brew Coffee located at 4900 S. 4th Street. The Development Regulations places responsibility for review and approval or rejection of site plans for specified projects with the Development Review Committee, with the option to appeal the DRC's decision to the Planning Commission and City Commission. The subject site is located at 4900 S. 4th Street and is .49 acres in size. It is situated in front of the existing Home Depot store and to the south of the existing UHaul self-storage facility and Starbucks store. Access to the site is proposed to be directly from 4th Street, which is a State/National highway and falls under KDOT jurisdiction for approval for access. There is an existing curb cut and driveway on the site used for maintenance of the billboard located on the site. This section of 4th Street has a posted speed limit of 45 mph, and handles a high volume of traffic, with multiple existing commercial access points in close proximity to the subject site. Ms. Hurley reviewed the identified primary concerns related to the site plan and Traffic Impact Study(TIS):

- Section 5.05 of the Development Regulations requires a 50' separation between non-residential access driveways. Staff has asked for 50' of "stand up curb" between the proposed driveway entrance to the site and the existing commercial driveway to the north. This has not been provided
- The KDOT Access Management Policy requires a minimum driveway spacing of 450' along a Class B highway. Failure to meet this requirement necessitates approval of a variance from KDOT
- There is an existing driveway servicing U-Haul/Starbucks directly to the north, the turn lane for access to Home Depot beginning directly to the south, and existing commercial driveway directly to the east, and 4 lanes of high volume traffic on 4th Street with a two-way left turn lane. The proposed development results in an additional 19 points of conflict in an already congested area of a State highway, causing significant traffic safety concerns

- The TIS indicates that the proposed development would require a right turn lane on 4th Street for entrance to the site, based on KDOT standards. Failure to meet this requirement necessitates approval of a second variance from KDOT
- Based on predicted peak customer volume of 88 vehicles in the morning plus a midday peak of 66 vehicles as indicated in the TIS, it is anticipated that stacking could back up onto 4th Street, posing additional points of conflict with southbound traffic on 4th Street and traffic exiting from the U-Haul site
- The existing billboard base on the site is located approximately even with the stop bar indicated on the site for exiting traffic, posing significant sight distance issues for exiting traffic

Based on those factors, the DRC reached a unanimous decision to withhold approval of the site plan. The Planning Commission considered the appeal of the DRC decision on May 9, 2022, and voted 4-1 to recommend approval contingent upon the applicant receiving the necessary approval and variances from KDOT.

Public Works Director Brian Faust:

- Julie did a great job covering our concerns on this
- Top priority is safety whenever we look at a new project
- When we have access controls it is a good idea to maintain those so we don't create a less-safe intersection or traffic on the roadway

Ryan Barrett Area Engineer for KDOT:

- A lot of the same concerns as Ms. Hurley and Mr. Faust
- Regarding the existing 12' driveway, a variance was provided for that current use of the site, which is the billboard
- Per KDOT's Access Management Policy, they would require the 450' driveway spacing
- At its current state, the site is not adequate to safely facilitate this project
- This is an unsafe situation for the traveling public

Commissioner Hingula:

- Will the billboard be removed

Ms. Hurley:

- The billboard will remain

Police Chief Patrick Kitchens:

- Principal concern is cars stacked on 4th Street
- Police would be unable to direct traffic
- Concerned about safety

John Kollhoff with 7 Brew Coffee:

- Drive thru only beverage company
- Anticipate hiring 50 people
- U-Haul has been unwilling to allow cross-access requests, reached out to Home Depot, but has not heard back

- Service time is 3-5 minutes, traffic flows magically
- Doesn't feel there will be as many traffic safety issues once constructed

Mayor Leonhard:

- In your Topeka location, you didn't have to go through KDOT
- Is there an option for another location if it can't work here

Mr. Kollhoff:

- Correct, we dealt with the City of Topeka
- We think the highest and best use of the area is our business

Commissioner Martin:

- Not sold on there not being issues when it comes time for people to leave and exit

Mr. Bliss with 7 Brew Coffee:

- Traffic Impact Study was conducted which is the best way to quantify traffic issues
- Thinks that in the study if they consider 88 vehicles coming in, they assume they all can get out

Commissioner Hingula:

- Concerned about traffic wanting to turn north and crossing 3 lanes of traffic

Mr. Kollhoff:

- Location in Topeka is in front of the Home Depot and we don't share the same concerns that staff has

Mayor Leonhard:

- Doesn't feel it's safe
- Safety of individuals over a cup of coffee

Commissioner Bauder:

- Feels that the DRC rejected the plan for very valid reasons

Commissioner Wilson:

- Not in favor due to the safety concerns

Commissioner Hingula:

- So Home Depot just hasn't responded and you've given up

Mr. Kollhoff:

- I've reached out and our engineer reached out to his contacts and no one has responded

Mr. Bliss:

- Feels the 50' stand up curb is an interpretation and not clearly stated as a requirement in the code, and the proposed site plan does meet the 50' separation in his interpretation

- TIS doesn't describe additional points of conflict, hasn't received documentation as to the 19 points of conflict
- Feels that KDOT would approve the variances
- Doesn't feel that the other points of disapproval are code driven, even if they are safety related
- Existing billboard is only in the site triangle because of the space left for sidewalks
- Non-conformance is already in the area, so the precedent has been set
- A lowering of the speed limit to 40 mph would be beneficial to the area
- Hard to find properties that would accommodate the requirements along the 4th street corridor

Attorney Waters:

- There is language in the code "unless no other practical alternative exists", but it doesn't mean anything goes
- Article 2 goes over some other criteria, safety being one of them
- Reviewed the options for the Commission to consider

Mr. Kollhoff:

- Discussed the terrain differences between the Home Depot site and their proposed site as well as U-Haul site and the proposed site

Mr. Bliss:

- Provided and read an excerpt from Smith v. State Highway Commission

Attorney Waters:

- This site has access to 4th Street for purposes it is currently being used for, and that access is not being revoked
- There is not inverse condemnation on this property

Commissioner Bauder:

- Feels that the DRC recommendation of denial should be upheld

Commissioner Wilson moved to disapprove the site plan for 7 Brew Coffee located at 4900 S. 4th Street. Commissioner Martin seconded the motion and the motion was unanimously approved. Mayor Leonhard declared the motion carried 5-0.

Bids, Contracts and Agreements:

River City Community Players Agreement – City Manager Paul Kramer presented for consideration the updated agreement between the City of Leavenworth and the River City Community Players(RCCP) for providing performing arts in the City of Leavenworth, operating at the Performing Arts Center. The following changes were made to the agreement:

- Season ticket levels corrected to match current season ticket offerings
- Point-of-contact limited to one contact at RCCP to eliminate duplicate or confusing requests
- Play licensing and materials process streamlines to make RCCP a direct contact with the theatre companies. All purchasing approval and processing to remain with the Leavenworth Parks and Recreation Department

- Timelines added to keep financial records within the same fiscal year whenever possible
- Agreement review/renewal period changed to bi-annually

Mr. Mazzia with the River City Community Players:

- Last agreement was signed in the late 90's
- Streamlining of the play licensing and materials needed to occur to improve the process and make it more efficient

Commissioner Hingula:

- Would the City send back the materials

Mr. Mazzia:

- Sometimes we still have to package it up and send it back, but others we get a PDF and just print it out
- We are involved in terms of coordination, contractual items will stay with Parks and Recreation

Commissioner Martin:

- Can you provide the budgetary impacts
- What Financial responsibilities would fall on the City

Mr. Kramer:

- If Mr. Mazzia hits his numbers the City would subsidize about \$7,000
- RCCP handles the plays and things, the City is responsible for the building; it is similar to the relationship with the Library

Mr. Mazzia:

- Provided a cost overview of the plays and musical costs and revenues

Commissioner Hingula moved to approve the memorandum of agreement with the River City Community Players as written. Commissioner Wilson seconded the motion and the motion was unanimously approved. Mayor Leonhard declared the motion carried 5-0.

Agreement with Home Depot for Right-of-Way and Easement Acquisition – Public Works Director Brian Faust presented for consideration an agreement with Home Depot associated with the acquisition of right-of-way and easements needed to construct the intersection improvements at K-7/4th Street and Eisenhower. The plans for the intersection improvements identified a need for a temporary construction easement, a permanent drainage easement and for additional right-of-way. On November 9, 2021, the City Commission approved Resolution B-2300 regarding the appropriation of private property for public purposes. This started the condemnation process required before KDOT would permit bidding to occur. On January 26, 2022, the District Court approved the petition of eminent domain and appointed appraisers to apprise the value of the land and to determine damages resulting from the takings. All through this process the City, SMH Consultants and our attorney from Morrison, Frost, Olsen, Irvine & Schartz, LLP worked with the Home Depot attorney to arrive at an agreement prior to court proceedings. While this has been a long and challenging process, the City and Home Depot are very close to an agreement.

Mr. Kramer:

- If the substance of the contract changes, this will be null and void and would come back to the Commission for approval

Mr. Faust provided a brief overview of the project and the benefits of the improvements being made at the intersection

Commissioner Hingula moved to authorize the Mayor to sign the final agreement for the acquisition of right-of-way and easements associated with Home Depot for the K-7/4th Street and Eisenhower Intersection Improvement Project. Commissioner Wilson seconded the motion and the motion was unanimously approved. Mayor Leonhard declared the motion carried 5-0.

Consider Award of Bid for Mowing Services – Planning & Community Development Director Julie Hurley presented for consideration acceptance of the proposal for mowing services for the mowing clusters. Each year, the City of Leavenworth uses contract services to mow and maintain City owned properties such as rights-of-way, drainage ditches, and parcels obtained through the County tax sale. These properties are grouped into clusters and bids are solicited for each cluster. In addition, the City’s Code Enforcement efforts require corrective action for properties with property maintenance violations regarding grass and weeds. These contract services are offered through an open competitive bidding process. The previously awarded contract for these services had been terminated when the contractor advised the City on April 25, 2022, that due to theft of equipment and termination of staffing, he would not be able to fulfill the contract for the season. Bids were solicited and one bid was received for the 5 clusters, no bids were received for the Code Enforcement Mowing. Ms. Hurley reviewed the bid amounts for the 5 clusters and how the City will handle the Code Enforcement mowing’s for this season.

Commissioner Wilson moved to approve the proposal received from Affordable Lawn & Cemetery Care in an amount not to exceed \$54,175.00 for mowing services of the 5 clusters. Commissioner Martin seconded the motion and the motion was unanimously approved. Mayor Leonhard declared the motion carried 5-0.

