

RECEPTION#: 20140048657, 08/28/2014 at 08:52:33 AM, 1 OF 11, R \$61.00 TD Pgs: 0  
 Angela Myers, Clerk & Recorder, Larimer County, CO

**SHARED PARKING AND ACCESS EASEMENT DEED  
 AND AGREEMENT**

**THIS SHARED PARKING AND ACCESS EASEMENT DEED AND AGREEMENT** ("Agreement") is made and entered into this 29 day of MAY, 2014 (the "Effective Date"), by and between **DILLON COMPANIES, INC.**, a Kansas corporation, ("Grantor"), and **THE CITY OF FORT COLLINS, COLORADO**, a municipal corporation, ("Grantee").

**Recitals**

A. Grantor is the owner of that certain parcel of real property located in Larimer County, Colorado, which is legally described on **Exhibit A**, consisting of 1 page, attached to and made a part of this Agreement (the "Property").

B. Grantee is in the process of constructing the Mason Corridor MAX/BRT Project (the "Project") for the purpose of establishing a public mass transit system serving a portion of the City of Fort Collins, Colorado. The Project will run, in part, adjacent to the Property.

C. Grantee has requested that Grantor grant a non-exclusive shared parking and access easement to that portion of the Property more fully described and depicted in the attached **Exhibit B**, consisting of 2 pages, attached to and made a part of this Agreement, to which reference is here made for all purposes (the "BRT Easement Tract").

D. Grantor has agreed to grant to Grantee a non-exclusive shared parking and access easement and related rights on the terms and conditions set forth in this Agreement.

**NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:**

That, for and in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree:

1. Grant of Easement – Consideration. For and in consideration of the covenants and agreements herein set forth, the sum of **Ten Dollars (\$10.00)**, and other good and valuable consideration, the receipt and adequacy of which Grantor acknowledges, the Grantor grants, sells and conveys to the Grantee, its successors and assigns, a perpetual, non-exclusive shared parking and access easement (the "Easement") on, over, and across the BRT Easement Tract, subject to the conditions and restrictions set forth below.

2. Purpose and Uses of Easement Area. Grantee may use the BRT Easement Tract for sixty (60) spaces to provide for public parking to accommodate users of Grantee's MAX Bus Rapid Transit (BRT) system and related facilities (the "Parking Spaces"), and for access to such parking by Grantee and the public, on, over, and across the BRT Easement Tract. This use is non-exclusive, and Grantor's patrons and invitees have a shared right for access and to use the Parking Spaces within the BRT Easement Tract. Persons using the Parking Spaces will not be charged a



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fee for such use. The area of the Parking Spaces provided for herein will be identified by appropriate signage to indicate the appropriate number and location of the Parking Spaces.

3. Additional Rights of Grantee. In addition to the non-exclusive right to use the BRT Easement Tract as set forth herein, Grantor further grants to Grantee:

(a) The right to install and maintain signage, at Grantee's expense, to designate and distinguish the Parking Spaces within the BRT Easement Tract as being available for users of the Project.

(b) The right to improve or maintain the Parking Spaces, at Grantee's expense, to current or future city standards, if at any time the condition of the Parking Spaces does not meet or exceed applicable city standards.

4. Grantor's Rights in Easement Area. Grantor reserves the right to use the BRT Easement Tract for access and parking as set forth in Paragraph 2 of this Agreement and for other purposes which will not interfere with Grantee's full enjoyment of the rights hereby granted. If Grantor or one of its affiliates is operating from the Property, Grantor will not permit the BRT Easement Tract to be designated for employee parking or a parking area for delivery vehicles. Grantor may revise the location of parking spaces and access lanes within the BRT Easement Tract as long as a minimum of sixty (60) spaces are maintained and reasonable vehicular access is maintained.

5. Maintenance of the BRT Easement Tract.

(a) Grantor or its lessee will maintain the surface of the BRT Easement Tract in a sanitary condition in compliance with any applicable weed, nuisance or other legal requirements.

(b) Grantor will not deposit, or permit or allow to be deposited, earth, rubbish, debris, or any other substance or material, whether combustible or noncombustible, on the BRT Easement Tract.

(c) Grantor or its lessee shall maintain the Parking Spaces including snow removal, lighting, and all repairs and maintenance, to the same extent that Grantor or its lessee maintain other parking areas on the Property.

