

(Summary Published in the Leavenworth Times on October 30, 2020)

ORDINANCE NO. 8149

AN ORDINANCE VACATING ALL THAT PART OF 6th STREET RIGHT OF WAY LYING BETWEEN BLOCK G, LEAVENWORTH CITY AND BLOCK 97 DAY & MACAULAY'S BETWEEN CHEYENNE STREET AND METROPOLITAN AVENUE, IN THE CITY OF LEAVENWORTH, LEAVENWORTH COUNTY, KANSAS, AMENDING APPENDIX C, ARTICLE I, STREET VACATIONS OF THE CITY OF LEAVENWORTH CODE OF ORDINANCES AND SUBJECT TO ACCEPTANCE OF THE PROPOSED UTILITY EASEMENT.

WHEREAS, a petition for a vacation of all that part of 6th Street right of way lying between Block G, Leavenworth City and Block 97, Day & Macaulay's between Cheyenne Street and Metropolitan Avenue in the City of Leavenworth, Leavenworth County, Kansas; and

WHEREAS, the petition included the proposed utility easements which have been modified as to the agreements with the utility companies involved; and

WHEREAS, the City Clerk of the City of Leavenworth, Kansas gave public notice of the same by publication in the official City newspaper on September 4, 2020 stating that a petition has been filed in the office of the City Clerk praying for such vacation, describing the property fully and setting October 13, 2020 as the hearing date on which the petition shall be presented to the Governing Body of the City for hearing and that at such time and place and giving instructions to all persons interested to be heard under the petition; and

WHEREAS, the petition did proceed to hearing as published and no objections were filed with the City Clerk or received at the time of the hearing; and

WHEREAS, all utility companies were notified and agreed to such vacation and the utility easement described in Exhibit B; and

WHEREAS, all the requirements of K.S.A. 12-504 *et. seq.* have been complied with.

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

Section 1. Those certain streets, road, alleys, or rights-of-way, as previously platted or otherwise, and being more fully described and depicted in Exhibit A, are hereby vacated.

Section 2. Notwithstanding the foregoing, such vacation is contingent and depending upon, contemporaneously herewith, the delivery, dedication, and recording of those certain easements as more particularly described on Exhibit B, which easements shall be deemed to survive and/or be effective notwithstanding the above-described vacation, and are intended to replace such easement rights as may have existed prior to such vacation.

Section 3. EFFECTIVE DATE. This ordinance shall take effect and be in force from and after the date of its publication in the official city newspaper.

PASSED and APPROVED by the Governing Body on this 27th day of October 2020.

{Seal}

/s/ Myron J. "Mike" Griswold
Myron J. "Mike" Griswold, Mayor

ATTEST:

/s/ Carla K. Williamson
Carla K. Williamson, CMC, City Clerk

Exhibits A to Ordinance 8149

EXHIBIT A STREET VACATION

All that part of 6th Street right of way, in the city of Leavenworth, Leavenworth County, Kansas lying between Block G, LEAVENWORTH CITY and Block 97, DAY & MACAULAY'S and between Cheyenne Street and Metropolitan Avenue more particularly described as follows:

Beginning at the Southwest corner of said Block G; thence South 78°46'13" West a distance of 60.00 feet to the Southeast corner of said Block 97; thence North 11°13'47" West, along the West line of said Block 97, a distance of 262.51 feet to a point of intersection with the South right-of-way line of Metropolitan Avenue, as it now exists; thence along said South right-of-way line, North 85°02'02" East a distance of 60.36 feet to a point of intersection with the West line of said Block G; thence along the west line of said Block G, South 11°13'47" East a distance of 255.92 feet to the Point of Beginning, containing 15,553 square feet, or 0.357 acres, more or less.