First Consideration Ordinance:

First Consideration Ordinance Rezoning 1830 South Broadway Street – Planning and Community Development Director Julie Hurley presented for first consideration an ordinance rezoning 1830 South Broadway Street from PUD, Planned Unit Development to R-MX, Residential Mixed Use District. The item was heard by the Planning Commission at their May 9, 2022 meeting and was voted 5-0 to approve the proposed change. A public hearing was first held by the Planning Commission for a rezoning on the subject property on March 7, 2022. At that time the request was to rezone the property from R1-6, High Density Single Family Residential District to R-MX, Residential Mixed Use District. After the public hearing was held, it came to staff’s attention that the zoning designation of R1-6 was incorrect, and that the property had been previously rezoned to PUD in 2009. The City Attorney advised staff that even though no changes were made to the current proposal, a new application would need to be submitted indicating the correct zoning designation of PUD, with new legal notification sent to property owners within 200’ and a new public hearing would need to be conducted. Notices were sent, and the Planning Commission conducted a public hearing on May 9, 2022, reflecting the correct zoning designation of PUD. Ms. Hurley reviewed the request:

- The property owner requested the rezone

- The property is 9.32 acres in size
- Current tenants in the building is the Council on Aging, who is anticipated to relocate in 2022
- Owner wants to renovate the building to residential and business/office space, 30 multi-family units
- Reviewed Golden Factors when reviewing Rezoning Requests:
 - Character of neighborhood
 - The zoning and use of properties nearby
 - The suitability of the subject property for the uses to which it has been restricted
 - The extent to which removal of the restrictions will detrimentally affect nearby property
 - The length of time the subject property has remained vacant as zoned
 - The relative gain to economic development, public health, safety, and welfare by the reduction of the value of the landowners property as compared to the hardship imposed by such reduction upon the individual landowner
 - The recommendations of permanent or professional staff
 - The conformance of the requested change to the adopted or recognized Comprehensive Land Use Plan being utilized by the city
 - Such other factors as may be relevant to a particular proposed amendment

Commissioner Hingula:

- Asked about Garland Street being on the Pavement Management Program this year

Mr. Faust:

- A portion is on the list for this year

Attorney Waters:

- It would be good to have comments and conversation in regards to the factors that are taken into account for rezoning a property, whether at this meeting or at the second consideration

Commissioner Bauder:

- Supports the rezoning and stated the property needed to be rezoned for some time and it will be good to see a use out of that building which would help make that neighborhood nicer with its improvements

Mayor Leonhard:

- It's a beautiful big piece of land and a nice building, and it would be nice to have the building be more than an empty building once the Council on Aging moves out

There was a consensus by the Commission to place on first consideration.

Consent Agenda:

Commissioner Martin moved to approve claims for May 7, 2022 through May 20, 2022, in the amount of \$736,045.10; Net amount for Payroll #10 effective May 20, 2022 in the amount of \$355,517.00 (Includes Police and Fire Pension in the amount of \$9,038.36). Commissioner Bauder seconded the motion and the motion was unanimously approved. Mayor Leonhard declared the motion carried 5-0.

Other:

Executive Session – Attorney Client Privilege – Mayor Leonhard moved to recess into executive session to discuss legal options pursuant to the consultation with an attorney for the public body or agency which would be deemed privileged in the attorney-client relationship exception per K.S.A. 75-4319 (b) 2. The open meeting to resume in the City Commission Chambers at 8:20p.m. City Manager Paul Kramer and City Attorney David E. Waters are requested to be present during the Executive Session. Commissioner Martin seconded the motion and the motion was unanimously approved. Mayor Leonhard declared the motion carried 5-0.

Mayor Leonhard, Commissioners Bauder and Wilson returned to open session at 8:19 p.m. Commissioner Bauder moved to extend the executive session until 8:30 p.m., Commissioner Wilson seconded the motion and the motion carried 3-0.

The Leavenworth City Commission returned to open session at 8:30 p.m.

Commissioner Hingula:

- When will we get a report or status update on the Bird Scooters

Ms. Holler:

- That is a part of the pilot program for that information to be provided, but there have been some technology issues with accessing the Bird website, their IT is troubleshooting, but as soon as its available, we'll share them

Commission briefly discussed some feedback they've received with the scooters

Commissioner Hingula:

- Be safe and enjoy the upcoming holiday

Commissioner Wilson

- Be safe, God bless and pray for the families in Texas

Commissioner Martin:

- Expressed that the City wants to welcome and help businesses

Mayor Leonhard:

- Stay safe and have a good holiday

Adjournment:

Commissioner Martin moved to adjourn the meeting. Mayor Leonhard seconded the motion and the motion was unanimously approved and the meeting was adjourned.

Time Meeting Adjourned 8:34 p.m.

Minutes taken by City Clerk Sarah Bodensteiner, CMC

**POLICY REPORT
SECOND CONSIDERATION ORDINANCE 8187
REZONING 1830 S. BROADWAY STREET FROM PLANNED UNIT DEVELOPMENT TO RESIDENTIAL
MIXED USE DISTRICT**

JUNE 14, 2022

Prepared by:



Sarah Bodensteiner, CMC
City Clerk

Reviewed by:



Penny Holler
Assistant City Manager

BACKGROUND:

At the May 24, 2022 City Commission regular meeting the City Commission reviewed and placed on first consideration:

**AN ORDINANCE AMENDING THE DEVELOPMENT REGULATIONS,
APPENDIX A OF THE CODE OF ORDINANCES OF THE CITY OF
LEAVENWORTH, KANSAS BY REZONING 1830 S. BROADWAY STREET
FROM PLANNED UNIT DEVELOPMENT (PUD) TO RESIDENTIAL
MIXED USE DISTRICT (R-MX).**

There have been no other changes since first consideration.

Ordinance No. 8187 is now presented for second consideration and requires a roll call vote.

ATTACHMENTS:

- Ordinance No. 8187

(Summary Published in the Leavenworth Times on June 17, 2022)

ORDINANCE NO. 8187

AN ORDINANCE AMENDING THE DEVELOPMENT REGULATIONS, APPENDIX A OF THE CODE OF ORDINANCES OF THE CITY OF LEAVENWORTH, KANSAS BY REZONING 1830 S. BROADWAY STREET FROM PLANNED UNIT DEVELOPMENT (PUD) TO RESIDENTIAL MIXED USE DISTRICT (R-MX).

WHEREAS, under the Development Regulations, Appendix A of the Code of Ordinances of the City of Leavenworth, Kansas, the Governing Body of the City of Leavenworth is given the power to amend, supplement or change existing zoning regulations within said City; and

WHEREAS, the City Planning Commission, after fully complying with the requirements of the Code of Ordinances of the City of Leavenworth, Kansas, held a public hearing on the 9th day of May 2022 in the Commission Room, 1st Floor of City Hall, 100 N. 5th Street, Leavenworth, Kansas. The official date and time set as was published in the Leavenworth Times newspaper on the 16th day of April 2022 and notice of the public hearing was mailed to all property owners as required by K.S.A. 12-757(b); and

WHEREAS, upon a motion made, duly seconded, and passed, the Planning Commission adopted findings of fact and recommended approval of the request Rezoning of 1830 S. Broadway Street, Leavenworth Kansas from Planned Unit Development (PUD) to Residential Mixed Use District (R-MX); and

WHEREAS, upon a roll call vote duly passed, the Governing Body adopted the findings of fact and conclusions to rezone the property described herein.

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

Section 1: That the following described property, to-wit, is hereby rezoned from Planned Unit Development (PUD) to Residential Mixed Use District (R-MX).

A TRACT OF LAND IN THE NORTHEAST QUARTER OF SECTION 2, TOWNSHIP 9 SOUTH, RANGE 22 EAST OF THE 6TH PM, CITY OF LEAVENWORTH, LEAVENWORTH COUNTY, KANSAS, MORE FULLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID NORTHEAST QUARTER; THENCE SOUTH 89° 40' 31" WEST, ALL BEARINGS ARE FROM GPS OBSERVATION A DISTANCE OF 927.33 FEET, THENCE SOUTH 01° 02' 02" WEST A DISTANCE OF 885.60 FEET TO THE TRUE POINT OF BEGINNING, SAID POINT BEING ON THE SOUTH RIGHT OF WAY OF PENNSYLVANIA AVENUE AND ALSO BEGINNING THE NORTHWEST CORNER OF A TRACT OF LAND RECORDED IN DEED BOOK 982, PAGE 704; THENCE SOUTH 01° 02' 02" WEST FOR A DISTANCE OF

270.70 FEET ALONG THE WEST LINE OF SAID TRACT, DEED BOOK 982, PAGE 704, AND ALONG THE WEST LINE OF A TRACT OF LAND RECORDED IN DEED BOOK 716, PAGE 706 TO THE SOUTHWEST CORNER OF SAID TRACT BOOK 716, PAGE 706; THENCE NORTH 89° 42' 58" EAST FOR A DISTANCE OF 139.88 FEET ALONG THE SOUTH LINE OF SAID TRACT, DEED BOOK 716, PAGE 706 TO THE WESTERLY RIGHT OF WAY OF SOUTH BROADWAY, THENCE SOUTH 01° 02' 02" WEST FOR A DISTANCE OF 548.00 FEET ALONG SAID WESTERLY RIGHT OF WAY TO THE NORTH RIGHT OF WAY LINE OF REES STREET; THENCE SOUTH 89° 33' 52" WEST FOR A DISTANCE OF 544.01 FEET ALONG SAID NORTH RIGHT OF WAY LINE TO THE EAST RIGHT OF WAY OF GARLAND STREET, ALSO BEING THE EAST LINE OF S.H. HOLMES PLEASANT VIEW SUBDIVISION; THENCE NORTH 01° 32' 06" EAST FOR A DISTANCE OF 819.71 FEET ALONG SAID RIGHT OF WAY TO THE SOUTH RIGHT OF WAY LINE OF PENNSYLVANIA AVENUE, THENCE NORTH 89° 42' 58" EAST FOR A DISTANCE OF 396.92 FEET ALONG SAID SOUTH RIGHT OF WAY LINE, TO THE POINT OF BEGINNING. TOGETHER WITH AND SUBJECT TO COVENANTS, EASEMENTS, AND RESTRICTIONS OF RECORD.

And **more commonly referred to as 1830 S. Broadway Street**, Leavenworth, Kansas

Section 2: That the “Zoning District Map” adopted under the Development Regulations, Appendix A of the Code of Ordinances of the City of Leavenworth, Kansas shall be and the same is hereby amended to conform to the rezoning as set forth in Section 1 above.

Section 3: That this Ordinance shall take effect and be in force from and after its passage, approval and summary publication in the official City newspaper of the City of Leavenworth, Kansas, as provided by law.

PASSED and APPROVED by the Governing Body on the 14th day of June 2022.

Camalla M. Leonhard, Mayor

{Seal}

ATTEST:

Sarah Bodensteiner, CMC, City Clerk

MAYOR'S APPOINTMENTS

June 14, 2022

Mayor Leonhard

"Move to

*Appoint to the **Library Board** Rebecca Kellogg to an unexpired term ending April 30, 2024"*

Requires a second and vote by the Governing Body.