6. Representations of Grantor. Grantor states that it is the lawful owner in fee simple of the Property; that it has good and lawful right and authority to grant, sell and convey the Property or any part thereof; and that it will warrant the title of the Property subject to those exceptions listed on **Exhibit C**, consisting of 1 page, attached to and made a part of this Agreement. Grantor represents and warrants that the beneficiary of any deed of trust, mortgage, lien or other obligation secured by an interest in the Property and of any tenant in possession has consented to and subordinated its interest in the Property to the Easement granted hereunder.

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7. **Liability.** For the purpose of this Agreement, the Grantee, its employees, contractors, and customers using the BRT Easement Tract are considered licensees within the meaning of Section 13-21-115, Colorado Revised Statutes, for purposes of establishing the Grantor's standard of care. Nothing contained in this Agreement is intended to impose a standard of care higher than that set forth in Section 13-21-115, as amended, or to be construed as a waiver of governmental immunity under Section 24-10-101, et.seq., Colorado Revised Statutes.

8. **Termination of Agreement.** As set forth above, the rights of Grantee created herein are intended to be perpetual, provided, however: (i) this Agreement may be terminated by an appropriate writing signed by Grantor and Grantee; and (ii) this Agreement (and Grantee's rights hereunder) shall terminate if Grantee abandons the Project and fails to replace the Project with a mass transit system that utilizes a station or access point adjacent to the Property.

9. **Additional Terms and Conditions.** Whenever used herein, the singular number includes the plural, the plural the singular; and the use of any gender is applicable to all genders. All of the covenants herein contained are binding upon and inure to the benefit of the parties hereto, their personal representatives, successors and assigns. Any deed, lease assignment, conveyance, or contract made in violation of this Agreement is void. This Agreement may be modified or the Shared Parking Easement terminated only by the written agreement of the parties.

**IN WITNESS WHEREOF**, the parties have set their hands and seals the day and year first written above.

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GRANTOR: DILLON COMPANIES, INC.  
a Kansas corporation

By: Russell J. Dispense  
          Russell J. Dispense  
Title: Vice President  
Date: 5-29-14

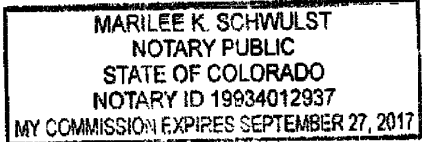


STATE OF COLORADO     )  
  ) ss  
COUNTY OF Denver )

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of May, 2014  
by Russell J. Dispense, as Vice President for Dillon Companies, Inc Grantor.  
A Kansas Corporation

Witness my hand and official seal.

My Commission expires: 9-27-17



Marilee K. Schwulst  
Notary Public

GRANTEE: THE CITY OF FORT COLLINS, COLORADO, a Municipal Corporation

By: \_\_\_\_\_  
          Darin A. Atteberry, City Manager  
Date: \_\_\_\_\_

ATTEST:  
\_\_\_\_\_  
City Clerk  
APPROVED AS TO FORM:  
\_\_\_\_\_  
Deputy City Attorney



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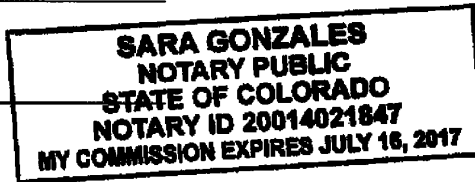
STATE OF COLORADO )  
 ) ss  
COUNTY OF LARIMER )

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of May, 2014, by Darin A. Atteberry as City Manager of the City of Fort Collins.

Witness my hand and official seal.

My Commission expires: 7-16-17

Sara Gonzalez  
Notary Public



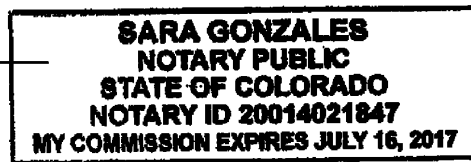
STATE OF COLORADO )  
 ) ss  
COUNTY OF LARIMER )

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of May, 2014, Wanda Nelson as City Clerk of the City of Fort Collins.

Witness my hand and official seal.

