

## **LICENSE AGREEMENT**

This License Agreement is made this \_\_\_\_ day of August, 2011, by and between the City of Lawrence, Kansas, a municipal corporation, and 1040 Vermont, LLC, a Kansas limited liability company.

### **RECITALS**

- A.** The City of Lawrence, Douglas County, Kansas ("the City"), is the holder of that Right of Way on which Vermont Street ("Vermont Street Right of Way") is located in the City of Lawrence, Douglas County, Kansas;
- B.** 1040 Vermont, LLC ("the Owner"), owns certain real estate ("the Property") adjacent to and along the Vermont Street Right of Way, commonly known as 1040 Vermont Street, Lawrence, Douglas County, Kansas, and bearing the following legal description:

Lots 108, 110, and 112 on Vermont Street in the City of Lawrence, Douglas County, Kansas;

- C.** The Owner desires to re-develop and to construct certain multi-story building improvements on the Property and, as a result of said re-development and construction, an overhang will project seven feet, four inches (7' 4"), more or less, onto the Vermont Street Right of Way, at an elevation approximately twenty-seven feet, eight inches (27' 8") above grade ("the Vermont Street Encroachment");
- D.** The Owner has submitted to the City a Site Plan setting forth the details of its proposed re-development of the Property, including its plan to construct certain multi-story building improvements on the Property and showing therein the proposed Vermont Street Encroachment; and
- E.** The City has approved the Site Plan, including the Vermont Street Encroachment, contingent, *inter alia*, upon 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) and for 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 Vermont Street Right of Way on which the Vermont Street Encroachment will be located, as described in the Site Plan filed with the City, 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, at the Owner's sole cost and expense, for the duration of this License Agreement, the Vermont Street Encroachment.
  - (b) To move or remove, at the Owner's sole cost and expense, the Vermont Street Encroachment, located in the licensed area, in the event that the City needs to install, repair, maintain, or expand Vermont Street or any utilities that may be located or are to be located in the Vermont Street Right of Way. The owner may replace the Vermont Street Encroachment in its former location once said installations, repairs, maintenance, or expansion 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 Vermont Street Encroachment by the approved Site Plan.
  - (e) To refrain from causing any waste, damage, or injury to the Vermont Street Right of Way.
  - (f) The Owner shall not enlarge, intensify, or increase the proposed scope of its use or occupancy of the Vermont Street Right of Way as described in this License Agreement without the prior written consent of the City.
  - (g) The Owner shall list the City as an additional insured on its commercial insurance policy.

3. **The City Makes No Representations.** The Owner agrees that the City has made no representations to it with respect to the Vermont 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 Vermont Street Right of Way or its condition. This License Agreement grants the Owner the License to use the Vermont Street Right of Way in its present condition, "as is," without any warranties, representations, or assurances from the City.
4. **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 Vermont Street Right of Way or any portion thereof or the maintenance thereof, 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.
5. **Accommodation.** The permission granted to the Owner under this License Agreement is given for good and valuable consideration. However, the permission granted is 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 Vermont 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 Vermont Street Right of Way under this License Agreement.
6. **Term and Termination.** The City reserves the right to terminate the permission granted by this License Agreement at any time and for any reason, by giving the Owner at least 30 days written notice of such termination, except that the City may, at the City's election, terminate the permission immediately without such notice:
  - (a) If the Owner fails to comply with or abide by each and all of the provisions, including the Owner's Covenants, of this License Agreement;
  - (b) If the Owner fails to comply with or abide by each and every condition established in the approved Site Plan; or
  - (c) If the continued use or occupancy of the Vermont Street Right of Way presents a health or safety hazard.

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 his, her, or its ownership of the Property, or portion thereof, except for those duties and obligations arising during the period of his, her, or its ownership.
8. **Authorization.** Each of the persons executing this License Agreement, in behalf of their respective parties, represents and warrant that they have the authority to bind the party in behalf of whom they have executed this License Agreement, and that all acts requisite to the authorization to enter into and to execute this License Agreement have been taken and completed.
9. **Notice.** Notice under this License Agreement, including denials, revocation, or alteration of site specific approvals, notice to remove equipment, and any other notice that may be required by this License Agreement shall be provided in writing to the parties at the following addresses:
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| <u>Notice to the City:</u><br>City of Lawrence, Kansas<br>City Manager's Office<br>6 East 6th Street<br>P.O. Box 768<br>Lawrence, Kansas 66044 | <u>Notice to the Owner:</u><br>1040 Vermont, LLC<br>601 N. Iowa<br>P.O. Box 1797<br>Lawrence, Kansas 66044 |
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10. **Severability.** If any section, sentence, clause, or phrase of this License Agreement is found to be invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining provision of this License Agreement.
11. **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.
12. **Recitals.** The above-stated recitals are by reference incorporated herein and shall be as effective as if set forth *verbatim*.

*[SIGNATURES APPEAR ON THE FOLLOWING PAGES]*

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

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

\_\_\_\_\_  
DAVID L. CORLISS  
City Manager

**ACKNOWLEDGMENT**

THE STATE OF KANSAS            )  
  )  
THE COUNTY OF DOUGLAS        )        ss:

BE IT REMEMBERED, that on this \_\_\_\_ day of August, 2011, before me the undersigned, a notary public in and for the County and State aforesaid, came David L. Corliss, as City Manager of the City of Lawrence, Kansas, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

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

\_\_\_\_\_  
Notary Public

My Appointment Expires:

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

**1040 Vermont, LLC, a Kansas  
limited liability company**

  
MICHAEL L. TREANOR  
Manager


**ACKNOWLEDGMENT**

THE STATE OF KANSAS            )  
  )        ss:  
THE COUNTY OF DOUGLAS        )

BE IT REMEMBERED, that on this 5th day of August, 2011, before me the undersigned, a notary public in and for the County and State aforesaid, came Michael L. Treano, as Manager of 1040 Vermont, LLC, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

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



  
Notary Public

My Appointment Expires: 08-04-2012