**POLICY REPORT
RESOLUTION B-2314
REDEMPTION OF TAXABLE GENERAL OBLIGATION BONDS, SERIES 2015-B**

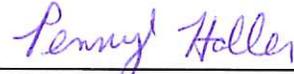
JUNE 14, 2022

Prepared by:



Sarah Bodensteiner, CMC
City Clerk

Reviewed by:



Penny Holler
Assistant City Manager

ISSUE:

The issue before the City Commission is to consider a resolution calling the outstanding principal amount of the Bonds maturing on and after September 1, 2023, in the aggregate principal amount of Two Hundred Sixty Thousand Dollars (\$260,000), for redemption and payment on September 1, 2022.

ACTION REQUIRED:

Approve Resolution B-2314 redemption of Taxable General Obligation Bonds, Series 2015-B.

RESOLUTION NO. B-2314

WHEREAS, the City of Leavenworth, Leavenworth County, Kansas, (the "Issuer") pursuant to the authority of Home Rule Ordinance No. 7934, (the "Act") passed and approved Ordinance No. 7984, on the 10th day of November, 2015, (the "Ordinance") which Ordinance authorized the Issuer to issue its Taxable General Obligation Bonds, Series 2015-B, in the principal amount of Six Hundred Thousand Dollars (\$600,000) (the "Bonds") to permanently finance the acquisition, demolition, site clearance and preparation of a tract of land or parcel of land commonly known as the Best Value Inn located at 101 South 3rd Street in the City which was formerly a hotel facility no longer in operation and in a state of deterioration (the "Project") and also approved on November 10, 2015, Resolution No. B-2122, (the "Resolution") which set forth the terms and conditions of the Bonds; and

WHEREAS, pursuant to *Section 203* of the Resolution, the Treasurer of the State of Kansas, Topeka, Kansas, was designated as the Issuer's Paying Agent and Bond Registrar (the "Paying Agent") for the payment of the principal of and interest on the Bonds; and

WHEREAS, pursuant to *Section 301* of the Resolution, the outstanding principal amount of the Bonds, or any portion thereof, maturing on or after September 1, 2023, is subject to redemption prior to maturity on September 1, 2022, or thereafter, in whole or in part on any date, at a redemption price equal to 100% of the principal amount so redeemed, plus all accrued and unpaid interest on such principal amount so redeemed to the Redemption Date; and

WHEREAS, pursuant to *Section 301* of the Resolution, the Issuer deems it necessary and advisable to call the outstanding principal amount of the Bonds in the amount of Two Hundred Sixty Thousand Dollars (\$260,000) for redemption and payment on September 1, 2022 (the "Redemption Date").

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LEAVENWORTH, LEAVENWORTH COUNTY, KANSAS:

Section 1. That pursuant to the Resolution, the Issuer hereby calls the outstanding principal amount of the Bonds maturing on and after September 1, 2023, in the aggregate principal amount of Two Hundred Sixty Thousand Dollars (\$260,000), for redemption and payment on September 1, 2022, the Redemption Date. The Bonds are being called in such principal amount thereof plus accrued interest thereon to the Redemption Date.

Section 2. That pursuant to *Section 303* of Resolution, the Issuer shall give written notice of its intent to so redeem such Bonds not less than 45 days prior to the Redemption Date to the Paying Agent who shall then give written notice of redemption, not less than 30 days prior to the Redemption Date, to the Owners of such Bonds and to the Original Purchaser of the Bonds. Each of said written notices shall be deposited in the United States first-class mail not less than thirty days prior to the date fixed for redemption.

Section 3. That all acts, conditions and things required by the Constitution and the laws of the State of Kansas, relating to the passage of this Resolution, or to the execution of any

related document to happen, exist and be performed pursuant to and in the enactment of this Resolution, have happened, exist and have been performed as required by law.

PASSED AND APPROVED this 14th day of June, 2022.

**THE CITY OF LEAVENWORTH,
LEAVENWORTH COUNTY, KANSAS**

Camalla M. Leonhard, Mayor

ATTEST:

Sarah Bodensteiner, City Clerk

(SEAL)

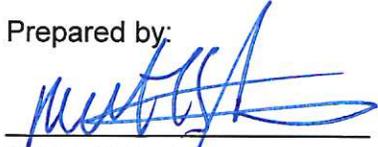
POLICY REPORT PWD NO. 22-29

**CONSIDER APPROVAL OF LOW BID FOR
THE 2022 PAVEMENT MANAGEMENT PROJECT
(MICRO-SURFACING PROGRAM)**

City Project 2021-966

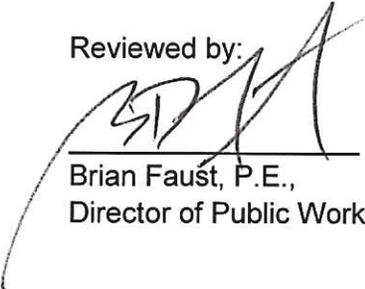
June 14, 2022

Prepared by:

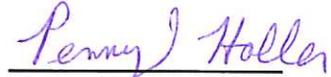


Michael Stephan,
Project Manager

Reviewed by:



Brian Faust, P.E.,
Director of Public Works



Penny Höller,
Assistant City Manager

ISSUE:

Consider bids received and possible award of the 2022 Pavement Management – Micro-Surfacing and Crack Seal Program.

BACKGROUND:

On November 9, 2021, the City Commission approved a design contract with Alfred Benesch & Company for the design of the 2022 Pavement Management Program.

For 2022, the City Commission authorized a combination of General Improvement Bonds and Sales Tax for the annual maintenance of public streets. The components of the 2022 program include micro-surfacing, mill and overlay, parking lot upgrades and major repair and maintenance work beyond the scope of the Streets Division. The funding for 2022 covers the costs of the 2022 project design, construction of the various components, a detailed evaluation of the pavement condition (previously completed in 2016 and 2019) along with the next phase of a Comprehensive Pavement Management Program. Inspection will be by City Staff.

The Micro-Surfacing and Crack Sealing Program for 2022 includes the City streets highlighted on the attached map. City forces have been working on patching potholes and trimming limbs on the streets ahead of this year's program.

The project plans were prepared by Alfred Benesch & Company and the project was advertised for bid in the Leavenworth Times and at Drexel Technologies. A mandatory pre-bid meeting was held on May 24th and bids were opened on June 7, 2022. Bid results are shown below and in the attached bid tabulation. Like several of the surface preservation processes, micro-surfacing has a limited number of contractors that do this type of work.

Vance Brothers was the sole bidder and met all bidding requirements. Vance Brothers has completed the Granite Seal Program for the City in previous years. The prior work was completed within the required timeframe and specifications. The company has done numerous micro-surfacing projects for other cities in Kansas and Missouri and has the experience to satisfactorily perform this work for the City of Leavenworth.

Company	City	Base Bid
Vance Brothers, Inc.	Kansas City, MO	\$777,487.64
Engineer's Estimate		\$808,003.50

Work is expected to begin in July or August and be completed by November. The crack sealing and any required base patching will occur early (late July to August) while the actual micro-surfacing will likely occur later in the fall.

With the uncertainty in petroleum pricing, the project was bid with a list of additional streets that could be added to the project with no change in unit prices. Depending on the bids received for the mill/overlay component (scheduled award is July 12th), staff is requesting the ability to add streets to the project. Without the ability to add streets, we may not be able to ensure all available funding is utilized.

POLICY:

The City Commission generally awards a contract to the lowest bidder if the bid is less than the Engineer's estimate and whose evaluation by the City indicates that the award will be in the best interest of the City. While there was only one bidder, the bid was under the engineer's estimate and the contractor is extremely well qualified for this work.

BUDGET IMPACT:

The 2022 budget included \$2M for the Pavement Management Program. In addition, there was unused funding in 2021 that brings the total available to \$2.5M. There are additional components and design work that are also included in this total amount.

RECOMMENDATION:

Staff recommends that the City Commission award the 2022 Pavement Management – Micro-Surfacing and Crack Sealing Program to Vance Brothers for the amount of \$777,487.64 and authorize the Public Works Director to add additional streets, as funding permits, with the approval of the City Manager.

ATTACHMENTS:

Project Street Map
Bid Tab



CITY OF LEAVENWORTH
 Project No. 2021-966
 2022 PMP - Crack Sealing & Micro-Surfacing
 June 7, 2022

BASE BID				Engineer's Estimate		VANCE BROTHERS		XXX		XXX	
Item	Description	Unit	Quantity	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
1	Mobilization	LS	1	\$20,000.00	\$20,000.00	\$36,500.00	\$36,500.00		\$0.00		\$0.00
2	Traffic Control	LS	1	\$50,000.00	\$50,000.00	\$20,000.00	\$20,000.00		\$0.00		\$0.00
3	Crack Sealing	SY	122,470	\$1.25	\$153,087.50	\$1.30	\$159,211.00		\$0.00		\$0.00
4	Micro-Surfacing	SY	122,470	\$4.00	\$489,880.00	\$3.44	\$421,296.80		\$0.00		\$0.00
5	Micro-Surfacing Crack Fill (Est)	LF	735	\$12.00	\$8,820.00	\$13.60	\$9,996.00		\$0.00		\$0.00
6	Full Depth Patch (Est)	TON	116	\$325.00	\$37,700.00	\$371.52	\$43,096.32		\$0.00		\$0.00
7	6" Granular Subbase, Ab-3 Compacted	SY	255	\$15.00	\$3,825.00	\$73.44	\$18,727.20		\$0.00		\$0.00
8	4" Solid White Line (Multi Component Epoxy)	LF	464	\$2.00	\$928.00	\$1.08	\$501.12		\$0.00		\$0.00
9	4" Solid Yellow Line (Multi Component Epoxy)	LF	10,966	\$2.00	\$21,932.00	\$1.08	\$11,843.28		\$0.00		\$0.00
10	12" Yellow Line (Multi Component Epoxy)	LF	188	\$12.00	\$2,256.00	\$6.48	\$1,218.24		\$0.00		\$0.00
11	24" White Line (Multi Component Epoxy)	LF	433	\$25.00	\$10,825.00	\$12.96	\$5,611.68		\$0.00		\$0.00
12	Left Turn Arrow Pavement Marking (Multi Component Epoxy)	EA	10	\$300.00	\$3,000.00	\$210.60	\$2,106.00		\$0.00		\$0.00
13	School Zone Pavement Marking	EA	3	\$750.00	\$2,250.00	\$12,960.00	\$38,880.00		\$0.00		\$0.00
14	Asphalt Oil Price Adjustment	LS	1	\$0.00	\$0.00	\$0.00	\$0.00		\$0.00		\$0.00
15	Mobilization (Per Each Ateamate Location)	EA	1	\$1,000.00	\$1,000.00	\$5,500.00	\$5,500.00		\$0.00		\$0.00
16	Traffic Control (Per Each Ateamate Location)	EA	1	\$2,500.00	\$2,500.00	\$3,000.00	\$3,000.00		\$0.00		\$0.00
				TOTAL BASE BID:	\$808,003.50		\$777,487.64		\$0.00		\$0.00

City of Leavenworth 2022 Crack Seal and Micro-Surface Projects - South Half



POLICY REPORT PWD NO. 22-30

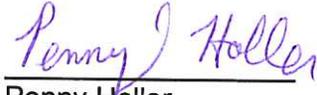
4TH STREET – 1ST CONSIDERATION FOR CHANGE OF SPEED LIMITS
EISENHOWER TO METROPOLITAN – ORDINANCE NO. XXXX

June 14, 2022

Prepared by:


Brian Faust, P.E.,
Director of Public Works

Reviewed by:


Penny Holler,
Assistant City Manager

ISSUE:

Consider placing on first consideration an ordinance updating speed limits on 4th Street between Eisenhower and Metropolitan.