My Commission expires: 7-16-17

Sara Gonzalez  
Notary Public



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**EXHIBIT A**  
**Legal Description**  
**TO**  
**SHARED PARKING BASEMENT DEED**  
**WITH TERMS AND CONDITIONS**  
**BY AND BETWEEN**  
**THE CITY OF FORT COLLINS, COLORADO**  
**AND**  
**DILLON COMPANIES, INC., A KANSAS CORPORATION**

**A portion of the following described property:**

**ALL OF TRACTS 1,2 AND 4, OF K-MART PLAZA, AND ALL OF TRACT 2 OF THE EXTENSION  
OF K-MART PLAZA, CITY OF FORT COLLINS, LARIMER COUNTY, COLORADO;  
EXCEPT THAT PORTION DESCRIBED IN BOOK 1805 AT PAGE 210, LARIMER COUNTY  
RECORDS;  
AND EXCEPT THAT PORTION TAKEN AND CONDEMNED BY THE CITY OF FORT COLLINS,  
COLORADO, A MUNICIPAL CORPORATION, BY RULE AND ORDER RECORDED DECEMBER 27,  
1997 AT RECEPTION NO. 96092189.**

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**Exhibit B to Attachment 2  
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**DESCRIPTION OF A SHARED PARKING AND ACCESS EASEMENT LOCATED ON THE DILLON COMPANIES, INC. A KANSAS CORPORATION PROPERTY TO BE DEDICATED TO THE CITY OF FORT COLLINS**

A TRACT OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 7 NORTH, RANGE 69 WEST OF THE SIXTH P.M.; CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO; BEING A PORTION OF TRACT 2 OF K-MART PLAZA, AS SHOWN ON THE PLAT THEREOF RECORDED IN THE OFFICE OF THE LARIMER COUNTY CLERK AND RECORDER; AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 23, AND CONSIDERING THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 23 TO BEAR N89°26'43"W, SAID LINE BEING MONUMENTED ON BOTH ENDS BY A 8" ALUMINUM CAP, BASED UPON G.P.S. OBSERVATIONS AND THE CITY OF FORT COLLINS COORDINATE SYSTEM, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;

THENCE ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 23, N89°26'43"W, A DISTANCE OF 417.78 FEET;  
THENCE N00°33'17"E, A DISTANCE OF 50.00 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF DRAKE ROAD, SAID POINT BEING THE POINT OF BEGINNING;

THENCE ALONG SAID NORTH RIGHT-OF-WAY LINE, N89°26'43"W, A DISTANCE OF 285.05 FEET;  
THENCE N01°42'27"E, A DISTANCE OF 29.21 FEET;  
THENCE N88°53'38"W, A DISTANCE OF 7.26 FEET;  
THENCE N01°23'15"E, A DISTANCE OF 173.39 FEET;  
THENCE S88°36'45"E, A DISTANCE OF 37.80 FEET;  
THENCE S01°23'16"W, A DISTANCE OF 82.87 FEET;  
THENCE S89°13'38"E, A DISTANCE OF 252.61 FEET;  
THENCE S00°33'17"W, A DISTANCE OF 118.27 FEET TO THE POINT OF BEGINNING.

CONTAINING 87.825 SQUARE FEET (0.881 ACRES), MORE OR LESS, AND BEING SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD OR THAT NOW EXIST ON THE GROUND.

I HEREBY STATE THAT THE ABOVE DESCRIPTION WAS PREPARED BY ME AND IS TRUE AND CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, BELIEF, AND OPINION.



JOHN STEVEN VON NIEDE, COLORADO P.L.S. 31169  
FOR AND ON BEHALF OF THE CITY OF FORT COLLINS  
P.O. BOX 580, FORT COLLINS, CO 80622