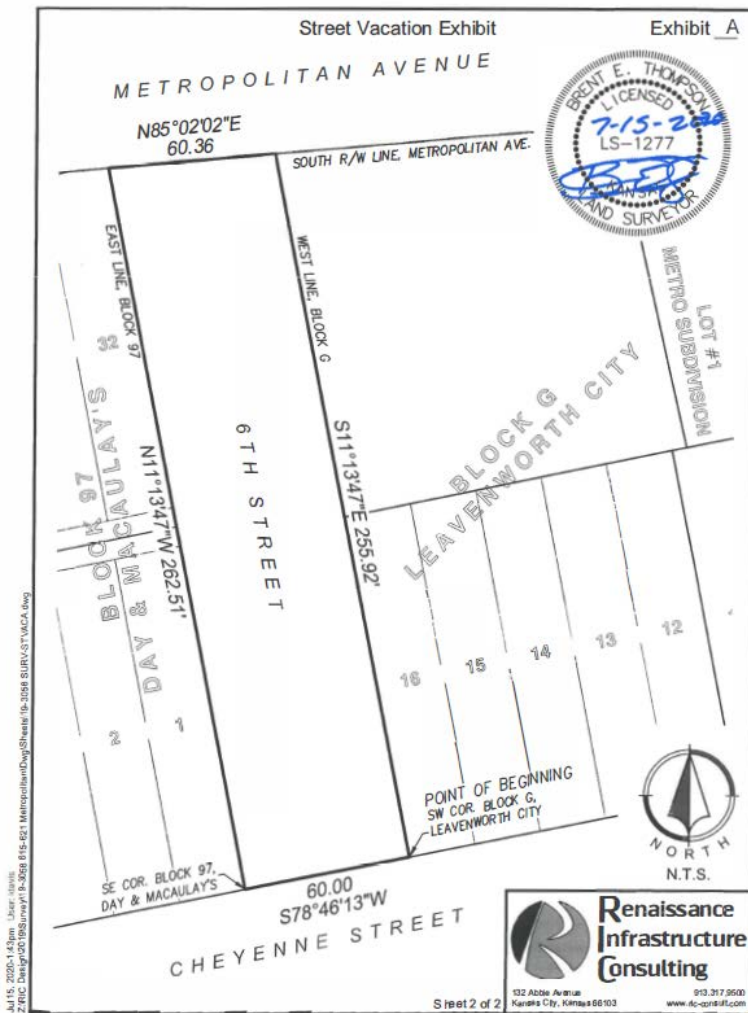


EXHIBIT B to Ordinance 8149

RECORDING COVER SHEET

Title of Document: General Utility Easement

Date of Document: _____, 2020

Grantor: Fort Gate Properties, LLC, a Kansas limited liability company

Grantor's Mailing Address: 7939 Floyd Street
Overland Park, KS 66204

Grantee: City of Leavenworth, Kansas

Grantee's Mailing Address: City of Leavenworth, Kansas
Attn: City Clerk
100 N. 5th Street
Leavenworth, KS 66048

Legal Description: See Exhibit A attached hereto

Reference Book and Page(s): N/A

After recording return to:
M. Kevin Lee
Polsinelli PC
900 W. 48th Place, Ste. 900
Kansas City, MO 64112

GENERAL UTILITY EASEMENT AGREEMENT

THIS GENERAL UTILITY EASEMENT AGREEMENT (this “Agreement”) is made and entered into, effective as of _____, 2020 (the “Effective Date”), by and between FORT GATE PROPERTIES, LLC, a Kansas limited liability company (“Grantor”), and the CITY OF LEAVENWORTH, KANSAS, a municipal corporation organized according to Kansas law (“Grantee”).

WITNESSETH

WHEREAS, Grantor is the owner of that certain real property situated in the City of Leavenworth, Leavenworth County, Kansas, as legally described on Exhibit A and generally depicted on Exhibit B (the “Easement Area”), attached hereto and incorporated herein; and

WHEREAS, Grantee has requested from Grantor, and Grantor is desirous of granting to Grantee, a perpetual, non-exclusive easement over, under, and through the Easement Area for the purpose of entering upon, locating, constructing and maintaining, or authorizing the location, construction, or maintenance, and use of, conduits, water, gas, sewer pipes, wires, surface drainage facilities, ducts, cables and appurtenances thereto, excluding any overhead lines (collectively, the “Utilities”), in any part of the Easement Area, including the right to clean, repair, replace and care for the Utilities, and for any reconstruction and future expansion of the Utilities within the Easement Area together with a right of access to the Easement Area and over the Easement Area for said purposes.

