

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made this ____ day of _____, 2017, by and between the City of Lawrence, Kansas, a municipal corporation, and Dillon Companies, Inc., a Kansas corporation.

RECITALS

- A.** The Kansas Department of Transportation ("KDOT") is the holder of that Right of Way on which 23rd Street/K-10 Highway ("the 23rd Street Right of Way") is located in Lawrence, Douglas County, Kansas.
- B.** Pursuant to an agreement with KDOT, the City of Lawrence, Kansas ("the City"), maintains the 23rd Street Right of Way.
- C.** Dillon Companies, Inc., a Kansas corporation ("Dillon"), is the tenant of that real property ("Dillon Property"), commonly known as 1015 West 23rd Street, Lawrence, Douglas County, Kansas, and bearing the following legal description, to-wit:

Lots 12, 13, 14, 15, 16, 17, 18, 19, LESS AND EXCEPT the East 25.00 feet of the North 247.27 feet and Lot 20, Block 1, South Hills, an Addition to the City of Lawrence, Douglas County, Kansas; ALSO together with vacated part of 23rd Street per County Commission Order in Book 297, page 56.
- D.** Dillon wishes to redevelop its property, has submitted to the City a Site Plan, and has agreed, in exchange for the approval of that Site Plan, to redevelop an access entrance ("Access Drive") (identified in the Site Plan, which is affixed hereto as Exhibit A), and a right turn lane that would permit ingress and egress from the 23rd Street Right of Way to and from the Dillon Property.
- E.** The City has agreed, subject to Dillon's execution of this Development Agreement and compliance with its terms, to reimburse Dillon for certain costs associated with redevelopment of the Access Drive and the right turn lane.

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 each of the parties, the parties agree as follows:

1. **Adoption of Recitals.** The Recitals set forth above are hereby adopted and incorporated herein by reference as if set forth in full.
2. **Site Plan.** The City has approved a site plan for the redevelopment of the Dillon Property, a copy of which is attached hereto as Exhibit A (the "Site Plan"). Dillon agrees to redevelop the Access Drive and right turn lane as identified on the Site Plan.
3. **Scope of Work.** Dillon agrees that it shall cause the Access Drive and right turn lane to be redeveloped in a good and workmanlike manner and in accordance with the approved Site Plan. The City agrees that Dillon shall be permitted to redevelop the Access Drive and right turn lane without posting a bond or providing a letter of credit. Further, the City, on behalf of itself and KDOT, hereby grants to Dillon and Dillon's employees, agents, and contractors a temporary license to access the 23rd Street Right of Way to perform the work contemplated by this Development Agreement. Such temporary license will expire when the work is complete.
4. **Request for Reimbursement.** Once the redevelopment of the Access Drive is completed in accordance with the approved Site Plan, Dillon shall submit to the City Engineer an itemized list requesting reimbursement for costs and expenses. The list shall be accompanied by copies of vouchers, invoices, payroll records, cancelled checks, or other documents necessary to substantiate Dillon's itemized costs and expenses related to the redevelopment of the Access Drive and right turn lane.
5. **Reimbursement.** Once the City Engineer has reviewed the documents submitted by Dillon to substantiate its itemized costs and expenses and finds that the amounts requested match the amounts set forth on the submitted invoices and other documents, the City Engineer will approve reimbursement to Dillon for the actual costs and expenses of the project to a maximum of \$103,513.00 and the City shall, within thirty (30) days of the City Engineer's approval of Dillon's costs and expenses, pay to Dillon such reimbursement. If the costs of the project exceed \$103,513.00, then Dillon agrees that it will be responsible for any costs and expenses that exceed \$103,513.00.
6. **The Parties' Covenants.** The City and Dillon hereby covenant and warrant as follows:
 - (a) Dillon agrees that it shall be responsible for all costs and expenses of repairing, replacing, restoring, cleaning, removing snow and ice, and otherwise maintaining the portion of the Access Drive located on the Dillon Property in good condition, capable of continued use for its intended purpose, ordinary wear and tear excepted. The City agrees that it shall be responsible for all costs and expenses of repairing, replacing, restoring,

cleaning, removing snow and ice, and otherwise maintaining all improvements located within the 23rd Street Right of Way in good condition, capable of continued use for their intended purpose, ordinary wear and tear excepted.

- (b) The City and Dillon agree not to erect or to allow any barriers, improvements, facilities, parking, or other obstructions that would unreasonably impair access to or use of the Access Drive. In the event that the City or KDOT must, in the course of doing work in the 23rd Street Right of Way, temporarily close the Access Drive for any reason, the City hereby agrees that any such closure will occur only outside of Dillon's business hours.

- 7. **Indemnification.** During the time that this Development Agreement is in effect, Dillon, and any successor, assign, or licensee thereof, agree 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 Dillon's use, construction or maintenance of the Access Drive, on account of any injury to persons or damage to property (provided, however, that the foregoing is not intended to constitute a waiver of the City's obligation to reimburse Dillon's costs and expenses as described in Sections 4 and 5 of this Development Agreement). This paragraph shall not apply to any injury or damage caused by the negligence of the City. Additionally, the City agrees not to waive any defenses that it might assert to any such claim.
- 8. **Term and Termination.** This Development Agreement shall expire, terminate, and automatically sunset one (1) year after the later of the following: (a) completion and approval of the redevelopment work in accordance with Section 3, above, or (b) payment of the reimbursement in accordance with Section 4, above. If, for any reason, Dillon is unable to redevelop the Access Drive in good and workmanlike fashion, in accordance with the Site Plan, or is otherwise unable to complete the redevelopment of the Access Drive, then the City shall have the right, after giving written notice of the defect and in the event Dillon fails to cure that defect within ninety (90) days of the date of the letter, to terminate this Agreement or, at its option, to complete the project as shown on the Site Plan. Upon the expiration or termination of this Development Agreement, either party shall, upon the request of the other, execute any reasonable document requested to evidence such expiration or termination.
- 9. **Binding Effect.** This Development Agreement shall, at all times, be binding upon the City and Dillon, and Dillon's successors and assigns as tenant of the Dillon Property pursuant to Dillon's lease.

10. **Severability.** If any section, sentence, clause, or phrase of this Development Agreement is found to be invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining provision of this Development Agreement.
11. **Governing Law.** This Development 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 parties have executed this Development Agreement with the full intent to bind themselves and their successors and assigns.

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 _____, 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:

{NAME}
{Title}

THE STATE OF _____)
)
THE COUNTY OF _____) SS:

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

My Appointment Expires: