



MISC 2016083555



OCT 07 2016 15:07 P 25

Fee amount: 154.00
FB: 07-05674
COMP: YT

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
10/07/2016 15:07:41.00



2016083555

**AGREEMENT FOR SKYWAY CONSTRUCTION, OPERATION,
MAINTENANCE, AND EASEMENTS**
(Parking, Retail and Hotel)

THIS AGREEMENT, is made and entered into as of October 6, 2016, by and between **CAPITOL DISTRICT HOTEL, LLC**, a Nebraska limited liability company ("Hotel") and **CAPITOL DISTRICT PARKING, LLC**, a Nebraska limited liability company ("Parking"), and **THE CAPITOL DISTRICT, LLC**, a Nebraska limited liability company ("Retail"). The Hotel, Parking and Retail are individually referred to as a "Party" and collectively as the "Parties".

RECITALS:

- A. Hotel is the lawful owner of Lot 2, The Capitol District Replat 1, an Addition to the City of Omaha, Douglas County, Nebraska (the "Hotel Property");
07-05674
- B. Parking is the lawful owner of Lot 1, The Capitol District, an Addition to the City of Omaha, Douglas County, Nebraska (the "Parking Property");
07-05673
- C. Retail is the lawful owner of Lot 1, The Capitol District Replat 1, an Addition to the City of Omaha, Douglas County, Nebraska (the "Retail Property");
07-05674
- D. The Parties are involved in that certain development of a physically integrated multi-level, mixed-use project in downtown Omaha, Nebraska, commonly known as "The Capitol District";
- E. Hotel is constructing a 13-story full-service hotel on the Hotel Property (the "Hotel Structure"), Retail intends to construct a multi-level retail building on the Retail Property (the "Retail Structure"), and Parking is constructing a 8-story parking structure that will provide approximately 505 parking spaces to serve The Capitol District (the "Parking Structure");
- F. The Hotel Structure, Retail Structure and Parking Structure are collectively referred to as "The Capitol District Complex";

- G. Hotel, Retail and Parking desire to provide for the construction, operation and maintenance of a skyway connection between the Parking Property and the Retail Property and between the Retail Property and the Hotel Property, including, without limitation, pedestrian walkways, corridors, escalators, and stairways as shown on attached Exhibit "A" hereto (the "Skyway System").
- H. Parking will construct the skyway bridge located between the building lines of the Parking Property and the Retail Property and between the Retail Property and the Hotel Property and certain structures and facilities appurtenant thereto as shown on attached Exhibit "A" (the "Skyway Bridge").
- I. Hotel will be the owner of that part of the Skyway System which consists of the pedestrian walkway within the Hotel Structure as shown on attached Exhibit "A" and any structural supports and utility facilities for the Skyway System and Skyway Bridge which are located within the Hotel Structure (the "Hotel Skyway");
- J. Retail will be the owner of that part of the Skyway System which consists of the pedestrian walkway in the Retail Structure as shown on attached Exhibit "A" and any structural supports for the Skyway System and Skyway Bridge which are located within the Retail Structure ("Retail Skyway");
- K. Parking will be the owner of that part of the Skyway System which consists of the pedestrian walkway in the Parking Structure as shown on attached Exhibit "A" and any structural supports for the Skyway System and Skyway Bridge which are located within the Parking Structure ("Parking Skyway") and will also own the Skyway Bridge.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I

CONSTRUCTION

- 1.1 Parking has engaged or will engage Leo A. Daly Company and/or TACKarchitects (the "Architect"), to prepare plans and specifications for construction of the Skyway Bridge and associated structural supports and utility facilities for the Skyway Bridge ("Construction Documents"). As soon as practicable, Parking will cause the Skyway Bridge to be constructed in accordance with the Construction Documents.
- 1.2 The entire cost of the design and construction of the Skyway Bridge, including any structural support and utility connections located within the Skyway Bridge, will be shared by the Parties pursuant to a separate agreement; provided, however, Hotel shall reimburse Parking and/or directly pay to the contractor up to One Million (\$1,000,000)

Dollars for its share of the cost to design and construct the Skyway System and Skyway Bridge. The entire costs include, but are not limited to, design and engineering costs, labor, and materials, costs to connect the Skyway Bridge between the Parking Structure, the Retail Structure and the Hotel Structure.

- 1.3 In connection with the construction of the Parking Structure, Parking, at Parking's sole expense, will construct and install within the Parking Structure adequate electrical, heating, cooling, ventilation, roof drainage, sprinkler and life safety equipment, systems and facilities to serve the Skyway Bridge, with connections terminating at an accessible location in the Parking Structure immediately adjacent to the Skyway Bridge, and necessary structural support in the Parking Structure to accommodate the Skyway Bridge. In connection with the construction of the Retail Structure, at Retail's sole expense, Retail will construct that part of the Skyway System, and construct any additional structural support and utility facilities in the Retail Structure as may be necessary to support and serve the Skyway Bridge, all according to plans and specifications prepared by the Architect. In connection with the construction of the Hotel Structure, at Hotel's sole expense, Hotel will construct that part of the Skyway System, and construct any additional structural support and utility facilities in the Hotel Structure as may be necessary to support and serve the Skyway Bridge, all according to plans and specifications prepared by the Architect. Subject to events outside Parking's reasonable control, said construction will be substantially completed to be open to pedestrian traffic by such date that will allow Parking to complete the Skyway Bridge in advance of the date Hotel and Retail are each ready to obtain a Certificate of Occupancy from the City of Omaha, Nebraska.
- 1.4 At Parking's sole expense, Parking will restore the interior of the Hotel Structure and Retail Structure to the extent disturbed by reason of the construction of the Skyway Bridge. Upon substantial completion of the Skyway Bridge, title to the Skyway Bridge shall vest entirely with Parking.
- 1.5 Parking hereby agrees to indemnify, defend, hold harmless Hotel and Retail from and against any claims, damages, or expenses arising out of or related to the construction or maintenance of the Skyway System and Skyway Bridge, except to the extent any such claim, damage, or expense is caused by the negligent or willful actions of either Retail and/or Hotel, or any of their respective employees, agents, or contractors.
- 1.6 Within a reasonable time after completion of the Skyway Bridge, Parking shall deliver to the Parties "as-built" plans and specifications of the Skyway Bridge and related structural supports.
- 1.7 Parking warrants and represents to Retail and Hotel that Parking will use all commercially reasonable efforts to obtain all licenses and permits necessary to construct and maintain the Skyway Bridge.