NOW THEREFORE, in consideration of the sum of Ten and 00/100 Dollars (\$10.00), of the above-referenced recitals, of the mutual promises contained herein, of the benefits to be derived from the construction and maintenance of any and all Utilities in the Easement Area, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, subject to the terms and conditions set forth herein, Grantor and Grantee hereby agree as follows:

1. **Grant of Permanent Utility Easement.** Grantor does hereby grant to Grantee forever a perpetual, non-exclusive easement over, under, and through the Easement Area for the purpose of entering upon, locating, constructing and maintaining, or authorizing the location, construction, or maintenance, and use, of, the Utilities, in any part of the Easement Area, including the right to clean, repair, replace and care for the Utilities, and for any reconstruction and future expansion of the Utilities within the Easement Area together with a right of access to the Easement Area and over the Easement Area for said purposes.

2. **Maintenance.** Following completion of the initial construction of any and all Utilities and upon completion of any subsequent maintenance, repair or replacement thereof, Grantee, its agents and employees, and successors and assigns, shall restore the surface of the Easement Area to as near as possible to the original condition existing prior to any such activities by Grantee, its agents and employees, and successors and assigns, and shall be responsible for making any repairs made necessary due to any damage caused by such activities.

3. **Duration; Assignment.** The rights and obligations set forth in this instrument shall run with the land and be binding upon the successors and assigns of Grantor and Grantee. The rights of Grantee under this Easement may be assigned, in whole or in part, by Grantee.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Grantor and Grantee have executed this instrument as of the Effective Date.

GRANTOR:

FORT GATE PROPERTIES, LLC, a Kansas limited liability company

By: _____

Name: Justin Kaufmann

Its: Manager

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2020, to me personally known, appeared Justin Kaufmann, who, being by me duly sworn did say that he is the Manager of FORT GATE PROPERTIES, LLC, a Kansas limited liability company, and that said instrument was signed and delivered on behalf of said limited liability company by authority of its members, as the free act and deed of said limited liability company acting with full power and authority to so bind the limited liability company.

Notary Public

My commission expires:

[SEAL]

GRANTEE:

CITY OF LEAVENWORTH, KANSAS, a Kansas municipal corporation

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

ATTEST:

By: _____
Carla K. Williamson, CMC, City Clerk

APPROVED AS TO FORM:

David E. Waters, City Attorney

ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

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

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

Notary Public

My commission expires:

[SEAL]