BACKGROUND:

During the May 17, 2022 Commission Work Session, staff presented the findings of the Speed Study conducted along 4th Street between Eisenhower and Metropolitan. After the presentation, there was consensus with the Commission to move forward with the process of updating the speed limits based on the findings of the study.

SUMMARY OF FINDINGS/RECOMMENDATIONS:

Eisenhower to Limit:	The recommended posted speed limit is 40mph.
Limit to Spruce:	The recommended posted speed limit is 35mph.
Spruce to Choctaw:	The recommended posted speed limit is 30mph (no change)
Choctaw to Miami:	Area not included in the study – remain at 20mph (no change)
Miami to Metropolitan:	The recommended posted speed limit is 35mph.

BUDGET IMPACT:

There are currently 28 signs that will need to be changed – ½ are in the City's area of maintenance (Limit to Metropolitan). The estimated cost for the change out is \$2,200.

RECOMMENDATION:

Place an ordinance on first consideration to update the speed limits along 4th Street per the recommendations of the traffic study.

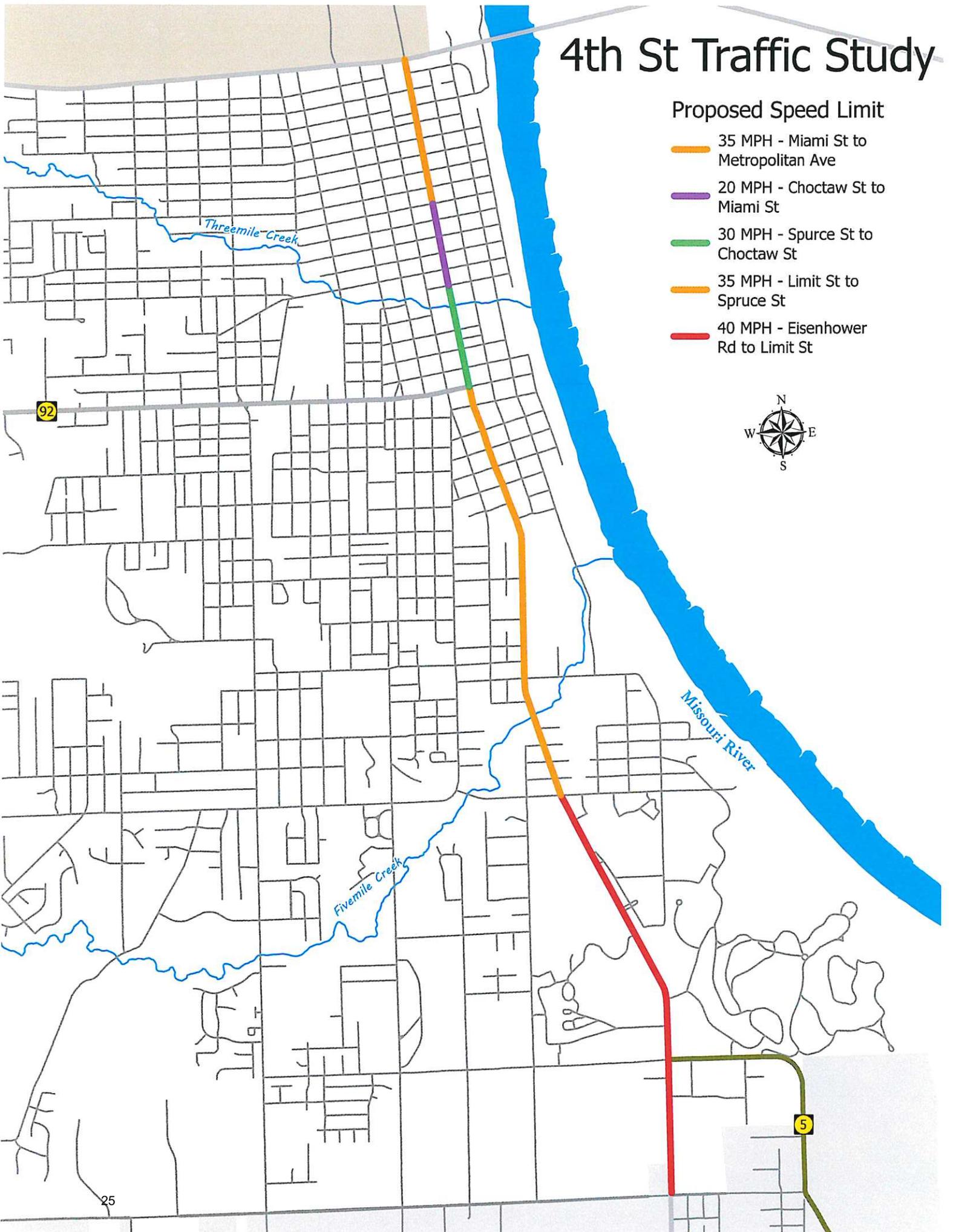
ATTACHMENTS:

Map of 4th Street with recommended speed limits.
Ordinance No. XXXX

4th St Traffic Study

Proposed Speed Limit

- 35 MPH - Miami St to Metropolitan Ave
- 20 MPH - Choctaw St to Miami St
- 30 MPH - Spruce St to Choctaw St
- 35 MPH - Limit St to Spruce St
- 40 MPH - Eisenhower Rd to Limit St



(Summary Published in the Leavenworth Times on _____, 2022)

ORDINANCE NO. _____

AN ORDINANCE REGARDING SPEED LIMITS, AMENDING SECTIONS 44-62 AND 44-63 OF THE LEAVENWORTH CODE OF ORDINANCES, AND ESTABLISHING NEW AND REPLACEMENT SECTIONS.

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

Section 1. Section 44-62 of the Leavenworth Code of Ordinances is hereby deleted in its entirety and amended to read as follows:

Sec. 44-62. Speed limit on U.S. 73 city connecting link (south fourth street trafficway) between Eisenhower and Shawnee Street.

Traffic on U.S. 73 city connecting link (south fourth street trafficway) between Eisenhower and Shawnee Street shall not exceed the speed limits as follows for the respective distances set out in this section, traveling north:

- (1) Speed limit of 40 miles per hour starting 330 feet north of the Eisenhower and U.S. 73 intersection (south city limits) to the south side of the Limit Street intersection.
- (2) Speed limit of 35 miles per hour starting at the south side of the Limit Street intersection and to the south side of Spruce Street intersection.
- (3) Speed limit of 30 miles per hour starting at the south side of the Spruce Street intersection and to the south side of the Choctaw Street intersection.
- (4) Speed limit of 20 miles per hour starting at the south side of the Choctaw Street intersection and to the south side of the Shawnee Street intersection.

Any person, upon conviction of a violation of this section, shall be fined as provided in the penalty section of the Standard Traffic Ordinance for Kansas Cities as adopted by section 44-1.

Section 2. Section 44-63 of the Leavenworth Code of Ordinances is hereby deleted in its entirety and amended to read as follows:

Sec. 44-63. Speed limit on U.S. 73 city connecting link (north fourth street) between Shawnee Street and Metropolitan Street.

Traffic on U.S. 73 city connecting link (north fourth street) between Shawnee Street and Metropolitan Street shall not exceed the speed limits as follows for the respective distances set out in this section, traveling north:

- (1) Speed limit of 20 miles per hour starting at the south side of the Shawnee Street intersection and to the south side of the Miami Street intersection.
- (2) Speed limit of 35 miles per hour starting at the south side of the Miami Street intersection and to the south side of the Metropolitan Street intersection.

Any person, upon conviction of a violation of this section, shall be fined as provided in the penalty section of the Standard Traffic Ordinance for Kansas Cities as adopted by section 44-1.

Section 3. Sections 44-62 and 44-63 of the Leavenworth Code of Ordinances, in existence as of and prior to the adoption of this ordinance, are hereby repealed.

Section 4. This ordinance shall take effect and be in force from and after its publication in the official city newspaper as provided by law.

PASSED and APPROVED by the Governing Body on the ____ day of _____, 2022.

Camalla M. Leonhard, Mayor

{SEAL}

ATTEST:

Sarah Bodensteiner, CMC, City Clerk

Policy Report
Leavenworth Land Bank
Development Agreement for 600 Cherokee Street
June 14, 2022

Prepared By:



Penny Holler
Assistant City Manager

ISSUE:

Consider approval of development agreement with Sean and Jennifer Willcott to purchase and redevelop 600 Cherokee Street.

BACKGROUND:

A Request for Proposals (RFP) was published in January 2022 to identify parties interested in purchasing and redeveloping 600 Cherokee Street. Willcott Brewing, owned by Sean and Jennifer Willcott, submitted a proposal to purchase the property for the purpose of establishing a microbrewery and taproom. The Leavenworth Land Bank authorized negotiation of the development agreement with Willcott Brewing during the April 26 meeting.

The drafted development agreement outlines the terms for that purchase and redevelopment.

ACTION/OPTIONS:

- Approve development agreement
- Provide additional/revised development agreement terms for further negotiation
- Do not approve development agreement

ATTACHMENT:

- Development Agreement 600 Cherokee Street

LAND TRANSFER AND DEVELOPMENT AGREEMENT

THIS LAND TRANSFER AND DEVELOPMENT AGREEMENT (this "Agreement"), is effective as of the 14th day of June, 2022 (the "Effective Date"), by and between the **City of Leavenworth Land Bank**, an instrumentality of the City of Leavenworth, Kansas, created pursuant to K.S.A. 12-5901 *et seq.* ("Land Bank"), and **Sean Willcott and Jennifer Willcott**, husband and wife, and jointly and severally (together, "Developer") (Land Bank and Developer may be collectively referred to as the "Parties" and each a "Party").

RECITALS

A. Reference is hereby made to that certain real property located in the City of Leavenworth, Leavenworth County, Kansas, commonly known and numbered as 600 Cherokee Street, as more particularly identified and shown on Exhibit A attached hereto and incorporated herein by this reference (the "Property").

B. Developer has proposed a development project consisting generally of a first-floor microbrewery with tap-house and related facilities and equipment (the "Project").

C. To facilitate development of the Project, Land Bank has agreed to convey the Property to Developer pursuant and subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and 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 are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I RULES OF CONSTRUCTION

Section 1.01 Incorporation of Recitals. The above recitals are hereby incorporated and made a part of this Agreement by this reference as if completely set forth in this Agreement.