ARTICLE II

OPERATION AND MAINTENANCE

- 2.1 Each Party acknowledges that the Skyway Bridge will be operated and maintained as set forth in this Agreement. The Skyway Bridge shall be Operated and Maintained in first-class condition and repair, in compliance with all applicable legal and insurance requirements, and shall be Operated and Maintained in a first-class manner, consistent with the highest level of standards maintained in other skyways in the Omaha Metropolitan area.
- 2.2 As used in this Agreement, to "Operate and Maintain" a specific segment of the Skyway System means to repair, maintain, clean, operate, replace, remove, reconstruct and restore such segment, including without limitation to provide janitorial services and supplies, heating, lighting, cooling, ventilation, drainage, glass cleaning, repair and replacement of windows, doors, hardware, signs, carpeting, wall covering, ceilings, and fixtures, and capital improvements, procure casualty and liability insurance, and pay real estate taxes and other customary taxes if the Skyway Bridge is separately assessed for such taxes, permit fees, and any bonding fees. From and after substantial completion of the Skyway Bridge, Hotel will Operate and Maintain the Skyway Bridge, the cost of which will be borne by the Hotel, Retail and Parking as provided in Section 2.3. If Hotel fails to Operate and Maintain the Skyway Bridge as required under this Agreement, Parking or Retail may exercise its rights under Article VI to cure such default. The costs of curing any such failure that are chargeable to Hotel pursuant to Section 6.1 shall be includable as Skyway Bridge Costs, as defined herein, except to the extent such costs exceed the amount that would have been includable as Skyway Bridge Costs if Hotel had not failed to Operate and Maintain the Skyway Bridge as required herein.
- 2.3 Retail will pay to Hotel twenty-five percent (25%) of the costs incurred by Hotel to Operate and Maintain the Skyway Bridge, and Parking will pay to Hotel twenty-five percent (25%) of the costs incurred by Hotel to Operate and Maintain the Skyway Bridge. Parking and Retail will pay their respective share of such cost, as follows:
 - (a) After the completion of the Skyway Bridge, and not later than November 1 of each calendar year thereafter, subject to events beyond Hotel's reasonable control, Hotel shall submit to Retail and Parking an estimated budget ("Budget") setting out in detail the estimated cost to Operate and Maintain the Skyway Bridge for such calendar year (the "Skyway Bridge Costs"). The Budget shall identify separate cost estimates for any significant component of such costs, including the following:
 - (1) Repairs and alterations.
 - (2) Premium for commercial general liability insurance and property insurance covering the Skyway Bridge.
 - (3) Rental or purchase of equipment and supplies.

- (4) Utilities.
- (5) Supervisory personnel.
- (6) Trade-in allowance applicable to items purchased for skyway area purposes.
- (7) Janitorial services.
- (8) A reasonable administration fee.

The Parties agree that Skyway Bridge Costs shall not include any costs covered by any warranty in Parking's Design/Build Construction Contract (the "Design/Build Agreement") for construction of the Skyway Bridge, as defined therein, with JE Dunn Construction Co. (the "Design/Builder"). Such warranty will provide that if, within one (1) year after the date of substantial completion of the Skyway Bridge, or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty contained in the specifications, any of the work is found to be defective due to faulty design, workmanship or materials or not in accordance with requirements of the Design/Build Agreement and if within such period any Party notifies Design/Builder thereof in writing, then Parking shall cause Design/Builder to correct the same at the expense of Design/Builder after receipt of such notice in accordance with the requirements of the Design/Build Agreement. Parking shall notify Design/Builder promptly after discovery of defective work. Eleven (11) months after the date of substantial completion, representatives of the Parties hereto and the Design/Builder shall inspect the Skyway Bridge, jointly determine if any work does not conform to the requirements of the Design/Build Agreement, and Parking shall cause Design/Builder to promptly correct such non-conforming work.

If either Party disapproves the proposed Budget, it shall notify Hotel in writing stating the specific items, amounts, or basis for disapproval within thirty (30) days after receipt of the Budget. The Budget shall be deemed approved if written notice of disapproval is not delivered to Hotel within such thirty (30) day period. The Parties shall consult with each other to establish a final approved Budget. If the Budget is not approved by the beginning of any calendar year, any Party may submit the disagreement to Arbitration, as defined herein. Hotel shall operate and maintain the Skyway Bridge in accordance with the Budget to the extent not disapproved by Parking or Retail, and, pending resolution pursuant to Arbitration, otherwise in accordance with Hotel's reasonable business judgment with respect to any disapproved element thereof. Any actions so taken by Hotel pending resolution pursuant to Arbitration shall be deemed included in the approved Budget for such calendar year.

Each Party's obligation to pay Skyway Bridge Costs shall commence upon the completion of the Skyway Bridge and the issuance of a Certificate of Occupancy for the Skyway Bridge by the City of Omaha, Nebraska.

