



MISC 2016083556



OCT 07 2016 15:07 P 17

Fee amount: 106.00
FB: 07-05673
COMP: YT

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
10/07/2016 15:07:50.00



2016083556

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

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

RECITALS:

- A. Parking is the lawful owner of Lot 1, The Capitol District, an Addition to the City of Omaha, Douglas County, Nebraska (the "Parking Property");
- B. Residences is the lawful owner of Lot 2, The Capitol District, an Addition to the City of Omaha, Douglas County, Nebraska (the "Residences Property");
- C. 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";
- D. Residences is constructing a 12-story multi-family housing project on the Residences Property (the "Residences 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");
- E. The Residences Structure and Parking Structure are collectively referred to as "The Capitol District Complex";
- F. Residences and Parking desire to provide for the construction, operation and maintenance of a skyway connection between the Parking Property and the Residences Property, including, without limitation, pedestrian walkways, corridors, escalators, and stairways as shown on attached Exhibit "A" hereto (the "Skyway System").

- G. Residences will construct the skyway bridge located between the building lines of the Residences Property and the Parking Property and certain structures and facilities appurtenant thereto as shown on attached Exhibit "A" (the "Skyway Bridge").
- H. Residences will be the owner of that part of the Skyway System which consists of the pedestrian walkway within the Residences 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 Residences Structure (the "Residences Skyway") and will also own the Skyway Bridge.
- I. 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").

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 paid solely by Residences. 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 and the Residences 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 Residences Structure, Residences, at Residence's sole expense, will construct the Skyway Bridge and that part of the Skyway System, including any additional structural support and utility facilities in the Residences 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 Residences to complete the Skyway Bridge in advance of the date Residences is ready to obtain a Certificate of Occupancy from the City of Omaha, Nebraska.

- 1.4 At Residences' sole expense, Residences will restore the interior of the Parking 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 Residences.
- 1.5 Residences hereby agrees to indemnify, defend, hold harmless Parking 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 (a) for the cost of constructing that part of the Skyway System and utility facilities that are located within the Parking Structure to serve the Skyway Bridge which are to be paid by Parking pursuant to Section 1.3 above or (b) to the extent any such claim, damage, or expense is caused by the negligent or willful actions of Parking, or any of their respective employees, agents, or contractors.
- 1.6 Within a reasonable time after completion of the Skyway Bridge, Residences shall deliver to Parking "as-built" plans and specifications of the Skyway Bridge and related structural supports.
- 1.7 Residences warrants and represents to Parking that Residences 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, Residences will Operate and Maintain the Skyway Bridge, the cost of which will be borne by the Residences and Parking as provided in Section 2.3. If Residences fails to Operate and Maintain the Skyway Bridge as required under this Agreement, Parking may exercise its rights under Article VI to cure such default. The costs of curing any such failure that are chargeable to Residences 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 Residences had not failed to Operate and Maintain the Skyway Bridge as required herein.

2.3 Residences shall be solely responsible for the costs to Operate and Maintain the Skyway Bridge (the "Skyway Bridge Costs"), which costs shall include 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.

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, Residences will promptly restore the same to substantially the same condition as existed immediately prior to such damage or destruction. If the Residences Structure and/or Parking 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, Residences 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, Residences agrees to take such actions as may be reasonably necessary to protect the Skyway Bridge against preventable deterioration from the elements. Residences shall reconstruct the Skyway Bridge in its immediately prior location. 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 the other Party makes 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 Residences, 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. Residences 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 Residences. 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, Residences may retain the proceeds of any insurance maintained hereunder with respect to the Skyway Bridge.

- 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 Residences Structure and Parking Structure. 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. Residences 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 Party 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 Residences Structure and Parking Structure.

- (b) Each Party hereby grants for the benefit of the other Party a non-exclusive easement within the Skyway System for the purposes of permitting pedestrian access and passage through and between the Parking Structure and Residences 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 Residences 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 and Residences Structure, 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 or the Residences 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 the other Party 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 or Residences 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 Residences 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, Residences 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 Each Party reserves the right from time to time, in their 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 Residences Property or the Parking Property. 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 Residences restores or reconstructs the Residences Structure 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 Party will execute and deliver a document in recordable form evidencing such termination of this Agreement.