Section 1.02 Term of Agreement. Except for those provisions which specifically survive expiration or termination of this Agreement, and except where earlier termination is provided for in this Agreement, the "Term" of this Agreement shall commence on the Effective Date and expire on Completion Date (defined below) of the entire Project.

Section 1.03 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 Agreement include the plural as well as the singular. All accounting terms not otherwise defined in this Agreement have the meanings assigned to them, and all computations provided for in this Agreement shall be made, in accordance with generally accepted accounting principles. All references in this Agreement to "generally accepted accounting principles" refer to all principles in effect on the date of the determination, certification, computation or other action to be taken under this Agreement using or involving such terms. All references in this instrument to designated "Sections" and other subdivisions are to the designated Sections and other subdivisions of this instrument as originally executed. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Section or other subdivision. The Section headings in this Agreement are for convenience only and shall not affect the construction hereof.

ARTICLE II **THE PROJECT**

Section 2.01 Description and Scope of Project. The scope, timing, and components of the Project, all as set forth in this Agreement, are critical to the Land Bank's agreement to convey the Property to Developer and Land Bank's consent to any public incentives offered by the City for the Project. The Project may be developed in phases (individually, a "Phase" and together, the "Phases"), as more particularly set forth on Exhibit B which is attached hereto and incorporated herein by this reference (which Exhibit B further defines "Phase 1" and "Phase 2").

Section 2.02 Plan Approval. Developer will submit to the City of Leavenworth, Kansas (the "City") such preliminary plans and final plans as and when necessary for final zoning and building approvals of the Project (or the applicable Phase thereof) as required by the zoning, building, construction, and fire/life/safety codes adopted by City. Developer understands that City will use its standard procedures for review and approval of such submissions. As of the Effective Date, the Property is zoned Central Business District. Commencing upon the Effective Date and until the Closing, Developer shall be permitted to file with other applicable regulatory agencies (including but not limited to the Kansas Historical Society, the Kansas State Historic Preservation Office, and the National Park Service) applications for such permits, approvals, consents, certificates of appropriateness, and the like as Developer may deem necessary for the Project, provided that such applications are consistent with City requirements and standards. Land Bank agrees to reasonably cooperate with Developer in applying for and obtaining any such approvals, which cooperation may include assigning points of contact with the City, organizing and attending development and construction meetings, and participating in such other matters as may be reasonably necessary to facilitate development of the Project. Provided, that Developer understands that the City shall not be required itself under this Agreement to grant any permits, variances, or similar approvals except in accordance with its standard procedures, ordinances, and policies.

Section 2.03 Modifications to Plans. Following approval of the preliminary plans and final plans by the City (as provided above), no substantial changes may be made to final development plans or final site plans for the Project (or the applicable Phase thereof) except as may be mutually agreed upon, in writing, between Developer and Land Bank. As used in this Section 2.03, the term "substantial changes" includes, but may not be limited to: material modifications or revisions to architectural or design elements; material changes to building envelopes or locations of structures; and material changes to size, layout, height, and locations of access points, drives, parking areas, and storage areas. Further, following approval of the preliminary plans and final plans, whether by the City or another regulatory body (as provided above), Developer shall not make any substantial changes to such approved plans for the Project (or the applicable Phase thereof) without Land Bank's prior approval, and subject to City's standard procedures for review and approval of the same. Developer shall not be required to obtain Land Bank approval as to non-substantial changes to the Project (or the applicable Phase thereof) with respect to color selections, material selections and the like which comply with any applicable design guidelines and criteria and which do not otherwise trigger City approval under City's planning and zoning ordinances and/or policies.

Section 2.04 Inspections.

(a) Commencing upon the Effective Date, Developer shall have the right to enter upon the Property and make such inspections of the Property as it may deem desirable. Prior to Closing, Developer must give the Land Bank reasonable notice before entering the Property for such purposes. Such inspections of the Property shall be made at the sole cost and expense of Developer and Developer agrees to indemnify, defend and hold harmless the Land Bank and the City from any cost, charge, claim or lien directly arising therefrom and agrees to repair any damage to the Property occurring as a direct result of such inspections, which agreement shall survive termination or expiration of this Agreement.

(b) To the extent Developer obtains a Phase I and/or Phase II environmental site assessment of the Property, or any portion thereof (collectively, the "Environmental Reports"), Developer hereby agrees to provide the Land Bank and the City with a copy of the final version of such Environmental Reports, whether or not Developer takes title to the Property pursuant to the terms and conditions of this Agreement.

Section 2.05 Taxes and Assessments. From and after taking title to the Property as provided herein, Developer must timely pay when due all taxes (including ad valorem real property taxes and personal property taxes) and special assessments, including interest and penalties, imposed against the Property (from and after Closing), the Project (or applicable Phase thereof), and/or Developer. Developer shall not allow any tax lien (whether federal, state, county, municipal, or otherwise) to attach to the Property, the Project (or any Phase thereof), or Developer's interests therein. By January 15 of each calendar year (and by June 15 of each calendar year, if taxes, and assessments may be paid in part and Developer does so), Developer shall provide City with receipts evidencing payment of such taxes and assessments. The obligation of Developer to provide City with such receipts terminates at Project completion.

ARTICLE III TRANSFER OF THE PROPERTY

Section 3.01 Transfer of the Property. Subject to the terms and conditions of this Agreement, and subject to the satisfaction of the conditions precedent set forth in Section 3.05 of this Agreement, and in consideration of the Purchase Price (defined below) and Developer's development and construction of the Project, Land Bank shall convey the Property to Developer pursuant to a special warranty deed in the form and substance mutually agreed to by the parties (the "Deed") and subject to: (a) the terms and conditions of this Agreement, (b) the Permitted Exceptions (defined below), and (c) the Right of Reentry (defined below). Notwithstanding the above, Developer shall be entitled to review and approve title to the Property, including the Permitted Exceptions, and the Land Bank will reasonably cooperate with the Developer in connection therewith, including execution of a standard form of owner's affidavit required by the title company (with such explanation or exceptions as Land Bank may be required to provide). The Parties acknowledge that Developer will require an owner's title insurance policy as to the Property acquired by Developer hereunder ("Title Policy"), which will be at Developer's sole cost and expense.

Section 3.02 Right of Reentry. The conveyance of the Property to Developer shall be subject to a "Right of Reentry" (under which Land Bank is referred to as "Grantor" and Developer is referred to as "Grantee") in substantially the following form:

Grantor hereby reserves and retains unto itself a right of reentry as provided in that certain Land Transfer and Development Agreement between Grantor and Grantee dated as of June 14, 2022 (the "Agreement"). Grantee, for itself and its successors, assigns, and successors in title, covenants and agrees that if Grantee shall fail to commence and/or complete Phase 1 or Phase 2 of the Project (as such terms are defined in the Agreement) by those dates set forth in Exhibit B to the Agreement (which Exhibit is further attached hereto and incorporated herein by this reference), subject to Force Majeure (as defined in the Agreement) and the cure period provisions set forth in Section 7.01 of the Agreement, or time extension of a later agreed upon date with written consent by both Grantor and Grantee; then in any of the foregoing cases, Grantor shall have the right of reentry and title to the Property, at Grantor's option, shall revert back to Grantor. Upon satisfaction of such requirement as to all of Phase 1 and Phase 2 of the Project, Grantor will execute a release of such Right of Reentry in recordable form as mutually agreed to by Grantor and Grantee.

The Agreement is incorporated herein by this reference and notice is hereby given of the Agreement and all of its terms, covenants, and conditions to the same extent as if the Agreement were fully set forth herein. The foregoing does not purport to show all of the terms and provisions of the Agreement and is not a complete summary of the Agreement or the obligations of the parties with respect thereto. The provisions of this instrument shall not be construed to interpret, vary or modify the terms, covenants, conditions and provisions of the Agreement and in the event of any conflict between the terms hereof and the terms of the Agreement, the terms of the Agreement shall be exclusively controlling.

The Right of Reentry may be included in the Deed or in a separate instrument filed of record against the Property, as Land Bank and Developer may hereafter agree (provided, that in the failure of such agreement, it shall be included in the Deed).

Section 3.03 Permitted Exceptions. The Property shall be conveyed subject to: all land heretofore conveyed or dedicated for road purposes or right-of-way; matters of record encumbering the Property (and approved by Developer as provided herein); liens for state, county and local real estate taxes and special assessments becoming due after Closing and subsequent years; and zoning laws, subdivision regulations and other laws and ordinances regulating the use (or improvements to) the Property, the Right of Reentry, the Use Restrictions (defined below), and the Memorandum (defined below), all of which shall be deemed "Permitted Exceptions" to Developer's title.

Section 3.04 Condition of the Property. Other than the express representations and warranties of the Land Bank contained in this Agreement, Land Bank makes no warranties, representations or statements about any legal documents, records, files, or information provided to Developer, nor any physical items and conditions relating to the Property including, but not limited to any environmental conditions on the Property. No agents, employees, brokers or other persons are authorized to make any representations or warranties for the Land Bank. By its execution of this Agreement, Developer acknowledges that, except for the express representations and warranties of the Land Bank contained in this Agreement, neither the Land Bank nor the City have made any warranties, representations or statements whatsoever concerning any condition or matter relating to the Property, including such matters as title to the Property, legal status of the Property, use of the Property (including, but not limited to, the operation of the Property for Developer's intended purposes), availability or cost of utilities, or physical condition of the Property. Land Bank has relied upon this acknowledgment as a material inducement to enter into this Agreement. If this transaction closes and Developer acquires the Property, other than those representations and warranties, which are specifically set forth in this Agreement, Developer is acquiring the Property "**AS IS**" and "**WHERE IS**," and it acknowledges and agrees that it relies upon no warranties, representations or statements by Land Bank or City or any other persons for Land Bank or City in entering into this Agreement or in closing the transaction described in this Agreement, other than those representations and warranties, which are specifically set forth in this Agreement.

Section 3.05 Conditions to Closing. The conveyance of the Property from Land Bank to Developer as described in this Agreement shall be referred to as "Closing" in this Agreement. Before proceeding to Closing on the Property, Developer must have obtained and, where appropriate, delivered the following to Land Bank (unless otherwise expressly waived in writing by Land Bank and/or the Developer, as the case may be):

(a) if and to the extent required, final rezoning, final special use permits or conditional use permits, final replatting, and final site plan approval for the Project, as mutually approved by Land Bank, City, and Developer;

(b) complete plans and specifications for the Project approved by City, which approval shall be processed, considered, and approved or denied in due course using City's normal standards and procedures regarding such process and all applicable laws, as mutually approved by Land Bank, City, and Developer;

(c) each governmental permit, approval, variance, or similar approval required for the commencement of the construction of the Project, including without limitation third-party approvals as set forth in Section 2.02 above, but excluding required building permits, as mutually approved by Land Bank, City, and Developer;

(d) letters addressed to the Land Bank, signed by or on behalf of experienced sub-contractors selected by Developer, confirming that Developer has engaged such licensed contractors and that the parties have entered into a construction contract for the Project;

(e) evidence that Developer and its parent companies, subsidiaries, and affiliates undertaking development of the Project, or guaranteeing performance of the same, have financial wherewithal (through a combination of equity, internal financing and external funds) which are sufficient and available to fully fund the hard and soft costs for the Project; and

(f) Developer has approved the results of its inspections and due diligence with respect to the Property, including, without limitation, title commitment, Permitted Exceptions, survey, environmental reports, soil and geotechnical studies, and the Developer otherwise elects to proceed with acquiring the Property, subject to the terms and conditions of this Agreement.