Parking and Retail shall pay to Hotel on or before the first day of each month an amount

equal to one-twelfth (1/12) of their respective share of such budgeted Skyway Bridge Costs for such calendar year. Promptly after the close of such calendar year, Hotel will submit to Parking and Retail notice in the form of an itemized statement of the actual Skyway Bridge Costs incurred by Hotel during such calendar year, and within thirty (30) days after such notice a cash adjustment shall be made between the Parties to the end that Parking and Retail will pay to Hotel the amount which each Party is required to pay for such calendar year under the provisions of this Section.

Any Skyway Bridge Costs that exceed the budgeted amount by more than Ten Thousand and No/100ths Dollars (\$10,000) shall be considered "Major Unbudgeted Expenditure". Except in an emergency, Hotel will not undertake any Major Unbudgeted Expenditure without the consent of the other Parties, which consent will not be unreasonably withheld or delayed, and will be deemed given except to the extent the other Parties make specific written objection thereto within ten (10) days after request. If the Major Unbudgeted Expenditure is not approved within ten (10) days after request for consent, either party may submit the disagreement to Arbitration. Each Party shall pay its respective share of the Major Unbudgeted Expenditure to Hotel within ten (10) days after submission of a statement by Hotel, together with evidence reasonably acceptable to the other Parties of the actual cost incurred by Hotel for such Major Unbudgeted Expenditure.

Hotel shall keep accurate and complete books and records with respect to the Skyway Bridge Costs. Within three (3) years after receipt of any itemized attachment, the other Parties shall have the right to inspect, audit, and/or copy such books and records to the extent pertaining to such costs paid or payable by Hotel in the calendar year covered by such statement. Any Party desiring to inspect, audit, and/or copy such books and records shall notify Hotel of its intent to inspect, audit, and/or copy at least ten (10) days prior to the date it desires to make such inspection, audit, or copying. In the event such audit shall disclose any error in the determination of such costs, an appropriate adjustment shall be made by Hotel. The reasonable cost of any inspection, audit or copying shall be paid by the Party requesting the inspection, audit or copying unless such Party shall be entitled a refund in excess of five percent (5%) of the amount calculated by Hotel as such Party's allocable share for the applicable calendar year, in which case Hotel shall pay the cost of such audit.

- 2.4 Subject to the conditions of this Section 2.4 and Section 4.1, in the event of damage to or destruction of all or part of the Skyway Bridge, Parking will promptly restore the same to substantially the same condition as existed immediately prior to such damage or destruction. If the Hotel Structure, Parking Structure or Retail Structure is also damaged or destroyed to such extent that restoration of the Skyway Bridge or access to the Skyway Bridge through such property is not feasible and the easement granted by this Agreement with respect to the Skyway Bridge has not then terminated, Parking may defer such restoration until such restoration and access is again feasible, subject to Section 4.1. During any such period that restoration is deferred, Parking agrees to take such actions as may be reasonably necessary to protect the Skyway Bridge against preventable deterioration from the elements and any costs incurred by Parking which are not paid for from insurance proceeds shall be a Skyway Bridge Cost. Parking shall

reconstruct the Skyway Bridge in its immediately prior location, unless within a reasonable amount of time prior to Parking's commencement of reconstruction of the Skyway Bridge, Hotel and Retail delivers written notice to Parking identifying a revised location (the "Revised Location") for the Skyway Bridge. Upon the conditions that (a) the Revised Location is structurally feasible or can be made so; (b) Hotel and/or Retail shall pay for all costs in excess of the costs that would have been incurred in reconstructing the Skyway Bridge in its immediately prior location; and (c) Parking obtains all required permits from all applicable governmental authorities authorizing construction of the Skyway Bridge in the Revised Location, then Parking shall construct the Skyway Bridge in the Revised Location. The plans and specifications for reconstruction of the Skyway Bridge in the Revised Location shall be created and subject to approval in accordance with the Construction Documents, which will be subject to approval by the Parties in their reasonable good faith discretion. The Construction Documents shall not be inconsistent with any applicable state or local laws and regulations. Any Construction Documents as submitted initially or resubmitted after revisions have been made shall be deemed approved except to the extent Parties make written request for changes, with a detailed statement of the basis for the request for changes, within thirty (30) days after submission, in the case of the initial submission, or ten (10) days after submission, in the case of the any resubmission. The Parties agree to attend weekly design sessions scheduled by Parking, after consultation with a licensed architect approved by the Parties hereto, to review and approve the Construction Documents. The provisions of this Section relating to approval, rejection, and resubmission of corrected Construction Documents will continue to apply until the Construction Documents have been approved by the Parties. The net proceeds (insurance proceeds, less the costs of collecting such proceeds) of any property insurance maintained pursuant to this Agreement shall be deposited with a title and escrow company and dispersed in accordance with a commercially reasonable disbursing agreement among the title and escrow company and the Parties hereto. Parking will be entitled to apply the net proceeds in payment of all costs of preservation and restoration, including, without limitation, architectural, engineering and legal fees. The cost of restoration of the Skyway Bridge (net of any proceeds of insurance relating to the Skyway Bridge applied thereto after deducting the cost of collecting such proceeds and preservation of the Skyway Bridge), shall be borne by the Parties in accordance with each of their respective share in the manner provided under Section 2.3. The construction documents for restoration of the Skyway Bridge shall be submitted for approval in the manner described in this Section 2.4. In the event the Skyway Bridge is not restored prior to termination of the easements granted in Article III as set forth in this Section 2.4, Parking shall deliver the proceeds of any insurance maintained hereunder with respect to the Skyway Bridge less the following amounts:

- (a) The out-of-pocket cost of collecting such proceeds;
- (b) The cost of preserving the Skyway Bridge, if applicable; and
- (c) The cost of the removal and disposal of the Skyway Bridge, including any relating supports, caissons, footages and foundation.

Twenty-five percent (25%) of the remaining proceeds shall be delivered to Retail and fifty percent (50%) to Hotel within sixty (60) days following completion of the removal and disposal of the Skyway Bridge. Parking shall retain the balance of the insurance proceeds after disbursing the remaining proceeds to Retail and Hotel.

