

LICENSE AGREEMENT

This License Agreement is made this _____ day of _____, 2011, by and between the City of Lawrence, Kansas, a municipal corporation, and Dillon Companies, Inc., a Kansas corporation.

RECITALS

- A.** The City of Lawrence, Douglas County, Kansas ("the City") is the holder of that Right of Way on which Massachusetts Street ("the Massachusetts Street Right of Way") is located in the City of Lawrence, Douglas County, Kansas;
- B.** Dillon Companies, Inc. ("the Owner"), operates a grocery store and "Hospitality Establishment" on that certain real property ("the Property") located adjacent to and adjoining the Massachusetts Street Right of Way, commonly known as 1740 Massachusetts Street, Lawrence, Douglas County, Kansas (a copy of the legal description for the Property is affixed hereto as Exhibit A.);
- C.** The Owner wishes, as part of the redevelopment of the Property, to use the Massachusetts Street Right of Way, in order to enhance the use and enjoyment of the Property, for sidewalk hospitality;
- D.** The Owner has submitted to the City a Site Plan setting forth the details of its proposed redevelopment of the Property, including its plan for the proposed sidewalk hospitality use; and
- E.** The City has approved the Site Plan contingent, *inter alia*, upon an execution of this License Agreement and compliance with the terms of this License.

AGREEMENT

NOW, THEREFORE, in light of the mutual promises and obligations contained herein, and in exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

- 1. Grant of License.** In exchange for the sum of one dollar and no cents (\$1.00), for the payment of rent as described below, and for other good and valuable consideration given, the City hereby grants to the Owner the non-exclusive license, right, privilege, and permission ("the License") to use, in common with others, that portion of the Massachusetts Street Right of Way upon which it has proposed to use for sidewalk hospitality.


2. **Rent.** The Owner shall pay to the City an annual fee for the use of the Massachusetts Street Right of Way. Said fee shall be due and owing at the time the license is issued and annually on that date for each year that the license is renewed. Said fee shall be in the nature of a rent, or lease payment, for the commercial use of the Massachusetts Street Right of Way. The annual rent shall be assessed and paid at the rate of \$3.50 per square foot.
3. **The Owner's Covenants.** In exchange for this License, in addition to giving good and valuable consideration, the Owner hereby covenants and warrants as follows:
 - (a) To maintain that portion of the Massachusetts Street Right of Way used by the Owner for sidewalk hospitality, at the Owner's sole cost and expense and to remove all debris and other items placed thereon by the Owner or that may be caused to be deposited thereon as a result of the Owner's use and occupancy of the Massachusetts Street Right of Way.
 - (b) To move or to close, at the Owner's sole cost and expense, the Owner's sidewalk hospitality area, in the event that the City needs to install, repair, or maintain any utilities that may be located or are to be located in the Massachusetts Street Right of Way. The owner may replace or reopen the sidewalk hospitality area once said installations, repairs, or maintenance are completed, except as may otherwise be provided in paragraph 7 of this License Agreement.
 - (c) To comply with all applicable laws and ordinances, including Chapter 6, Article 12 of the "City Code of Lawrence, Kansas, 2011 Edition," as amended, and all land use requirements of the City and Douglas County, Kansas.
 - (d) To comply with all conditions placed on the sidewalk hospitality use by the approved Site Plan.
 - (e) To refrain from causing any waste, damage, or injury to the Massachusetts Street Right of Way.
 - (f) The Owner shall not enlarge, intensify, or increase the proposed scope of its use or occupancy of the Massachusetts Street Right of Way as described in this License Agreement without the prior written consent of the City.

4. **The City Makes No Representations.** The Owner agrees that the City has made no representations to it with respect to the Massachusetts Street Right of Way or its condition, and that it is not relying on any representations of the City or its agents with respect to the Massachusetts Street Right of Way or its condition. This License Agreement grants the Owner the License to use the Massachusetts Street Right of Way in its present condition, "as is," without any warranties, representations, or assurances from the City.
5. **Insurance.** The Owner, at its sole cost and expense, shall carry a policy of insurance, issued by a company licensed to issue insurance in the State of Kansas, insuring the Owner and the City, as an additional named insured, against liability for personal injury, death, or damage to personal property arising out of the Owner's use and occupancy of the Massachusetts Street Right of Way in an amount not less than \$500,000.00 for a single incident.
6. **Indemnification.** During the time that this License Agreement is in effect, the Owner agrees to indemnify, defend, save, and hold harmless the City, its officers, commissioners, agents, employees, grantees, and assigns, from and against all claims, actions, liabilities, damages, costs, expenses, and judgments, including attorneys' fees, which relate to, arise out of, or are in any way related to the Owner's use or occupancy of the Massachusetts Street Right of Way or any portion thereof or the maintenance of that portion of the Massachusetts Street Right of Way used by the Owner for sidewalk hospitality, on account of any injury to persons or damage to property. This indemnification clause shall not apply to any injury or damage caused by the City's own negligence.
7. **Termination.** In the event that continued use or occupancy of the Massachusetts Street Right of Way creates a public health or safety hazard, the City shall have the right to terminate the permission granted by this License Agreement immediately. Otherwise, the City reserves the right to terminate the permission granted by this License Agreement by giving the Owner at least forty-five (45) days notice by sending written Notice of Termination to Dillons Real Estate Department, 2700 East 4th, Hutchinson, Kansas, 67501, by certified mail. However, the City agrees that, in the event that Notice of Termination is given (1) because the Owner fails to comply with the provisions of this License Agreement or (2) because the Owner fails to comply with the conditions established for a sidewalk hospitality use as set forth in the approved Site Plan, the Owner shall have forty-five (45) days from the date that Notice of Termination is mailed in which to cure the defect. If, within that time, the defect is cured to the City's satisfaction, then the Notice of Termination will be rescinded. If, within that time, the defect is not cured to the City's satisfaction, then the Licensing Agreement will be terminated.

8. **Non-Assignment.** This License granted by this License Agreement shall be non-assignable and non-transferable. This License Agreement, governing the Owner's use of the Massachusetts Street Right of Way, is neither assignable nor transferable. A new owner of the Hospitality Establishment in question must apply for a new license and must reach a separate License Agreement with the City.
9. **Alcoholic Beverages/Cereal Malt Beverages.** To the extent that it is allowable by law and to the extent that the Owner obtains and maintains proper licensing, alcoholic beverages and/or cereal malt beverages may be served and consumed in that portion of the Massachusetts Street Right of Way used by the Owner for sidewalk hospitality.
10. **Governing Law.** This License Agreement shall be construed and enforced in accordance with and shall be governed by the laws of the State of Kansas.

IN WITNESS WHEREOF, the undersigned have caused this License Agreement to be executed as of the date noted above.

OWNER: Dillon Companies, Inc., a Kansas corporation

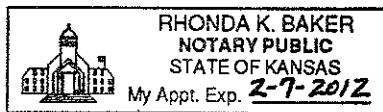


Joseph A. Grieshaber, Jr., Vice President

STATE OF KANSAS)
)
COUNTY OF RENO) ss:

The foregoing License Agreement was acknowledged before me this 14th day of July, 2011, by Joseph A. Grieshaber, Jr., Vice President of Dillon Companies, Inc., in behalf of the Corporation.

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





Notary Public

My commission expires:

**CITY: CITY OF LAWRENCE, KANSAS, a
municipal corporation**

Aron Cromwell, Mayor

ATTEST:

Jonathan M. Douglass, City Clerk