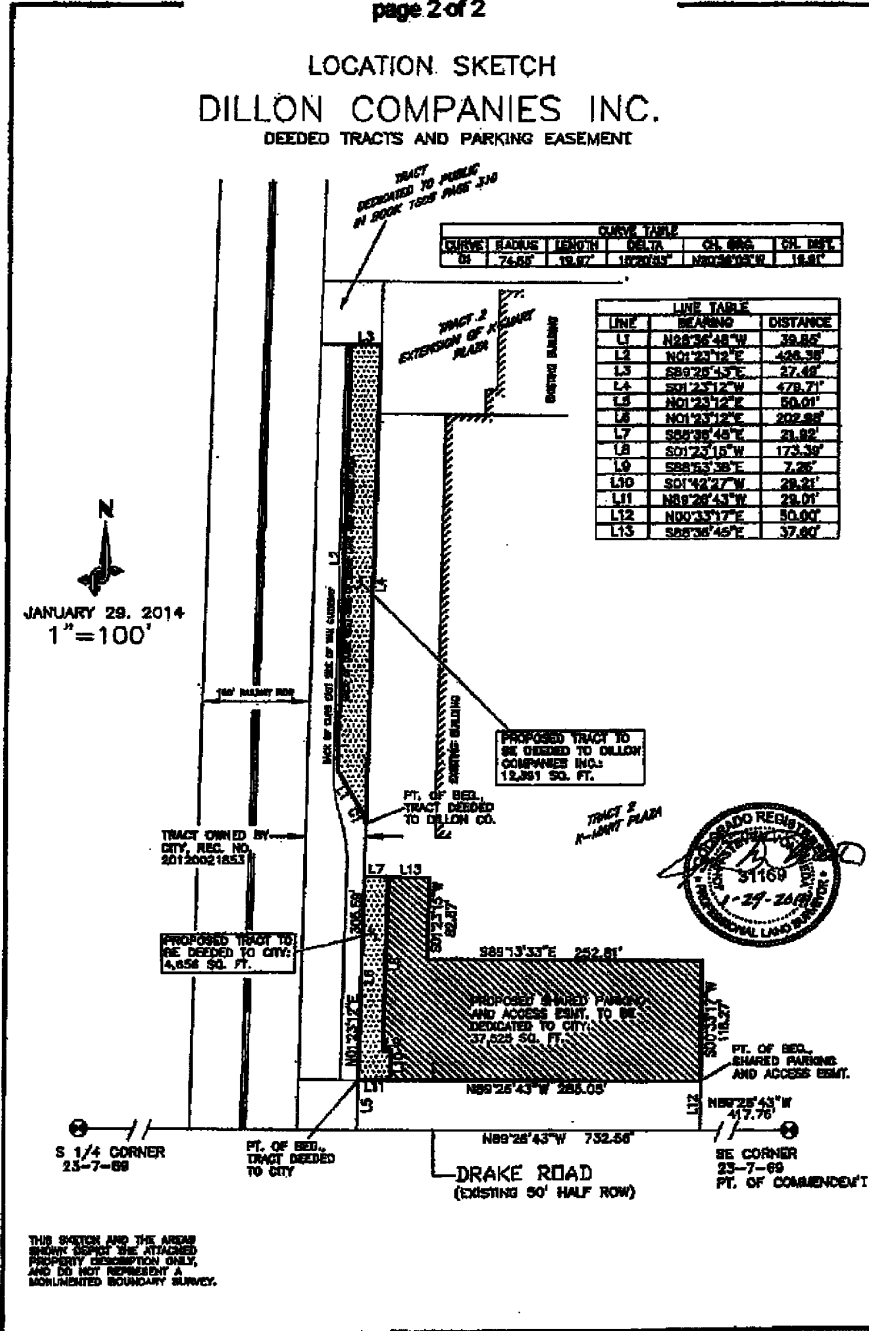
S:\Engineering\Departments\Survey\Projects\Transportation Services\BRT\RIGHT OF WAY\DRAKE TO PROSPECT ROW WORK\LEGALS\DILLON PARKING REV 1-29-2014.doc



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LOCATION SKETCH  
DILLON COMPANIES INC.  
DEEDED TRACTS AND PARKING EASEMENT



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### EXHIBIT C

Property Address: **FORT COLLINS CO 80525**

**SETBACKS, EASEMENTS FOR UTILITIES, TRAFFIC AND PARKING, AS SHOWN IN PLAT OF K-MART PLAZA, K-MART PLAZA EXTENSION AND PLAT OF UNIVERSITY SHOPPING CENTER.**

**RIGHT-OF-WAY FOR EXISTING UNDERGROUND UTILITIES UNDER THE WEST 40 FEET OF SUBJECT PROPERTY AS RESERVED BY VACATION ORDINANCE RECORDED JULY 20, 1965 IN BOOK 1297 AT PAGE 131.**