- 2.5 The Skyway System and the easements granted in Section 3.1 shall remain open for access and use 24 hours a day, seven days a week.
- 2.6 The principal purpose of the Skyway Bridge and the easements granted in Article III is to provide pedestrian access between the Hotel Structure, Retail Structure and Parking Structure and The Capitol District generally. The Skyway Bridge shall not be operated or used for the purpose of advertising any names, products or business or for any purpose other than pedestrian access, except for necessary or appropriate directional signs and identifying signs, as provided in Article VII, except with the consent of all of the Parties hereto in their absolute discretion. Hotel shall endeavor, to the extent permitted by law, to prevent solicitations, demonstrations, picketing, sales, and distributions of pamphlets or similar materials from taking place within the Skyway Bridge.

ARTICLE III

EASEMENTS

- 3.1 The parties hereby grant the following non-exclusive, private easements, subject to the restrictions set forth in Sections 2.6, and 3.1(e) of this Agreement.
 - (a) Each Party hereby grants for the benefit of the other Parties a non-exclusive easement over the portions of the Skyway System as is reasonably necessary for the construction, support, maintenance, repair and removal of the Skyway Bridge including all necessary connections of the Skyway Bridge between the Hotel Structure, Retail Structure and Parking Structure.
 - (b) Each Party hereby grants for the benefit of the other Parties a non-exclusive easement within the Skyway System for the purposes of permitting pedestrian access and passage through and between the Parking Structure, Hotel Structure and Retail Structure as provided in this Agreement.
 - (c) Nothing contained in this Agreement will prevent the temporary closing of the Skyway Bridge or such corridor or passageway located within the Skyway System, when necessary, to permit repairs and maintenance of the Skyway Bridge or Skyway System, to prevent the public from acquiring prescriptive or other rights in the Skyway Bridge or Skyway System, to permit repairs, replacements, maintenance, alterations or additions to the respective buildings including relocation of interior passageways, to comply with governmental orders, to respond to any emergency threatening pedestrian or property safety, or

to prevent loitering, picketing, demonstrations, distribution of pamphlets or other similar materials, public disturbances and similar occurrences incompatible with operation of the Hotel, Retail and Parking.

- (d) The Skyway System and the respective easements will be used by the grantee of the easements described herein as, and only as, a pedestrian walkway for the passage through and between the Parking Structure, Hotel Structure and Retail Structures, but specifically excluding any rights to loiter, solicit, demonstrate, picket, sell, or distribute pamphlets or other similar materials.
- (e) All easements granted in Sections 3.1 are intended to be and shall be private easements appurtenant to the particular benefited parcel, do not constitute a dedication to the public or for any public purpose whatsoever, and shall be held and enjoyed exclusively as private property rights and interests. In the event any of the parcels comprising the Parking Property, Retail Property or Hotel Property are subdivided in any manner, the easements benefiting and burdening such parcels as described herein shall continue to benefit and burden each portion of such subdivided parcel. The grantees of such easements shall have no right to grant, transfer, assign, or in any way convey any interest in such easements, except as set forth in Section 3.5.

- 3.2 Each Party reserves the right from time to time, in that Party's sole discretion and without the consent of any other party, to relocate, add to, subtract from, alter and rearrange the Skyway System within its respective building, so long as the resulting configuration provides for reasonably convenient and unhindered access as described in this Agreement.
- 3.3 The exercise of any easement right under this Agreement by one Party for the construction, support, maintenance, repair or removal of the Skyway Bridge upon the property of another Party or Parties will be limited to the extent necessary for such construction, repair, maintenance or removal, will be during such times and in such fashion as to result in the least amount of interference with the owner's and occupants' business and property as is reasonably practicable, and will be done only with prior written notice (or such other notice as may be reasonable in the event of an emergency).
- 3.4 Any mortgage holder or ground lessor of the Parking Property, Hotel Property or Retail Property shall subject to and subordinate to this Skyway Agreement; provided, however, that this Skyway Agreement shall not be amended or modified in any manner without consent of such mortgage holder or ground lessor, which consent shall not be unreasonably withheld or delayed.
- 3.5 The Parties shall have the right to make subsequent grants of such easement rights to other owners of property located within The Capitol District; subject to the terms, conditions and limitations set forth in this Agreement.

ARTICLE IV

TERMINATION OF EASEMENTS

- 4.1 The easements granted under Article III will terminate at the election of all of the Parties hereto upon ten (10) days written notice to the other upon five (5) years after destruction or demolition of the portion of the Hotel Structure, Retail Structure or Parking Structure to which the Skyway Bridge is connected unless within such five (5) year period such restoration or reconstruction of such building is commenced (unless the failure to commence such restoration or reconstruction is caused by a default by any Party hereunder) or construction is commenced on another building that allows for reconnection of the Skyway Bridge as required in Section 4.3.
- 4.2 Upon any termination of the easements for the Skyway Bridge, Parking shall remove the Skyway Bridge (including any related supports, caissons, footings and foundations) and repair and restore any part of any building affected by said removal. The cost of such removal (net of any proceeds of insurance applied thereto after deducting the costs described in Section 2.4(a) through (c)) shall be borne by the Parties in the manner provided under Section 2.3, subject to Section 4.3.
- 4.3 Retail and Hotel reserves the right from time to time, in its sole discretion and without the consent of any other Party, to demolish its respective structure or any other building on or hereafter located on the Retail Property or the Hotel Property, respectively. If either Party exercises such right, then the exercising Party shall be responsible for the cost of removal of the Skyway Bridge as described in Section 4.2 (net of any proceeds of insurance applied thereto after deducting the costs described in Section 2.4(a) through 2.4(c)). Nothing contained in this Agreement will be deemed to require the restoration or reconstruction of any building; provided, however, if Hotel or Retail restores or reconstructs the Hotel Structure or Retail Structure, respectively, or any other building constructed thereafter, then such restoration or reconstruction shall be accomplished in a manner that allows for the reconnection of the Skyway Bridge to such building, subject to Section 2.4.
- 4.4 Upon termination of any of the easements created by this Agreement, this Agreement will (to that extent) terminate and all then benefited parties will execute and deliver a document in recordable form evidencing such termination of this Agreement.