EXHIBIT A

Legal Description of Easement Area

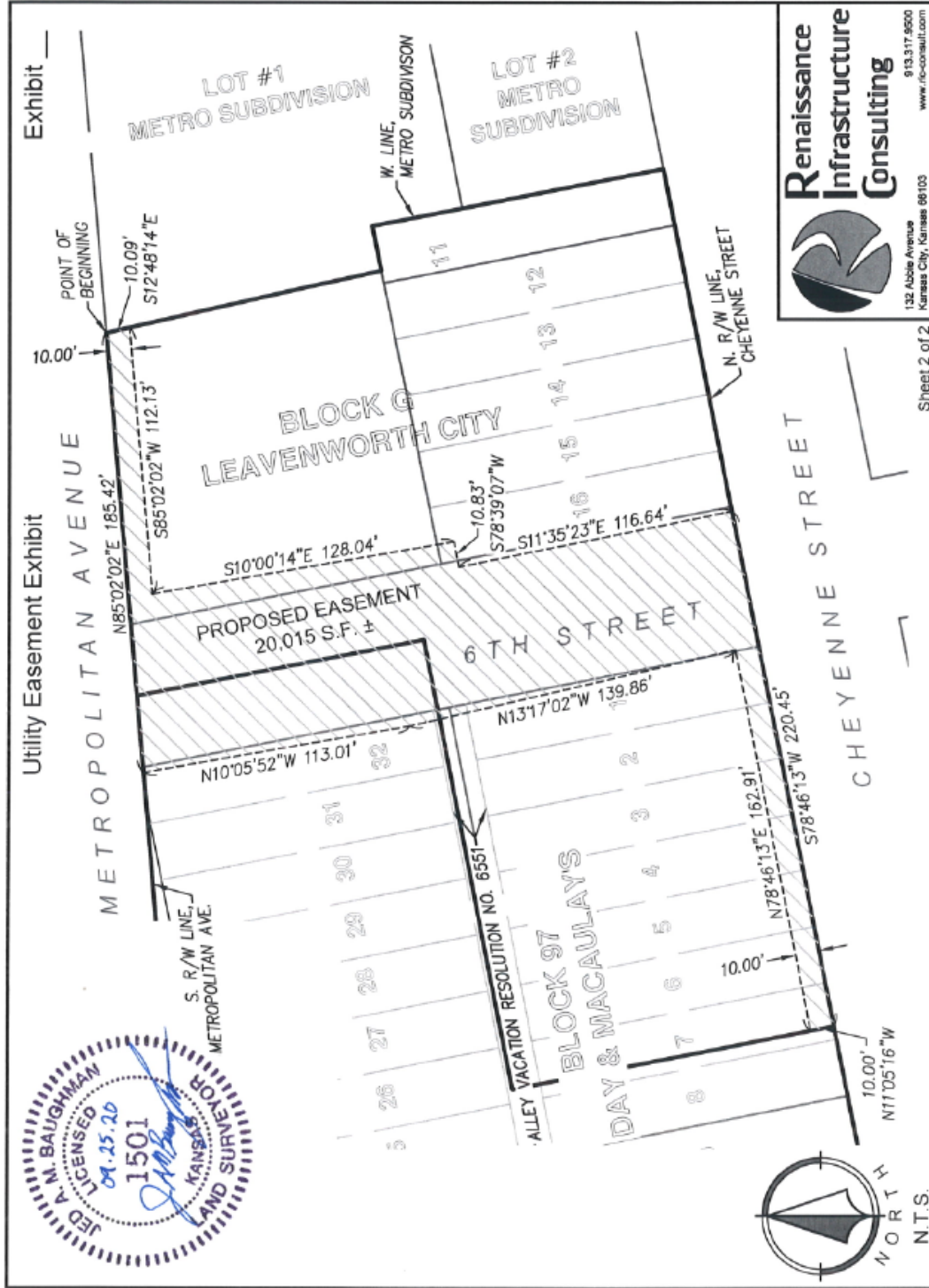
All that part of the North Fractional portion of Block G, together with Lot 16, Block G, LEAVENWORTH and Lots 1 through 7, inclusive and Lot 38, vacated Sioux Street and 6th Street and all that part of the alley vacated by Resolution No. 6551, all in Block 97, DAY AND MACAULAY'S SUBDIVISION; all in the City of Leavenworth, Leavenworth County, Kansas more particularly described as follows:

Beginning at the Northwest corner of Lot 1, METRO SUBDIVISION, a subdivision in said City of Leavenworth; thence South 12°48'14" East, along the West line of said Lot 1, a distance of 10.09 feet to a point on a line 10 feet distant and parallel with the South right-of-way line of Metropolitan Avenue; thence along said parallel line, South 85°02'02" West a distance of 112.13 feet; thence leaving said parallel line, South 10°00'14" East a distance of 128.04 feet; thence South 78°39'07" West a distance of 10.83 feet; thence South 11°35'23" East a distance of 116.64 feet to a point being on the North right-of-way line of Cheyenne Street, as it now exists; thence South 78°46'13" West, along said North right-of-way line, a distance of 220.45 feet; thence leaving said North right-of-way line, North 11°05'16" West a distance of 10.00 feet to a point on a line 10 feet distant and parallel with said North right-of-way line; thence North 78°46'13" East, along said parallel line, a distance of 162.91 feet; thence North 13°17'02" West a distance of 139.86 feet; thence North 10°05'52" East a distance of 113.01 feet; to a point on the South right-of-way line of Metropolitan Avenue, as it now exists; thence North 85°02'02" East, along said South right-of-way line, a distance of 185.42 feet to the Point of Beginning, containing 20,015 square feet, more or less.



EXHIBIT B

General Depiction of Easement Area



Renaissance Infrastructure Consulting
 132 Abble Avenue
 Kansas City, Kansas 66103
 913.317.9500
 www.ri-consult.com

Sheet 2 of 2

8/29/2020 7:37am User: jbaughman 2:181C Design\2018\Survey\113-3058 8149-521 Metro\7\rand\dwg\Exhibit\113-3058 SURV-ESMT-LIE.dwg