Section 3.06 Termination if Conditions Not Met.

(a) If at any time prior to Closing, Developer, in Developer's judgment, determines that any of the conditions set forth in Section 3.05 above will not be satisfied, then Developer may terminate this Agreement (as to the entire Project) at any time by giving written notice to Land Bank, and neither Party shall have any further obligation under this Agreement, except as otherwise set forth in this Agreement.

(b) If any of the conditions set forth in Section 3.05 above have not been satisfied as of that date which is five (5) calendar months after the Effective Date of this Agreement, then at any time thereafter Land Bank may terminate this Agreement (as to the entire Project) by giving written notice to Developer, in which event neither Party shall have any further obligation under this Agreement, except as otherwise set forth in this Agreement.

Section 3.07 Closing of Transaction.

(a) Closing of the transaction (as to the Property) contemplated by this Agreement shall be held upon completion or waiver of the conditions set forth in Section 3.05 above at a time and place mutually acceptable to the Parties (the "Closing Date"); provided, that (i) Closing shall occur no later than six (6) calendar months after the Effective Date. In the event the Closing Date falls on a weekend or holiday, the Closing shall occur on the next business day thereafter.

(b) At the Closing, Developer shall pay to the Land Bank, via wire transfer or other certified funds, the sum of Ten Dollars (\$10.00) (the "Purchase Price"). Notwithstanding the foregoing, nothing in this Agreement shall be deemed to reflect that the Purchase Price reflects the actual appraised value of the Property.

(c) At the Closing, Land Bank shall deliver to Developer the Deed for the Property, subject to the Permitted Exceptions.

(d) Land Bank and Developer shall also execute and deliver such other affidavits or documents as the applicable title company or closing agent may reasonably require for Closing. Developer shall pay for the premium for the Title Policy, recording the Deed, and any Closing fees charged by the Title Company. All other costs and expenses incurred by either Party hereto in connection with this Agreement or the transactions contemplated hereby shall, unless otherwise provided in this Agreement, be paid by the Party incurring the expense. Land Bank shall deliver possession of the Property to Developer at Closing. Real property ad valorem taxes and special assessments shall be prorated to the Closing, based upon actual days involved. The Land Bank shall be responsible for all ad valorem taxes and special assessments attributable to any period prior to the Closing and will not itself agree to reassess or reamortize any special assessments paid by Land Bank (or abated by the City) during Land Bank's ownership of the Property against the Property following Closing, and Developer shall be responsible for all ad valorem taxes and installments of special assessments attributable to any period on and after the Closing. In connection with the proration of real and property ad valorem taxes, if actual tax figures for the year of Closing are not available at the Closing Date, the proration shall be based upon the tax figures from the preceding year.

ARTICLE IV **DEVELOPMENT OF THE PROJECT**

Section 4.01 Schedule. Developer must commence construction of (and must have obtained all building permits for) all Phases of the Project by and within the time periods set forth in Exhibit B attached hereto, subject to Force Majeure and the cure provisions set forth in Section 7.01 herein.

Section 4.02 Code Compliance. The Project must comply with all applicable building and zoning, health, environmental and safety codes and laws and all other applicable laws, rules and regulations. Developer must, at its own expense, secure or cause to be secured all permits which may be required by City or any other governmental agency having jurisdiction for the construction and operation of the Project. Developer must comply with applicable City regulations regarding seeding, landscaping, or otherwise controlling dust, dirt, and weeds on non-developing portions of the Property, and Developer shall otherwise maintain in good order all lawns, trees, and other landscaping on the Property. Developer shall not in the construction of, or otherwise in connection with, the Project discriminate against any employee or applicant for employment because of race, color, creed, religion, age, sex, marital status, sexual orientation, gender identity, disability, national origin or ancestry, and Developer shall comply with all City regulations and policies regarding the same.

Section 4.03 Developer Certificates of Completion. Promptly after completion of each Phase of the Project in accordance with the provisions of this Agreement, Developer shall submit to the Land Bank a certificate or notice of final completion prepared by Developer's sub-contractor(s), in a form reasonably acceptable to the Land Bank (the "Certificate of Final Completion"). The term "Final Completion" shall mean that Developer has completed all work as required by this Agreement for the applicable Phase, including final "punch list" work on such Phase, and that, as to Phase 2, City has granted to Developer a Certificate of Occupancy as to that Phase of the Project (the date of Final Completion as to each Phase, and to the Project as a whole, is referred to in this Agreement as the "Completion Date"). The Land Bank or the City will carry out such inspections as it deems necessary to verify to its reasonable satisfaction the accuracy of the certifications contained in the Certificate of Final Completion. If, with Developer's submittal of its Certificate of Final Completion, Developer is actually entitled to a Certificate of Occupancy based on full performance of this Agreement by Developer as to any Phase, then the

Completion Date shall be deemed to be the date of Developer's submittal of its Certificate of Final Completion.

Section 4.04 City and Land Bank Rights of Access. Representatives of the City and the Land Bank shall have the right of access to the Property, without charges or fees, at normal construction hours during the period of construction, for the purpose of ensuring compliance with this Agreement including, but not limited to, the inspection of the work being performed in constructing, renovating, improving, equipping, repairing and installing the Project improvements, so long as they comply with all safety rules. Except in case of emergency, prior to any such access, such representatives of City or Land Bank will check in with the on-site manager. Such representatives of the City or Land Bank shall carry proper identification and shall not interfere with Developer's operations on the Property.

Section 4.05 Use Restrictions. In addition to any uses prohibited by applicable law or regulation, the following uses are hereby, and shall be, prohibited within the Property and the Project without the prior written consent of the Land Bank, which consent may be withheld in the Land Bank's sole discretion (the "Use Restrictions"):

Any use that would or could cause the Property or the Project, or any portion thereof, to be exempt from the payment of ad valorem real or personal property taxes; and Developer (and its successors and assigns) shall not assign or convey all or any part of its interest in the Property or the Project (or any portion thereof), or lease or sublet all or any part of the Property or the Project to any person or entity, or allow the condominiumization of all or any portion of the Property or the Project, or in any other manner grant any right to use, occupy or otherwise lease or allow the use of the Property (or any portion thereof) in such a manner that would cause the Property or the Project (or any portion thereof) to be exempt from, or eligible for exemption from, ad valorem real or personal property taxation. Developer agrees that any violation of this subsection will be deemed initially void, and acknowledges that, notwithstanding such voiding, the Land Bank and the City may incur damages as a result of such violations, and Developer agrees to indemnify the Land Bank and the City from any such damages.

Such use restrictions may be included in the Deed or in a separate instrument filed of record against the Property, as Land Bank and Developer may hereafter agree (provided, that in the failure of such agreement, it shall be included in the Deed). The provisions of this Section 4.05 shall survive expiration or termination of this Agreement.

Section 4.06 Annual Compliance Certification. At any time upon the request of the Land Bank, the Developer shall provide a signed certification to the Land Bank containing (1) a certification that the Developer is in compliance with the Agreement, applicable state law, or applicable local law, including that the Developer is not delinquent on taxes or other obligations owed to the City or another governmental entity.

ARTICLE V

ASSIGNMENT AND TRANSFER

Section 5.01 Assignments by Developer. Prior to Final Completion of the Project, Developer may not assign Developer's rights, duties, or obligations under this Agreement, in whole or in part, to another person or entity, without the prior approval of Land Bank, which approval may be granted or withheld in Land Bank's sole discretion. Any permitted assignee must, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of Land Bank, assume all of the obligations of Developer under this Agreement and agree to be subject to all the conditions and restrictions to which

Developer is subject. In the event of a permitted transfer or assignment of this Agreement, whether by virtue of Land Bank approval or otherwise, then Developer shall be relieved from all obligations set forth herein.

Section 5.02 Successors and Assigns. The Parties' respective obligations under this Agreement, unless earlier satisfied, will inure to and be binding upon the heirs, executors, administrators, and permitted successors and assigns of the respective Parties as if they were in every case specifically named and will be construed as a covenant running with the land, enforceable against the purchasers or other transferees as if such purchaser or transferee were originally a Party and bound by this Agreement.

Section 5.03 Tenants and Subtenants. The Parties acknowledge and agree that, upon Final Completion of the Project, Developer may allow tenants, subtenants, or operators to occupy all or portions of the Project, whether pursuant to a lease, sublease, or otherwise (collectively, "Tenants") without approval or consent by the Land Bank (but subject to all applicable laws and the use restrictions set forth in this Agreement).

ARTICLE VI

INDEMNIFICATION AND INSURANCE

Section 6.01 Indemnification.

(a) Developer shall defend, indemnify, and hold Land Bank and City, and Land Bank's and City's elected and appointed officers, agents, contractors, and employees, harmless from all costs (including attorneys' fees and costs), claims, demands, liabilities, or judgments for injury or damage to property and injuries to persons, including death, which may be caused directly by any of the Developer's activities under this Agreement. In the event that Developer or its contractors release Hazardous Substances onto the Property after the Effective Date of this Agreement in violation of Environmental Laws, Developer shall be responsible for the remediation of such Hazardous Substances (defined below) in accordance with applicable Environmental Laws (defined below) and shall defend, indemnify, and hold Land Bank and City and Land Bank's and City's elected and appointed officers, agents, contractors, and employees, harmless from all costs (including attorneys' fees and costs), claims, demands, liabilities, or judgments for injury or damage to property and injuries to persons, including death, which may be caused directly by Developer's or its contractors' release of Hazardous Substances onto the Property after the Effective Date of this Agreement in violation of Environmental Laws. The right to indemnification set forth in this Agreement shall survive the expiration or termination of this Agreement.

(b) Notwithstanding the foregoing provisions of Section 6.01(a) above, Developer shall have no liability to the Land Bank or the City or any third parties with respect to the pre-existing environmental contamination of the Property, unless and only to the extent that Developer or its contractors have willfully exacerbated the pre-existing environmental contamination as a direct result of Developer or its contractors' failure to comply, as applicable, with any and all applicable Environmental Laws. For purposes of this Agreement, the mere discovery or encountering of the pre-existing environmental contamination shall not be deemed "exacerbation".