ARTICLE V

INSURANCE

- 5.1 Parking shall obtain and cause to be kept in place while this Agreement is in effect commercial general liability insurance in amounts commonly carried by prudent property

owners of first-class buildings in downtown Omaha, but not less than Five Million and No/100 Dollars (\$5,000,000) per occurrence for personal injury or death and Five Hundred Thousand and No/100 Dollars (\$500,000) for property damage, insuring as named insureds, Retail and Hotel from time-to-time and the holders of any mortgages or other parties notice of which is given to Parking, against all claims or actions for injury or death or property damage occurring in, on or about the Skyway Bridge, that part of the Skyway System located within the Parking Structure or arising out of or related to the repair, maintenance, cleaning, operation, replacement, removal, reconstruction or restoration of the Skyway Bridge; and (b) insurance on the Skyway Bridge covering those risks covered by an "All-Risk" policy of property insurance, with coverage for the full replacement cost of the Skyway Bridge as determined annually by the property insurer, the proceeds of which shall be applied to repair, reconstruction and restoration of the Skyway Bridge and Skyway Systems, with Hotel and Retail named as insured parties solely for the purpose of its interest in unused insurance proceeds under the last sentence of Section 2.4, as an additional named insured, as their interests may appear. The cost of the insurance provided under this Section shall be borne by the Parties in the manner provided under Section 2.3. Such insurance shall be primary insurance and not contributory with any other insurance maintained by Parking.

- 5.2 Hotel shall obtain and cause to be kept in place while this Agreement is in effect commercial general liability insurance in amounts commonly carried by prudent property owners of first-class buildings in downtown Omaha, but not less than Five Million and No/100 Dollars (\$5,000,000) per occurrence for personal injury or death and Five Hundred Thousand and No/100 Dollars (\$500,000) for property damage, insuring as named insureds, Retail and Parking from time-to-time and the holders of any mortgages or other parties notice of which is given to Hotel, against all claims or actions for injury or death or property damage occurring in, on or about that part of the Skyway System that is located within the Hotel Structure. Such insurance shall be primary insurance and not contributory with any other insurance maintained by Hotel.
- 5.3 Retail shall obtain and cause to be kept in place while this Agreement is in effect (a) commercial general liability insurance in amounts commonly carried by prudent property owners of first-class buildings in downtown Omaha, but not less than Five Million and No/100 Dollars (\$5,000,000) per occurrence for personal injury or death and Five Hundred Thousand and No/100 Dollars (\$500,000) for property damage, insuring, as named insureds, Parking and Hotel from time-to-time, and the holders of any mortgages or other parties notice of which is given to Retail, against all claims or actions for injury or death or property damage occurring in, on or about the Skyway System that is located within the Retail Structure. Such insurance shall be primary and not contributory with any other insurance maintained by Retail.
- 5.4 All insurance provided under this Agreement will be issued by financially responsible insurance companies licensed to do business in Nebraska and shall be rated by Best's Insurance Reports not less than A-IX. The companies shall be subject to the approval of all parties to this Agreement, such approval not to be unreasonably withheld or delayed. Each policy will provide for at least thirty (30) days written notice to the parties prior to

cancellation, non-renewal or material modification. Certificate evidence of each policy shall be deposited with the other Parties prior to opening of the Skyway Bridge and, for renewals, not less than thirty (30) days prior to the expiration of the term of the expiring policy.

- 5.5 Each Party, on behalf of itself and anyone claiming through it, by way of subrogation or otherwise, hereby releases the other Party hereto from and against any and all liability or responsibility which the released Party would otherwise have for loss or damage to the releasing Party's property and improvements within the Skyway System (including City streets and sidewalks between said properties), to the extent such property and improvements are covered by insurance maintained by the releasing Party or coverable by insurance required to be maintained by the releasing Party hereunder, even if such loss or damage will have been caused by the fault or negligence of a released party or anyone for whom such Party may be legally responsible. In the event this Agreement terminates in its entirety, this Section will automatically terminate with respect to loss or damage to property and improvements thereafter occurring. In the event that all easements granted under this Agreement terminate with respect to any of the properties, so that this Agreement terminates with respect to said property, all releases under this Section between the owner of said property, and anyone claiming through it by way of subrogation or otherwise, and the owners of the properties then remaining subject to this Agreement, and anyone claiming through them by way of subrogation or otherwise, will terminate and be of no further force and effect with respect to loss or damage to property and improvements thereafter occurring.

ARTICLE VI

DEFAULT

- 6.1 If any Party fails to perform its monetary obligations according to the terms and conditions of this Agreement, a non-defaulting Party may, after fifteen (15) days' written notice to the defaulting Party and the failure of the defaulting Party to cure within such time period, cure such default. If any Party fails to perform any other obligation according to the terms and conditions of this Agreement, a non-defaulting Party may, immediately in the case of emergencies and after thirty (30) days written notice to the defaulting Party in all other cases, and the failure of the defaulting Party to cure within such time period, cure such default, and the Party curing such default shall have access to the Skyway Bridge and Skyway System to the extent reasonably necessary to cure such default. Reimbursement for actual out-of-pocket costs incurred by the non-defaulting Party in curing a monetary or non-monetary default, including an administrative fee of fifteen percent (15%) of such costs, will be due and payable immediately by the defaulting Party with interest thereon at the lower rate of either six percent (6%) per annum in excess of the then-current reference rate as publicly announced from time to time by First National Bank of Omaha or its successor or the highest rate allowed by applicable law. If First National Bank of Omaha or its successor should cease to announce a reference rate, a comparable rate will be selected by the non-defaulting Party in substitution therefore. The non-defaulting Party, at its option, may

also exercise any other remedy available at law or in equity; provided, however, in no event shall any Party have the right to terminate this Agreement. In addition to any other remedy hereunder, the non-defaulting Party will be entitled to reasonable attorney's fees and costs.