ARTICLE V

INSURANCE

- 5.1 Residences 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, Parking from time-to-time and the holders of any mortgages or other parties notice of which is given to Residences, 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 Residences 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 Parking named as an additional named insured, as their interests may appear. The cost of the insurance provided under this Section shall be borne by Residences. Such insurance shall be the primary insurance and not contributory with any other insurance maintained by Residences.
- 5.2 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, Parking 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 that part of the Skyway System that is located within the Parking Structure. Such insurance shall be primary insurance and not contributory with any other insurance maintained by Parking.
- 5.3 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 Party prior to cancellation, non-renewal or material modification. Certificate evidence of each policy shall be deposited with the other Party 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.

- 5.4 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 Residences: The Residences at the Capitol 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 Residences, as owner of the Residences, shall benefit the Residences 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 and the Residences Property.

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

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

By: The Capitol District, LLC, a Nebraska limited liability company, as Administrative Member,

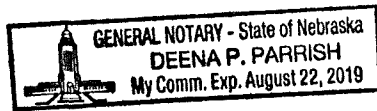
By: MTM Capitol District, LLC, a Nebraska limited liability company, its Administrative Member

By: [Signature]
Name: Michael T. Moylan
Title: Sole 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, the sole 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 administrative member of The Residences at the Capitol District, LLC, a Nebraska limited liability company, on behalf of the company.

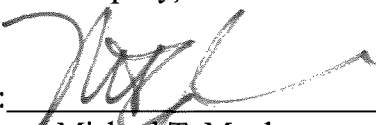
[Signature]
Notary Public



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 07th 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.

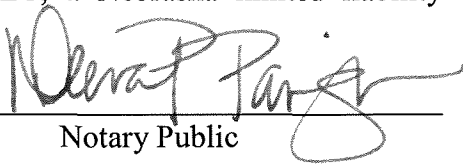
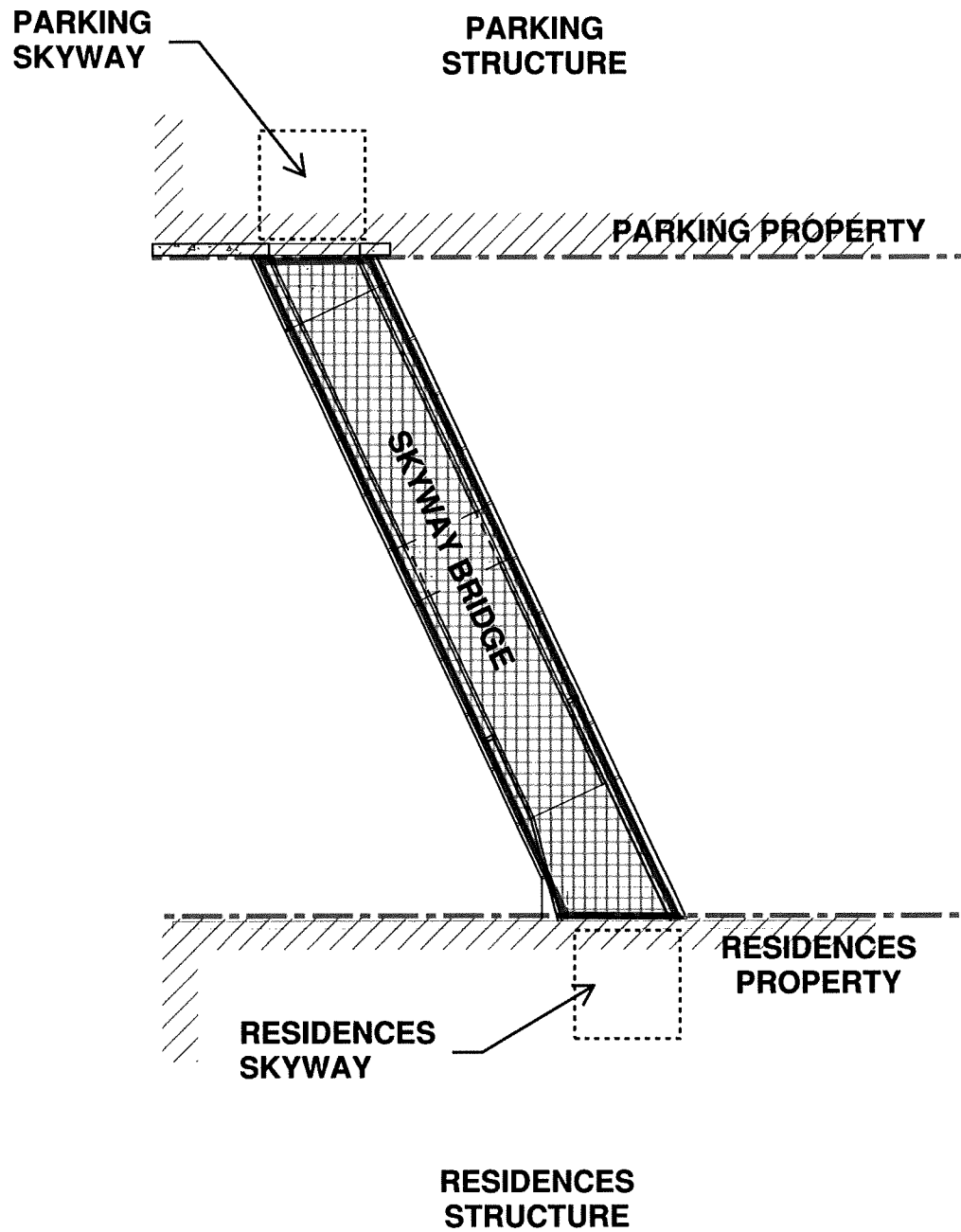