(c) For purposes of this Agreement, "Hazardous Substances" shall mean any substance or material that is or becomes described as a toxic or hazardous substance, waste or material or a pollutant or contaminant, or words of similar import, in any of the Environmental Laws, and includes, without limitation, asbestos or asbestos containing material, petroleum (including, without limitation, flammable explosives, crude, oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof), petroleum, petroleum-based products and petroleum additives and derived substances, lead-based paint, viruses, mold, fungi or bacterial matter, the group of

compounds known as polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive matter, medical waste, and chemicals which may cause cancer or reproductive toxicity; and the term "Environmental Laws" shall mean all federal, state and local laws, ordinances, rules and regulations now or hereafter in force, as amended from time to time, and all federal and state court decisions, consent decrees and orders interpreting or enforcing any of the foregoing, in any way relating to or regulating human health or safety, or industrial hygiene or environmental conditions, or protection of the environment, or pollution or contamination of the air, soil, surface water or groundwater, and includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 United States Code section 9601, et seq., the Resource Conservation and Recovery Act, 42 United States Code section 6901, et seq., and the Clean Water Act, 33 United States Code section 1251, et seq.

(d) The provisions of this Section 6.01 shall survive expiration or termination of this Agreement.

Section 6.02 Insurance.

(a) As used in this Section, "Replacement Value" means an amount sufficient to prevent the application of any co-insurance contribution on any loss but in no event less than 100% of the actual replacement cost of the improvements on the Property, including additional administrative or managerial costs that may be incurred to effectuate the repairs or reconstruction, but excluding costs of excavation, foundation and footings. Replacement Value shall be determined by an appraisal or a report from an insurance consultant that is engaged by Developer for the Project ("Insurance Consultant"), or if the policy is on a blanket form, such other means as is reasonably acceptable to the Insurance Consultant. If an appraisal or report is conducted, Developer must furnish a copy of such appraisal or report to Land Bank. Land Bank may request, from time to time, such reasonable evidence as may be necessary to ensure compliance with this Section, including, but not limited to, reports and appraisals of an Insurance Consultant.

(b) Upon and after the date of Closing, and for so long as the Land Bank's Right of Reentry remains in effect, Developer must keep the Project continuously insured against such risks and in such amounts, with such deductible provisions as are customary in connection with the operation of facilities of the type and size comparable to the Project. All policies of insurance required by this Section must become utilized as required by this Agreement. For so long as the Land Bank's Right of Reentry remains in effect Developer, at Developer's sole expense, must carry and maintain or cause to be carried and maintained, and pay or cause to be paid in a timely manner the premiums for at least the following insurance with respect to the Project:

(i) Builder's risk insurance on a completed value form and, on and after the Completion Date of each structure, property insurance, in each case (A) providing coverage during the construction of the Project for financial losses of the Developer relating to continuing expenses, caused by property damage during the construction of the Project, (B) providing coverage (including increased costs from changes in building laws, demolition costs and replacement cost coverage) for those risks which is equal or broader than that currently covered by a special form policy covering all improvements, fixtures and equipment in the Project, (C) containing an agreed amount endorsement or a waiver of all co-insurance provisions, (D) providing for no deductible in excess of \$50,000.00 (as increased each calendar year by the increase in the CPI, if any, for the preceding calendar year) for all such insurance coverage, and (E) covering, without limitation, loss, including, but not limited to fire, extended coverage perils, vandalism and malicious mischief, water damage, debris removal, collapse, and comprehensive boiler and machinery insurance, in each case on a replacement cost basis in an amount equal to the Project's Replacement Value.

(ii) Commercial general liability insurance providing coverage for those liabilities which is equal or broader than that currently covered by a CGL policy (a standard ISO CGL form), including at least the following hazards: (A) premises and operations; (B) products and completed operations; (C) independent contractors; and (D) blanket contractual liability; such insurance (Y) to be on an "occurrence" form with a combined limit of not less than \$3,000,000.00 in the aggregate and \$1,000,000.00 per occurrence (which may be comprised of a primary general liability policy and umbrella coverages);

(iii) Flood insurance, if the Project or any Phase thereof is located in an area identified as having "special flood hazards" as such term is defined pursuant to applicable federal law, with limits as are customary in connection with the operation of facilities of the type and size comparable to the applicable Phase; and

(iv) if applicable, Workers' compensation insurance, with statutorily required coverage.

(c) Each insurance policy obtained in satisfaction of the foregoing requirements:

(i) must be written by financially responsible insurers with a rating equal to or higher than A-/FSC VII or better by Best Insurance Guide and Key Ratings, or must otherwise be acceptable to the Insurance Consultant as evidenced by a written certificate delivered to Land Bank; and

(ii) must be in such forms and with such provisions as are generally considered standard provisions for the types of insurance involved, as evidenced by a written report of the Insurance Consultant delivered to Land Bank on the Completion Date for each Phase.

(e) As and when obtained, Developer must provide Land Bank certificates for all such policies, evidencing that all required insurance is in full force and effect; provided, however, the insurance so required may be provided by blanket policies now or hereafter maintained by the Developer if Developer provides the Land Bank with a certificate from an Insurance Consultant to the effect that such coverage is substantially the same as that provided by individual policies. All policies evidencing such insurance required to be obtained under the terms of this Agreement must provide for thirty (30) calendar days' prior written notice to Developer and Land Bank of any cancellation.

(f) If Developer fails to maintain, or cause to be maintained, the full insurance coverage required by this Agreement, Developer must promptly notify Land Bank of such event and Land Bank, in addition to any other remedy it may have, may (but shall be under no obligation to) contract for the required policies of insurance and pay the premiums on the same; and Developer will reimburse Land Bank to the extent of the amounts so advanced, with interest thereon at a rate of one and one half percent (1.5%) per month until paid, but in no event shall such penalty exceed eighteen percent (18%) per annum.

Section 6.03 Non-Liability of Officials, Employees and Agents of the City and Land Bank.

Except as otherwise set forth herein, Developer shall have no recourse for any claim based upon any representation, obligation, covenant or agreement contained in this Agreement against any past, present or future official, officer or employee of Land Bank or City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and Developer hereby expressly waives and releases any such claims as a condition of, and in consideration for, the execution of this Agreement.

ARTICLE VII
DEFAULT AND REMEDIES

Section 7.01 Default by Developer. Developer will be in default (each a "Developer Default") under this Agreement if:

(a) Any representation or statement of or by Developer in any application or information provided to Land Bank or City, or any application or information provided to the Land Bank or City or to Leavenworth County, Kansas (the "County"), or in any report provided to the Land Bank or City as required under this Agreement, should be untrue or misleading in any material respect and Developer fails to cure or correct same within thirty (30) calendar days of written notice from the Land Bank, to the extent such failure can be cured; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute an event of Developer Default if corrective action is instituted by Developer within such period and diligently pursued until the default is corrected.

(b) Developer fails to keep or perform any covenant or obligation that Developer is to keep or perform pursuant to this Agreement, and Developer fails to remedy the same within thirty (30) calendar days after the Land Bank has given Developer written notice specifying such failure and requesting that it be remedied; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute an event of Developer Default if corrective action is instituted by Developer within such period and diligently pursued until the default is corrected; or

(c) Developer files a voluntary petition under any bankruptcy law or an involuntary petition under any bankruptcy law is filed against Developer in a court having jurisdiction and that petition is not dismissed within sixty (60) calendar days after such filing; or Developer makes an assignment for the benefit of its creditors; or a custodian, trustee or receiver is appointed or retained to take charge of and manage any substantial part of the assets of Developer and such appointment is not dismissed within sixty (60) calendar days; or any execution or attachment shall issue against Developer whereupon the Property, or any part thereof, or any interest therein of Developer under this Agreement shall be taken and the same is not released prior to judicial sale thereunder (each of the events described in this subparagraph being deemed a default under the provisions of this Agreement); or

(d) Developer materially breaches the representations and warranties set forth in this Agreement and fails to cure or correct same within thirty (30) calendar days of written notice from the Land Bank; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute an event of default if corrective action is instituted by Developer within such period and diligently pursued until the default is corrected.

Section 7.02 Rights and Remedies of Land Bank. The rights and remedies reserved by Land Bank under this Agreement and those provided by law shall be construed as cumulative and continuing rights, no one of which shall be exhausted by the exercise of any one or more of such rights or remedies on any one or more occasions. Whenever any Developer Default has occurred and continues to exist and so long as it continues to exist, subject to applicable cure periods as set forth in Section 7.01 above, Land Bank or City, as the case may be, may, at its option and without limitation: (i) terminate this Agreement; (ii) terminate or cancel any incentives for Developer and the applicable Phase for which the Developer Default has occurred, and take such steps as may be necessary or appropriate to do so; (iii) terminate or cancel any payments, waivers, or grants of funds appropriated or scheduled to be appropriated to Developer to the extent not received; and/or (iv) exercise any other rights or remedies available to Land Bank at law or equity. Without limiting the generality of the foregoing, the Land Bank shall be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the

provisions of this Agreement, notwithstanding the availability of an adequate remedy at law, and each Party hereby waives the right to raise such defense in any proceeding in equity. If any Developer Default occurs, Land Bank may take such actions, or pursue such remedies, as exist hereunder or at law or in equity.

Section 7.03 Default by Land Bank. Land Bank will be in default (each a "Land Bank Default") under this Agreement if:

(a) Land Bank fails to keep or perform any covenant or obligation that Land Bank is to keep or perform pursuant to this Agreement, and Land Bank fails to remedy the same within thirty (30) calendar days after the Developer has given Land Bank written notice specifying such failure and requesting that it be remedied; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute an event of Land Bank Default if corrective action is instituted by Land Bank within such period and diligently pursued until the default is corrected; or

(b) Land Bank materially breaches the representations and warranties set forth in this Agreement and fails to cure or correct same within thirty (30) calendar days of written notice from the Developer; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute an event of Land Bank Default if corrective action is instituted by Land Bank within such period and diligently pursued until the default is corrected.

Section 7.04 Rights and Remedies of Developer. The rights and remedies reserved by Developer under this Agreement and those provided by law shall be construed as cumulative and continuing rights, no one of which shall be exhausted by the exercise of any one or more of such rights or remedies on any one or more occasions. Whenever any City Default has occurred and continues to exist and so long as it continues to exist, subject to applicable cure periods as set forth in Section 7.03 above, Developer may, at its option and without limitation: (i) terminate this Agreement and/or (ii) exercise any other rights or remedies available to Developer at law or equity. Without limiting the generality of the foregoing, the Developer shall be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Agreement, notwithstanding the availability of an adequate remedy at law, and each Party hereby waives the right to raise such defense in any proceeding in equity. If any City Default occurs, Developer may take such actions, or pursue such remedies, as exist hereunder or at law or in equity.

ARTICLE VIII **MISCELLANEOUS**

Section 8.01 Waiver of Breach. No waiver of any breach of any covenant or agreement set forth in this Agreement shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by either Party of any covenant, agreement or undertaking, the non-defaulting Party may nevertheless accept from the other any payment or payments or performance hereunder without in any way waiving its right to exercise any of its rights and remedies provided for herein or otherwise with respect to any such default or defaults which were in existence at the time such payment or payments or performance were accepted by it.