ARTICLE VII

SIGNAGE

- 7.1 No signs will be installed within the Skyway Bridge without the mutual consent of the Parties hereto. The installation of all signs also shall be subject to Section 2.6. Each Party will provide signs in its respective Skyway System segment indicating the location of the Skyway System and Parking Structure and means of public access in its respective building to and from the Skyway System and Parking Structure, which signs will be consistent with the criteria established by the Parties hereto as such criteria are generally observed in first class buildings connected to the Skyway System. Nothing herein will prohibit any Party from installing or permitting other signage in its respective properties.

ARTICLE VIII

ESTOPPEL CERTIFICATE

- 8.1 Each Party hereto agrees to execute and deliver within ten (10) days after written request a statement certifying that to the best of such Party's actual knowledge: (a) this Agreement is in full force and effect, represents the entire agreement between the Parties as to the subject matter hereof, and has not been assigned by the Party signing the estoppel, modified, supplemented or amended in any way, or if there has been any assignment, modification, supplement or amendment, identifying the same; and (b) to such Party's actual knowledge, there is no default under this Agreement by any of the Parties hereto, or if there is any default, identifying the same.

ARTICLE IX

MISCELLANEOUS

- 9.1 If at any time it is necessary or permissible to give any notice under the terms of this Agreement to any party hereto, such notice will be deemed to have been given or served when presented personally or two (2) days after such notice has been deposited in the United States mail, registered or certified, postage prepaid, addressed as follows:

If to Parking: Capital District Parking, LLC
Attn: Michael T. Moylan
1111 N. 13th Street, Suite 101
Omaha, NE 68102

If to Hotel: Capital District Hotel, LLC
Attn: Michael T. Moylan
1111 N. 13th Street, Suite 101
Omaha, NE 68102

If to Retail: The Capital District, LLC
Attn: Michael T. Moylan
1111 N. 13th Street, Suite 101
Omaha, NE 68102

The Parties hereto may change the address to which notice is to be given to it by giving written notice thereof to the other Parties hereto not less than fifteen (15) days prior to the effective date of change.

- 9.2 The provisions of this Agreement will be binding upon and will inure to the benefit of the Parties hereto and their respective heirs, administrators, representatives, successors and assigns; provided, however, the provisions of this Agreement inuring to the benefit of Parking, as owner of the Parking Property, shall benefit the Parking Property, the provisions of this Agreement inuring to the benefit of Hotel, as owner of the Hotel, shall benefit the Hotel Property, the provisions of this Agreement inuring to the benefit of Retail, as owner of the Retail Property, shall benefit the Retail Property. The provisions of this Agreement shall not be amended or altered in any manner without the prior written consent of all Parties hereto and their respective mortgagees.
- 9.3 The easements herein granted and the agreements, covenants, restrictions and releases herein contained will be easements and covenants beneficial and appurtenant to each of the respective properties and shall run with the land.
- 9.4 Each of the Parties hereto will cooperate with the others in obtaining all governmental approvals for the construction, maintenance, operation, relocation and restoration of the Skyway System. The Parties hereto will execute such further documents as will be reasonably required to perfect or place of record any of the matters herein agreed to or any of the easements herein granted.
- 9.5 The laws of the State of Nebraska will govern the validity, performance and enforcement of this Agreement.
- 9.6 The captions of the articles and sections of this Agreement are inserted only for convenience and do not define, limit or construe the contents of such articles or sections.
- 9.7 Except as otherwise expressly provided in this Agreement, this Agreement is the entire agreement between the Parties hereto with respect to the subject matter hereof.

- 9.8 Any controversy or claim arising out of or relating to this Agreement which is expressly provided to be resolved or determined by arbitration, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules ("Arbitration"), and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.
- 9.9 For convenience of the Parties, any number of counterparts hereof may be executed and each such executed counterpart shall be deemed an original, but all such counterparts together shall constitute one and the same agreement.
- 9.10 This Agreement shall be indexed in the Office of the Douglas County Register of Deeds against the Parking Property, the Retail Property and the Hotel Property.

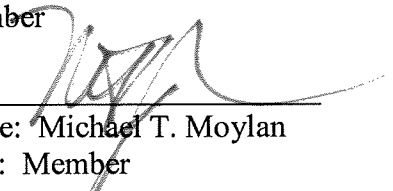
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above.

CAPITOL DISTRICT HOTEL, LLC, a Nebraska limited liability company

By: Capitol District Hotel Manager, LLC, a Nebraska limited liability company, its Managing Member

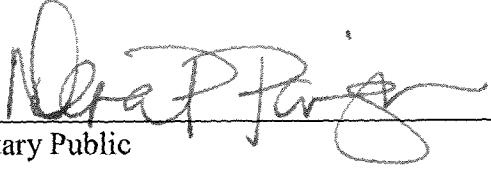
By: The Capitol District, LLC, a Nebraska limited liability company, its Sole Member

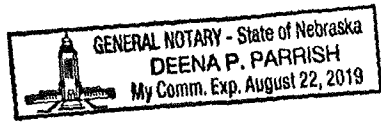
By: MTM Capitol District, LLC, a Nebraska limited liability company, its Administrative Member

By: 
 Name: Michael T. Moylan
 Title: Member

STATE OF NEBRASKA)
) ss.
 COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 17th day of October, 2016, by Michael T. Moylan, Member of MTM Capitol District, LLC, a Nebraska limited liability company, the administrative member of The Capitol District, LLC, a Nebraska limited liability company, the sole member of Capitol District Hotel Manager, LLC, a Nebraska limited liability company, the managing member of Capitol District Hotel, LLC, a Nebraska limited liability company, on behalf of the company.

