

## **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 New Hampshire Street ("the New Hampshire Street Right of Way") is located in the City of Lawrence, Douglas County, Kansas;
- B.** Dillon Companies, Inc. ("the Owner"), owns certain real estate ("the Property") located adjacent to and along the New Hampshire 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 install in the New Hampshire Street Right of Way a pharmacy drive-through lane, an emergency ingress lane, and a bio-swale to enhance the use and enjoyment of the Property;
- D.** The Owner has submitted to the City a Site Plan setting forth the details of its proposed redevelopment of the Property, including the pharmacy drive-through lane, the emergency ingress lane, and the bio-swale; 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 is 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) and other good and valuable consideration, 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 New Hampshire Street Right of Way, on which a pharmacy drive-through lane, an emergency ingress lane, and a bio-swale will be located, for the purpose of enhancing the use and enjoyment of the Property.

2. **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 the pharmacy drive-through lane, the emergency ingress lane, and the bio-swale, 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 New Hampshire Street Right of Way.
- (b) To move or to close, at the Owner's sole cost and expense, the pharmacy drive-through lane, the emergency ingress lane, and the bio-swale, located in the licensed 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 New Hampshire Street Right of Way. The owner may replace or reopen the pharmacy drive-through lane, the emergency ingress lane, or the bio-swale in its former location once said installations, repairs, or maintenance are completed, except as may otherwise be provided in paragraph 6 of this License Agreement.
- (c) To comply with all applicable laws and ordinances, including all land use requirements of the City and Douglas County, Kansas.
- (d) To comply with all conditions placed on the pharmacy drive-through lane, the emergency ingress lane, and the bio-swale by the approved Site Plan.
- (e) To refrain from causing any waste, damage, or injury to the New Hampshire Street Right of Way.
- (f) The Owner shall not enlarge, intensify, or increase the proposed scope of its use or occupancy of the New Hampshire Street Right of Way as described in this License Agreement without the prior written consent of the City.

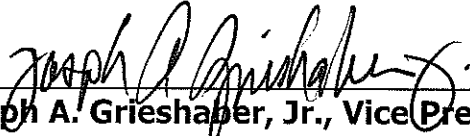
3. **The City Makes No Representations.** The Owner agrees that the City has made no representations to it with respect to the New Hampshire Street Right of Way or its condition, and that it is not relying on any representations of the City or its agents with respect to the New Hampshire Street Right of Way or its condition. This License Agreement grants the Owner the License to use the New Hampshire Street Right of Way in its present condition, "as is," without any warranties, representations, or assurances from the City.

4. **Accommodation.** The permission granted to the Owner under the License Agreement is given for good and valuable consideration. However, the permission granted is also given as an accommodation to the Owner and shall be made without requiring the payment of rent from the Owner. The Owner hereby acknowledges the City's right to the New Hampshire Street Right of Way and agrees never to assail, resist, or deny such right by virtue of the Owner's use or occupancy of the New Hampshire Street Right of Way under this License Agreement.
5. **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 New Hampshire Street Right of Way or any portion thereof or the maintenance of the pharmacy drive-through lane, the emergency ingress lane, or the bio-swale, 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.
6. **Termination.** In the event that continued use or occupancy of the New Hampshire 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 the pharmacy drive-through lane, the emergency ingress lane, or the bioswale 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.
7. **Binding Effect.** This License Agreement shall, at all times, be binding upon the City and the Owner and all owners of the Property and all parties claiming by, through, or under them, and shall run with the land, and shall be for the benefit of and shall oblige all future owners of the Property; provided, however, that the rights, duties, and obligations of each owner, as set forth herein, shall cease with the termination of ownership of the Property, or portion thereof, except for those duties and obligations arising during the period of said ownership.

8. **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.

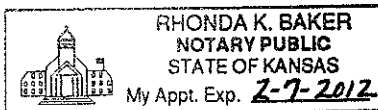
**OWNER: Dillon Companies, Inc., a Kansas corporation**

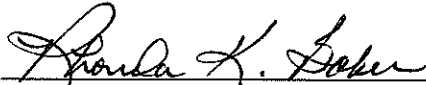
  
\_\_\_\_\_  
**Joseph A. Grieshaber, Jr., Vice President**

STATE OF KANSAS            )  
  )  
COUNTY OF RENO         )       SS:

The foregoing License Agreement was acknowledged before me this 14<sup>th</sup> 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**