Notary Public



EXHIBIT "A"

SKYWAY BRIDGE AND SKYWAY SYSTEMS

DOCS/1748036.2



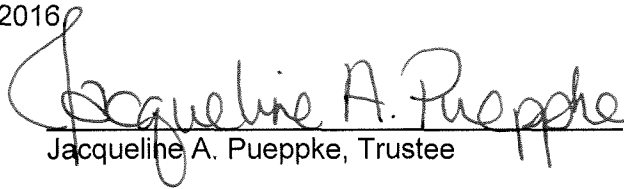
APARTMENT

EXHIBIT "A"

CONSENT OF TRUSTEE AND BENEFICIARY UNDER DEEDS OF TRUST

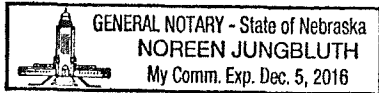
In consideration of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, each of Jacqueline A. Pueppke, as Trustee and Great Western Bank, as Beneficiary under that certain Construction Deed of Trust, Security Agreement, Assignment of Lases and Rents, and Fixture Filing filed June 2, 2015, as Instrument No. 2015042789, 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.

Executed this 3rd day of October, 2016


Jacqueline A. Pueppke, Trustee

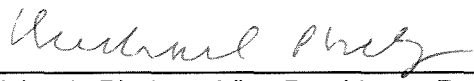
STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me on this 3rd day of October, 2016, by Jacqueline A. Pueppke, as Trustee.



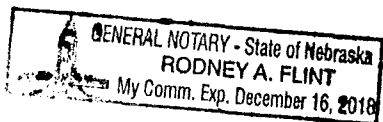

Notary Public

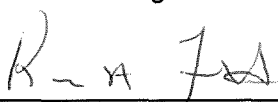
GREAT WESTERN BANK, as Beneficiary

By: 
Michael Phelps, Vice-President, Business Banking

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me on this 4th day of October, 2016, by Michael Phelps, as Vice-President, Business Banking of Great Western Bank, as Beneficiary, on behalf of said bank.



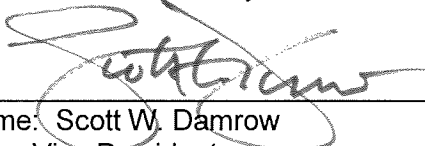

Notary Public
DOCS/1749721.1

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.

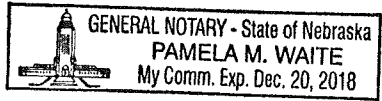
Executed this 4th day of October, 2016.

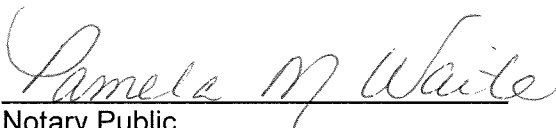
FIRST NATIONAL BANK OF OMAHA, as Deed Trustee and Beneficiary

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