



# City of Lawrence

## CITY MANAGER'S OFFICE

DIANE STODDARD  
INTERIM CITY MANAGER

City Offices  
PO Box 708 66044-0708  
[www.lawrenceks.org](http://www.lawrenceks.org)

6 East 6<sup>th</sup> St  
785-832-3000  
FAX 785-832-3405

CITY COMMISSION

MAYOR  
MIKE AMYX

COMMISSIONERS  
LESLIE SODEN  
STUART BOLEY  
MATTHEW J. HERBERT  
LISA LARSEN

February 11, 2016

Roger N. Walter, Esq.  
MORRIS LAING EVANS BROCK & KENNEDY, CHTD  
800 SW Jackson Street, Suite 1310  
Topeka, Kansas 66612-1216

Matthew S. Gough, Esq.  
BARBER EMERSON LC  
1211 Massachusetts Street  
P.O. Box 667  
Lawrence, Kansas 66044

Oread Inn, LC  
643 Massachusetts Street, Suite 300  
Lawrence, Kansas 66044

Re: Notice of Developer Event of Default

Dear Gentlemen:

In 2008, the City and Oread Inn, LC ("Oread Inn"), entered into the 12th & Oread Tax Increment Financing District Redevelopment Agreement ("Redevelopment Agreement"), whereby, in exchange for the installation of certain infrastructure, the City agreed to rebate to Oread Inn certain property tax and sales tax. Commencing in 2010, Oread Inn's tenant, Oread Wholesale, LC ("Oread Wholesale"), engaged in a plan and pattern to inflate the amount of sales tax dollars rebated to Oread Inn under the Redevelopment Agreement to the detriment of the City and the citizens of this community. On December 16, 2015, the City invited Oread Inn, under Section 10.01 of the Redevelopment Agreement, to assist it in ensuring that the terms, provisions, and intent of the Redevelopment Agreement were carried out.



Specifically, the City requested Oread Inn to do five things:

- (1) Oread Inn shall, on or before December 31, 2015, make payment to the City in the amount of \$492,914.86, said sum being the amount the City overpaid Oread Inn as the result of the actions of its tenant Oread Wholesale together with interest thereon, all under the terms of the Redevelopment Agreement;
- (2) Oread Inn shall, on or before December 31, 2015, reimburse the City for the costs it incurred in hiring AGH, in the amount of \$27,455.65, said costs being incurred only due to the obfuscatory and recalcitrant behavior of its tenant, Oread Wholesale;
- (3) Oread Inn shall, on or before January 18, 2016, obtain from its tenant, Oread Wholesale, all tax records and documents that Oread Wholesale used to prepare its *original* sales tax returns and shall provide the same to AGH for its review.
- (4) Oread Inn shall, on or before December 31, 2015, agree to amend the Redevelopment Agreement, in writing, to insert an Audit Clause that will permit the City to audit, without advance notice, any and all sales tax records (regardless of their nature or how stored) of Oread Inn, its tenants, or any person or entity doing business within the Oread Hotel, in order to foreclose the possibility of a similar occurrence in the future; and
- (5) Oread Inn shall give written assurance to the City that, in the event of a future occurrence, it will fully cooperate with the City in any future audits or review that may be necessary as the result of the actions of Oread Inn, its tenants, or any person or entity doing business within the Oread Hotel.

To date, Oread Inn has paid, albeit under protest, the sums requested by the City. Oread Inn, however, has declined to assist the City in obtaining from Oread Wholesale those documents underlying its original sales tax returns, has refused to amend the Redevelopment Agreement to include the requested audit terms, and has not given any assurance to the City, written or otherwise, that it will cooperate with the City in the event of a similar future occurrence.

On January 27, 2016, the City received from Oread Wholesale, LC, a cover letter and a report, through which it posits legal justification for its actions. The City has reviewed the letter and report thoroughly and find them, legally and equitably, to be wanting. Also, in that letter, Oread Wholesale admits to operating a warehouse at 1200 Oread, which is in violation of Exhibit F to the Redevelopment Agreement. It must be noted that the City first brought that to Oread Inn's attention in its November 13, 2015, cease

and desist letter, but ultimately did not pursue it based on representations made by Oread Wholesale and its counsel. Now, it appears, based on the January 27, 2016, letter, that Oread Wholesale has reversed course on the issue.

Additionally, based upon its review of the invoices and Oread Inn's actions to date, the City has a growing concern that, with respect to Oread Inn, Oread Wholesale, DFC Co., and other entities, legal formalities have not been maintained, especially with regard to those intramural transactions claimed to have been brought under the Redevelopment Agreement. That concern is further exacerbated (1) by online resources that show significant overlap in ownership among the entities in question and (2) by Oread Inn's tepid response to the City's December 16, 2015, request for assistance.


As you are aware, Section 10.01 of the Redevelopment Agreement requires the parties "to take such actions ... as may be necessary or appropriate ... **to aid and assist each other in carrying out**" the terms, provisions, and intent of the Redevelopment Agreement (emphasis added). As you are also aware, Section 10.02 provides that the citizens of this community are intended third-party beneficiaries of the Redevelopment Agreement, that the Redevelopment Agreement runs in favor of the City, and that the City has the right, in its own behalf and in behalf of the citizens of this community, to take those actions necessary to ensure that the terms, provisions, and intent of the Redevelopment Agreement are carried out.

To that end, on December 16, 2015, the City officially notified Oread Inn that Oread Wholesale had engaged in a plan and pattern to inflate the amount of sales tax dollars rebated to Oread Inn under the Redevelopment Agreement to the detriment of the City and the citizens of this community. In that letter, as noted above, the City invited Oread Inn to take certain actions to assist it in ensuring that the terms, provisions, and intent of the Redevelopment Agreement are carried out. Oread Inn has, however, by its inaction with regard to the December 16, 2015, letter, by its payment in protest of money owed to the City, by its tacit concurrence in the January 27, 2016, letter and report of Oread Wholesale, and by its indifference toward Oread Wholesale's apparent use of its premises in violation of Exhibit F to the Redevelopment Agreement, declined that invitation. As such, the City declares Oread Inn, because it has refused to provide assistance to the City, to be in default under Section 10.01 of the Redevelopment Agreement.

Pursuant to Sections 9.01 and 10.12 of the Redevelopment Agreement, this letter shall serve as the City's official written notice to Oread Inn of a Developer Event of Default. The specifics of the Developer Event of Default are set forth in the preceding paragraphs. Failure to cure or remedy the Developer Event of Default on or before March 14, 2016, shall be grounds for the City to terminate the Redevelopment Agreement.

Govern yourselves accordingly.

Sincerely,

A handwritten signature in cursive script, reading "Diane Stoddard". The signature is written in black ink and is positioned above the printed name and title.

Diane Stoddard  
Interim City Manager