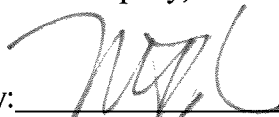

Notary Public



CAPITOL DISTRICT PARKING, LLC, a
Nebraska limited liability company


By: The Capitol District, LLC, a
Nebraska limited liability company,
its Sole Member

By: MTM Capitol District, LLC,
a Nebraska limited liability
company, its Administrative Member

By: 
Name: Michael T. Moylan
Title: Member

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)


The foregoing instrument was acknowledged before me this 12th day of October, 2016, by Michael T. Moylan, Member of MTM Capitol District, LLC, a Nebraska limited liability company, the administrative member of The Capitol District, LLC, a Nebraska limited liability company, the sole member of Capitol District Parking, LLC, a Nebraska limited liability company, on behalf of the company.


Notary Public



THE CAPITOL DISTRICT, LLC, a Nebraska limited liability company,

By: MTM Capitol District, LLC, a Nebraska limited liability company, its Administrative Member

By: 
Name: Michael T. Moylan
Title: Member

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 6th day of October, 2016, by Michael T. Moylan, Member of MTM Capitol District, LLC, a Nebraska limited liability company, the administrative member of The Capitol District, LLC, a Nebraska limited liability company, on behalf of the company.



Notary Public

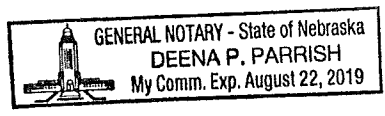


EXHIBIT "A"

SKYWAY BRIDGE AND SKYWAY SYSTEMS

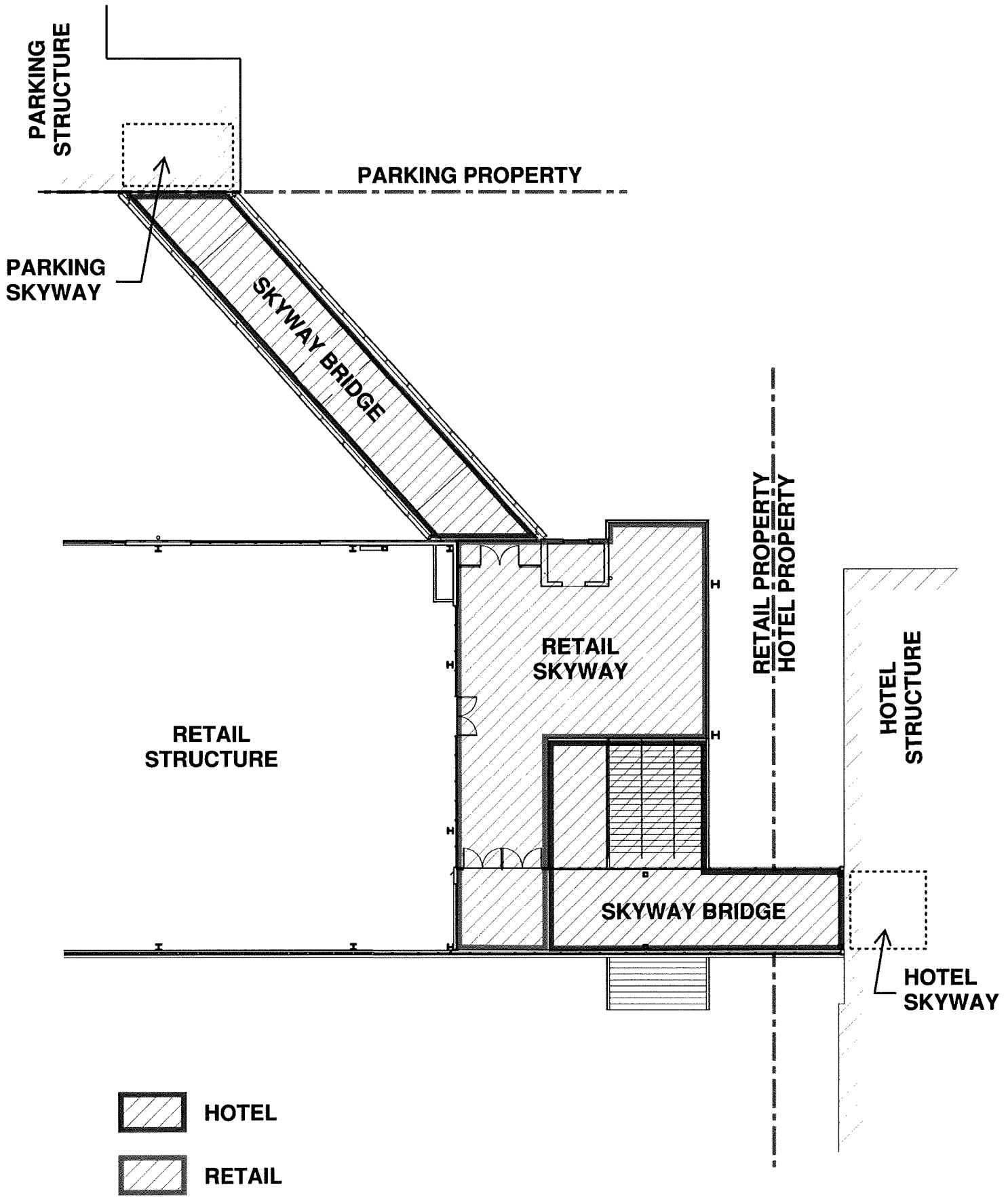


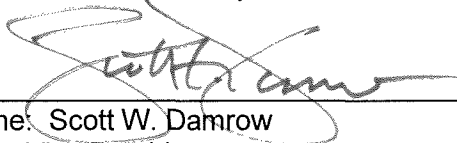
EXHIBIT "A"