**EASEMENTS, RESTRICTIONS, OBLIGATIONS AND CONDITIONS CONTAINED IN AGREEMENTS BETWEEN THE FIRST NATIONAL BANK OF FORT COLLINS, TRUSTEE, THE FORT COLLINS DEVELOPMENT CO., INC., AND MONTGOMERY WARD & CO., INCORPORATED, DATED DECEMBER 3, 1962, AND RECORDED JANUARY 8, 1963, IN BOOK 1193 AT PAGE 376, AS AMENDED AND MODIFIED BY INSTRUMENT DATED AUGUST 4, 1970, AND RECORDED FEBRUARY 5, 1971, IN BOOK 1452 AT PAGE 479 AND AGREEMENT RECORDED AUGUST 9, 1974 IN BOOK 1612 AT PAGE 822, AND MODIFICATION RECORDED JULY 26, 1976 IN BOOK 1712 AT PAGE 353, AND MODIFICATION RECORDED NOVEMBER 1, 1977 IN BOOK 1813 AT PAGE 489.**

**EXISTING LEASES AND TENANCIES, IF ANY.**

**MEMORANDUM OF LEASE DATED DECEMBER 11, 1970, BETWEEN NAREDEL PROPERTIES OF COLORADO, A LIMITED PARTNERSHIP, LESSOR, AND S.S. KRESGE COMPANY, A MICHIGAN CORPORATION, LESSEE, RECORDED FEBRUARY 24, 1971, IN BOOK 1453 AT PAGE 865. FIRST MODIFICATION OF MEMORANDUM OF LEASE DATED FEBRUARY 19, 1971 AND RECORDED MARCH 17, 1971, IN BOOK 1455 AT PAGE 732. SECOND MODIFICATION OF LEASE DATED SEPTEMBER 17, 1971 AND RECORDED NOVEMBER 9, 1971, IN BOOK 1482 AT PAGE 707 AND RECORDED APRIL 22, 1974, IN BOOK 1597 AT PAGE 764.**

**STREETS AS DEDICATED IN INSTRUMENT RECORDED JUNE 11, 1974 IN BOOK 1605 AT PAGE 310.**

**MEMORANDUM OF LEASE RECORDED SEPTEMBER 30, 1971 IN BOOK 1478 AT PAGE 200, AND ASSIGNED IN BOOK 1488 AT PAGE 155 AND BOOK 1490 AT PAGE 256.**

**EASEMENT GRANTED TO THE CITY OF FORT COLLINS, COLORADO, A MUNICIPAL CORPORATION FOR CONSTRUCTING PUBLIC IMPROVEMENTS, BY INSTRUMENT RECORDED JULY 02, 1990, UNDER RECEPTION NO. 90028439.**

**RIGHT OF WAY EASEMENT AS GRANTED TO CITY OF FORT COLLINS IN INSTRUMENT RECORDED November 17, 1998, UNDER RECEPTION NO. 98100537.**

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**MEMORANDUM OF LEASE RECORDED DECEMBER 14, 1998 AT RECEPTION NO.  
98109551.**

**MEMORANDUM OF LEASE RECORDED APRIL 29, 1999 AT RECEPTION NO.  
99036805.**

**LANDLORD'S CONSENT RECORDED APRIL 29, 1999 AT RECEPTION NO. 99036806.**

**MEMORANDUM OF LEASE RECORDED APRIL 29, 1999 AT RECEPTION NO.  
99036809.**

**ENCROACHMENT OF FENCE AND ASPHALT ONTO ADJACENT PROPERTY OWNER TO THE  
WEST AS SET FORTH ON SURVEY NO. 9062.1 DATED JULY 27, 1999 BY JR  
ENGINEERING LTD.**

**TERMS, CONDITIONS AND PROVISIONS OF AGREEMENT FOR POSSESSION AND USE  
RECORDED June 12, 2012 AT RECEPTION NO. 20120038626.**

**FAILURE TO COMPLY WITH THE TERMS, CONDITIONS AND PROVISIONS OF SHARED  
PARKING AND ACCESS EASEMENT DEED AND AGREEMENT RECORDED  
\_\_\_\_\_, 2014 AT RECEPTION NO. \_\_\_\_\_.**