Section 8.02 Force Majeure. If any Party is delayed or hindered in or prevented from the performance of any act required under this Agreement by reason of any circumstances outside the control of any Party, including, without limitation, acts of God, emergency, bioterrorism, terrorism, acts of war, disease, pandemics (including without limitation, delays arising out of the spread of COVID-19, such as; without limitation, delays in the responsiveness of, or the unavailability of, governmental authorities to grant permit applications or signoffs or to perform inspections, or the unavailability of required meetings

of governmental agencies necessary to act to grant any approvals), any rule, order or regulation of any department or subdivision thereof of any government agency enacted after the date of this Agreement that prevents a Party from performing its obligations under this Agreement, strikes, lockouts, labor disturbance or disruptions, failure of power or other insufficient utility service, unusual delays in the supply or delivery of materials or equipment not caused by the applicable Party, riots, insurrection, environmental restrictions or remediation required by the appropriate government authorities, governmental preemption in connection with a National emergency, fire, unavoidable casualties, abnormal weather conditions, discovery of cultural, archeological or paleontological resources or endangered species, any lawsuit seeking to restrain, enjoin, challenge or delay construction, war terrorism or other cause of a like nature not enumerated herein but which is beyond the control of the Party delayed in performing work or doing acts required under the terms of this Agreement ("Force Majeure"), provided the affected Party provides reasonable notice of the event of Force Majeure and exercises all reasonable diligence to remove the cause of Force Majeure, then performance of such act shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Section shall not be applicable to delays resulting from the inability of a Party to obtain financing or to proceed with its obligations under this Agreement because of a lack of funds.

Section 8.03 Representations and Warranties of Developer. Developer, and each of them, represents and warrants to the Land Bank as follows:

(a) Valid and Binding Obligation. This Agreement is the legal, valid and binding obligation of Developer, and both of them, enforceable against Developer (and both of them) in accordance with the terms hereof.

(b) Authority. The execution, delivery and performance by Developer (and both of them) of this Agreement are within Developer's powers and have been duly authorized by all necessary action of Developer (and both of them).

(c) No Conflicts. The execution and delivery of this Agreement, the consummation of any of the transactions contemplated by this Agreement, and the compliance with the terms and provisions of this Agreement will not contravene any provision of law, statute, rule or regulation to which Developer (or either of them) is subject, or to any judgment, decree, license, order or permit applicable to Developer (or either of them), or will conflict or be inconsistent with, or will result in any breach of any of the terms of the covenants, conditions or provisions of any indenture, mortgage, deed of trust, agreement or other instrument to which Developer (or either of them) is a party, by which Developer (and either of them) is bound, or to which Developer (or either of them) is subject.

(d) No Consents. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or governmental authority or regulatory body or third party is required for the due execution and delivery by Developer (and both of them) of this Agreement. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or governmental authority or regulatory body or third party is required for the performance by Developer (and both of them) of this Agreement or the consummation of the transactions contemplated hereby, except for zoning, building and other customary permits or approvals, to include the Kansas Historical Society and the National Park Service, to be obtained from City or other governmental units.

Section 8.04 Representations and Warranties of Land Bank. Land Bank represents and warrants to the Developer as follows:

(a) Valid and Binding Obligation. This Agreement is the legal, valid and binding obligation of Land Bank, enforceable against Land Bank in accordance with the terms hereof.

(b) Authority. The execution, delivery and performance by Land Bank of this Agreement are within Land Bank's powers and have been duly authorized by all necessary action of Land Bank.

(c) No Conflicts. The execution and delivery of this Agreement, the consummation of any of the transactions contemplated by this Agreement, and the compliance with the terms and provisions of this Agreement will not contravene the organizational documents of Land Bank or any provision of law, statute, rule or regulation to which Land Bank is subject, or to any judgment, decree, license, order or permit applicable to Land Bank, or will conflict or be inconsistent with, or will result in any breach of any of the terms of the covenants, conditions or provisions of any indenture, mortgage, deed of trust, agreement or other instrument to which Land Bank is a party, by which Land Bank is bound, or to which Land Bank is subject.

(d) No Consents. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or governmental authority or regulatory body or third party is required for the due execution and delivery by Land Bank of this Agreement. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or governmental authority or regulatory body or third party is required for the performance by Land Bank of this Agreement or the consummation of the transactions contemplated hereby, except for zoning, building and other customary permits to be obtained from City or other governmental units.

Section 8.05 Execution of Counterparts and Electronic Transactions. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. The transaction described in this Agreement may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 8.06 Amendments. This Agreement may be amended, changed or modified only by a written agreement duly executed by the Land Bank and Developer. If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid, the Parties shall take such reasonable measures including but not limited to reasonable amendment of this Agreement to cure such invalidity where the invalidity contradicts the clear intent of the Parties in entering into this Agreement.

Section 8.07 Consents and Approvals. Wherever in this Agreement it is provided that the Land Bank or Developer shall, may or must give its approval or consent, the Land Bank and Developer shall not, unless specifically provided otherwise in this Agreement, unreasonably withhold, condition, delay or refuse to give such approvals or consents. It is agreed, however, that the sole right and remedy for Developer or the Land Bank in any action concerning another's reasonableness will be action for declaratory judgment and/or specific performance.

Section 8.08 Notices. All notices required or desired to be given hereunder shall be in writing and all such notices and other written documents required or desired to be given hereunder shall be deemed duly served and delivered for all purposes if (i) delivered by nationally recognized overnight delivery service; or (ii) delivered in person, in each case if addressed to the Parties set forth below:

To Land Bank: City of Leavenworth Land Bank
c/o City of Leavenworth, Kansas
Attn. City Manager
City Hall, 100 N. 5th Street
Leavenworth, Kansas 66048

Copy to: Lathrop GPM LLP
Attn. David E. Waters
10851 Mastin Blvd., Suite 1000
Overland Park, Kansas 66210

To Developer: Sean and Jennifer Willcott
13193 206 Rd
Holton, KS 66436

Copy to: Pugh & Pugh Attorneys at Law, P.A.
Attn: Jacob Pugh
625 Lincoln Ave., PO Box 138
Wamego, Kansas 66547

All notices given by fax, email, or personal delivery, followed up by regular United States mail, shall be deemed duly given one (1) business day after they are so delivered.

Section 8.09 Tax Implications. Developer acknowledges and agrees that (a) neither Land Bank nor any of its officials, employees, consultants, attorneys or other agents have provided to Developer any advice regarding the federal or state income tax or property tax implications or consequences of this Agreement, and the transactions contemplated hereby, and (b) Developer is relying solely upon its own tax advisors in this regard.

Section 8.10 Mutual Assistance. Except as may otherwise be set forth or permitted in this Agreement, Land Bank and Developer 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 and to aid and assist each other in carrying out said terms, provisions, and intent.

Section 8.11 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.

Section 8.12 City as Third-Party Beneficiary. Land Bank and Developer agree that the City is expressly intended as a third-party beneficiary of this Agreement.

Section 8.13 Miscellaneous. This Agreement shall be construed and enforced in accordance with the laws of the State of Kansas. Any suit shall be filed in or with the state courts for Leavenworth County, Kansas, and each Party agrees to such venue and forum. If for any reason any provision of this Agreement is determined to be invalid or unenforceable, the validity and effect of the other provisions of this Agreement shall not be affected thereby. The Article and Section headings shall not be treated as a part of this Agreement or as affecting the true meaning of the provisions hereof. Time is of the essence in this Agreement. The Exhibits attached to and incorporated into this Agreement by reference are a part of this Agreement to the same extent as if fully set forth in this Agreement. Together with the Exhibits hereto, this Agreement constitutes the entire agreement of the Parties with respect to the subject matter of this

Agreement and supersedes and replaces all prior oral or written agreements concerning the subject matter of this Agreement. Notwithstanding any economic development goals, processes, and procedures adopted by City, the terms of this Agreement shall take precedence and govern the relationship among the parties, and Developer shall not be entitled to rely on such goals, processes, and procedures except to the extent set forth in this Agreement.

Section 8.14 Run with the Land. This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs and permitted successors and assigns and shall run with the land constituting the Property. At Closing, the Parties shall record a memorandum describing this Agreement in the land records of Leavenworth County, Kansas, in form acceptable to Land Bank and Developer (the "Memorandum"), which Memorandum shall be deemed one of the Permitted Exceptions. Those provisions herein which are intended to survive Closing shall survive Closing and shall not be deemed to be merged with the Deed.

IN WITNESS WHEREOF, Land Bank and Developer have duly executed this Agreement pursuant to all requisite authorizations as of the Effective Date.

LAND BANK:

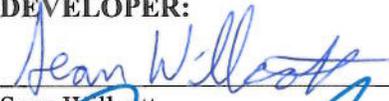
CITY OF LEAVENWORTH LAND BANK

By: _____
Camalla Leonhard, Chairperson

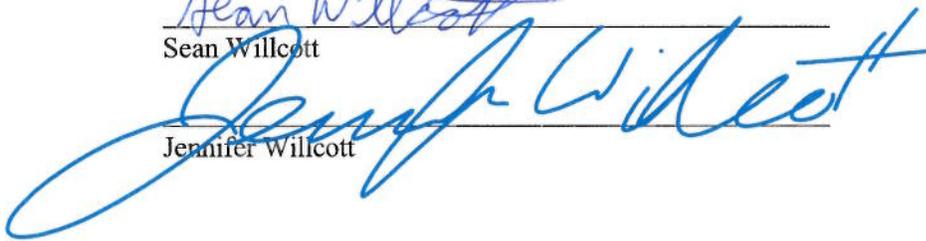
ATTEST:

Sarah Bodensteiner, CMC, City Clerk

DEVELOPER:



Sean Willcott



Jennifer Willcott

EXHIBIT A

[Description of the Property]

600 Cherokee Street, Leavenworth, Kansas. Parcel ID No. 052-077-36-0-20-07-013.00-0.

LEAVENWORTH, PLT ORIG, BLOCK 74, LOT 1-2.

EXHIBIT B

[Description of the Phases and Applicable Schedules]

Phase 1: **Submit comprehensive, permit-ready build-out plans and other documentation required by the City for the Project (including total square footage of the basement and 1st floor of the Property for the intended use of a microbrewery, taproom, and exterior beer garden), so as to allow the City to issue all required building permits for the Project, which plans and building permit application must reflect the Project as described in the Agreement (including but not limited to Section 3.05 thereof) and with a building permit and equipment value of not less than \$500,000.**

Completion Date: Within three (3) calendar months after the Closing.

Phase 2: **Commenced and completed all work in accordance with such Building Permit obtained as Phase 1.**

Commencement Date: Upon the Completion Date for Phase 1 above.

Completion Date: Within twelve (12) calendar months after the Commencement Date for Phase 2 (includes final inspections of HVAC, electrical, and plumbing for area included in the Phase 1 Building Permit, and issuance of a full certificate of occupancy for the Project).