CONSENT OF DEED TRUSTEE AND BENEFICIARY UNDER DEED OF TRUST

In consideration of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, each of FIRST NATIONAL BANK OF OMAHA, whose address is 1620 Dodge Street, Omaha, NE 68102, as Deed Trustee, and FIRST NATIONAL BANK OF OMAHA, whose address is 1620 Dodge Street, Omaha, NE 68102, as Beneficiary, under that certain Construction Deed of Trust, Security Agreement and Assignment of Rents filed June 2, 2015, as Instrument No. 2015042747, in the Office of the Register of Deeds of Douglas County, Nebraska, hereby consents to the foregoing Agreement for Skyway Construction, Operation, Maintenance and Easements (the "Agreement") such that the Deed of Trust shall be subject to the Agreement, and that for itself and its successors and assigns, hereby agrees that in the event of foreclosure of the Deed of Trust, it shall not take any action to terminate the Agreement.

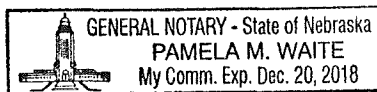
Executed this 4TH day of October, 2016.

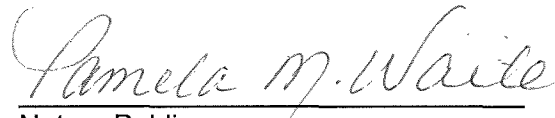
FIRST NATIONAL BANK OF OMAHA, as Deed Trustee and Beneficiary

By: 
Name: Scott W. Damrow
Title: Vice President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me on this 4 day of October, 2016, by Scott W. Damrow, Vice President of First National Bank of Omaha, as Deed Trustee and Beneficiary.



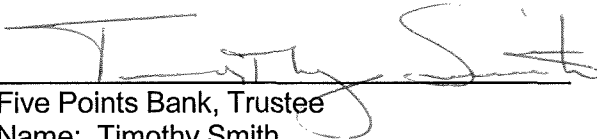

Notary Public

CONSENT OF TRUSTEE AND BENEFICIARY UNDER DEEDS OF TRUST

In consideration of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, each of FIVE POINTS BANK whose address is Omaha Branch, 8820 Arbor St. Omaha, NE 68124, as Trustee and FIVE POINTS BANK, whose address is P.O. Box 1507, Grand Island, NE 68820-1507, as Beneficiary under those certain Deeds of Trust filed June 2, 2015, as Instrument No. 2015042783, in the Office of the Register of Deeds of Douglas County, Nebraska, hereby consents to the foregoing Agreement for Skyway Construction, Operation, Maintenance and Easements (the "Agreement") such that the Deeds of Trust shall be subject to said Agreement, and that for itself and its successors and assigns, hereby agrees that in the event of foreclosure of any of the Deeds of Trust, it shall not take any action to terminate the foregoing Agreement.

Nothing contained herein shall be deemed to constitute a commitment by Five Points Bank to provide financing for the Retail Structure.

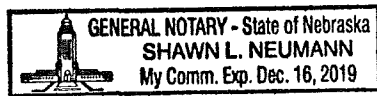
Executed this 3rd day of October, 2016.




Five Points Bank, Trustee
Name: Timothy Smith
Its: Senior Vice President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me on this 3rd day of October, 2016, by Timothy Smith, as Senior Vice President of Five Points Bank, as Trustee, on behalf of said Five Points Bank.





Notary Public



Five Points Bank, Beneficiary
Name: Timothy Smith
Its: Senior Vice President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me on this 3rd day of October, 2016, by Timothy Smith, as Senior Vice President of Five Points Bank, as Beneficiary, on behalf of said Five Points Bank.



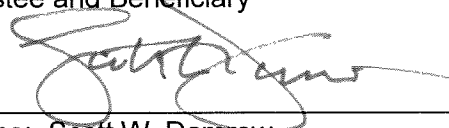
Notary Public

CONSENT OF DEED TRUSTEE AND BENEFICIARY UNDER DEED OF TRUST

In consideration of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, each of FIRST NATIONAL BANK OF OMAHA, whose address is 1620 Dodge Street, Omaha, NE 68102, as Deed Trustee, and FIRST NATIONAL BANK OF OMAHA, whose address is 1620 Dodge Street, Omaha, NE 68102, as Beneficiary, under that certain Construction Deed of Trust, Security Agreement and Assignment of Rents filed September 20, 2016, as Instrument No. 2016077869, in the Office of the Register of Deeds of Douglas County, Nebraska, hereby consents to the foregoing Agreement for Skyway Construction, Operation, Maintenance and Easements (the "Agreement") such that the Deed of Trust shall be subject to the Agreement, and that for itself and its successors and assigns, hereby agrees that in the event of foreclosure of the Deed of Trust, it shall not take any action to terminate the Agreement.

Executed this 4TH day of October, 2016.

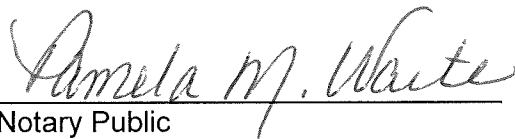
FIRST NATIONAL BANK OF OMAHA, as Deed Trustee and Beneficiary



By: _____
Name: Scott W. Damrow
Title: Vice President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me on this 4 day of October, 2016, by Scott W. Damrow, Vice President of First National Bank of Omaha, as Deed Trustee and Beneficiary.



Notary Public

