

LICENSE AGREEMENT

THIS LICENSE AGREEMENT is made this _____ day of April, 2017, by and between the City of Lawrence, Kansas, a municipal corporation, and 1101 Mass, LLC, a Kansas limited liability company.

RECITALS

- A.** The City of Lawrence, Douglas County, Kansas ("City"), is the holder of those Rights of Way on which West Eleventh Street ("Eleventh Street Right of Way"), Massachusetts Street ("Massachusetts Street Right of Way"), and the alley between Massachusetts Street and Vermont Street ("Alley Right of Way") (collectively, "the City's Rights of Way") are located in the City of Lawrence, Douglas County, Kansas;
- B.** 1101 Mass, LLC, a Kansas limited liability company ("Owner"), owns certain real property ("Property") adjacent to and along the Eleventh Street Right of Way, the Massachusetts Street Right of Way, and the Alley Right of Way, commonly known as 1101 Massachusetts Street, Lawrence, Douglas County, Kansas, and bearing the following legal description:
- Commencing at the Northeast Corner of Park Lot No. 17 in the City of Lawrence; thence running South 53 feet; thence running West 133 feet, thence running North 53 feet, thence running East 133 feet to the place of beginning, being part of Park Lots No. 17, 19, and 21, in the City of Lawrence, Douglas County, Kansas; LESS the West 16 feet thereof taken for a Public Alley.
- C.** Portions of the two-story structure located on the Property encroach upon the Eleventh Street Right of Way ("the Eleventh Street Encroachments"), the Massachusetts Street Right of Way ("the Massachusetts Street Encroachment"), and the Alley Right of Way ("the Alley Encroachment") (collectively, "the Encroachments"). (Maps showing the Encroachments are affixed hereto as Exhibits A and B and are incorporated herein by reference);
- D.** In order to enhance the use and enjoyment of the Property, the Owner wishes to continue to use the Encroachments; and
- E.** The City agrees that, in order to enhance the Owner's use and enjoyment of the Property, the Owner should be permitted to continue to use the Encroachments, subject to the Owner's execution of this License Agreement and compliance with its terms.

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:

TERMS

1. **Adoption of Recitals.** The above-stated recitals are incorporated herein by reference, are hereby made a part of this License Agreement, and shall be as effective as if repeated verbatim.
2. **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, the following:

(a) The Eleventh Street Encroachments:

- (i) Four feet of the Eleventh Street Right of Way, along the north side of the Property, in which the Owner may locate a portion of the structure, three window wells with grates, and overhangs (this portion of the Eleventh Street Encroachment is shown on Exhibit A); and
- (ii) Two extensions of the structure's basement (these portions of the Eleventh Street Encroachment are shown on Exhibit B), as follows:
 - (A) an area approximately 5.27 feet by 6.93 feet located under the Eleventh Street Right of Way; and
 - (B) an area approximately 8.00 feet by 14.36 feet located under the Eleventh Street Right of Way.

(b) The Massachusetts Street Encroachment:

- (i) Four feet of the Massachusetts Street Right of Way, along the east side of the Property, in which the Owner may locate a portion of the structure and overhangs (the Massachusetts Street Encroachment is shown on Exhibit A).

(c) The Alley Encroachment:

- (i) Four feet of the Alley Right of Way, along the west side of the Property, in which the Owner may locate a portion of the structure and overhangs (the Alley Encroachment is shown on Exhibit A).

3. **The Owner's Covenants.** In exchange for the 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 area in the City's Rights of Way licensed to the Owner to be used for the Encroachments.
 - (b) To comply with all applicable laws and ordinances, including all land use requirements of the City and Douglas County, Kansas.
 - (c) To comply with all reasonable conditions placed on the Encroachments by any approved Site Plan or other planning document approved by the City.
 - (d) To refrain from causing any waste, damage, or injury to the City's Rights of Way.
 - (e) The Owner shall not enlarge, intensify, or increase the proposed scope of its use or occupancy of the City's Rights of Way, as described herein without the prior written consent of the City.
 - (f) The Owner shall list the City as an additional insured on any commercial insurance policy.
4. **Additional Covenant.** The parties recognize that the structure, the window wells, and the underground vaults are permanent in nature and that it is not economically feasible that they be moved. Nevertheless, the parties agree to work together regarding the location of utilities or other public improvements, to the extent such are necessary, in the Encroachments.
5. **The City Makes No Representations.** The Owner agrees that the City has made no representations to it with respect to the City's Rights of Way, or their condition, and that it is not relying on any representations of the City or its agents with respect to those Rights of Way or their condition. This License Agreement grants the Owner the License to use the City's Rights of Way in their present condition, "as is," without any warranties, representations, or assurances from the City.
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 City's Rights 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.

7. **Accommodation.** The permission granted to the Owner under this License Agreement is given for good and valuable consideration. However, the License 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 City's Rights of Way and agrees never to assail, resist, or deny such right by virtue of the Owner's use or occupancy of the City's Rights of Way under this License Agreement.
8. **Term and Termination.** The City reserves the right to terminate the permission granted by this License Agreement at any time and for any reason if the Owner's continued use or occupancy of the City's Rights of Way presents a clear and imminent health or safety hazard. In the event of any default hereunder, the violation of any law, or the violation of any planning document approved by the City, the City shall give notice in writing to the Owner of such violation and the Owner shall have thirty (30) days therefrom in which to cure such violation, or, in the event that curing will require alterations to the structure that will require engineering plans, or the like, then the Owner shall have ninety (90) days to cure the violation. Failure to cure the violation in the time prescribed, shall give the City the right to terminate the permission granted by this License Agreement or to take whatever legal recourse is available to it.
9. **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, 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.
10. **No Waiver.** Nothing contained in this License Agreement shall be deemed to waive or terminate any common law or statutory rights of Owner relating to any pre-existing legal nonconforming use of the Property and the Encroachments.
11. **Authorization.** Each of the persons executing this License Agreement, in behalf of their respective parties, represent 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.

12. **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:

Notice to the City:

City of Lawrence, Kansas
City Manager's Office
6 East 6th Street
P.O. Box 768
Lawrence, Kansas 66044

Notice to the Owner:

1101 Mass, LLC
c/o Matt Gilhousen
602 Walnut
Lawrence, Kansas 66044

13. **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.
14. **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.

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

THOMAS M. MARKUS
City Manager

ACKNOWLEDGMENT

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

BE IT REMEMBERED, that on this ____ day of April, 2017, before me the undersigned, a notary public in and for the County and State aforesaid, came Thomas M. Markus, 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:

**OWNER:
1101 MASS, LLC, a Kansas limited
liability company**

MATT GILHOUSEN
President

ACKNOWLEDGMENT

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

BE IT REMEMBERED, that on this ____ day of April, 2017, before me the undersigned, a notary public in and for the County and State aforesaid, came Matt Gilhousen, as President of 1101 Mass, LLC, a Kansas limited liability company, 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: