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MISC 1991 01807

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ASSIGNMENT OF SKYWALK OPERATING AGREEMENT

THIS ASSIGNMENT is made this 31 day of January, 1991, by and between PARKFAIR LIMITED PARTNERSHIP, a Nebraska limited partnership ("Assignor"), and J.D. WAREHOUSE CO., a Nebraska general partnership ("Assignee").

WITNESSETH:

WHEREAS, concurrently herewith Assignee is purchasing the ParkFair Mall located on all of the Lots 4 and 5 and part of Lots 3 and 6, Block 118, in the Original City of Omaha, Douglas County, Nebraska; and

WHEREAS, pursuant to a resolution of the Omaha City Council adopted on September 20, 1983, the City of Omaha entered into an Operating Agreement with River Cities Limited Partnership and Assignor, a copy of which is attached hereto, marked Exhibit "A" and by this reference incorporated herein (the "Skywalk Operating Agreement"); and

WHEREAS, in connection with the sale of the ParkFair Mall to Assignee, Assignor desires to transfer to Assignee, and Assignee desires to accept, all of the rights and duties of Assignor under the Skywalk Operating Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignor hereby transfers and assigns to Assignee all of Assignor's rights and delegates to Assignee all of Assignor's duties, accruing on and after the date of this Assignment, under and by virtue of the Skywalk Operating Agreement, and Assignee hereby accepts such assignment of rights and delegation of duties.
2. Assignee shall indemnify, defend, and hold Assignor harmless from and against any and all loss, liability, damage, and expense whatsoever, including reasonable attorneys' fees, resulting from or proximately caused by (i) the failure of Assignee to perform the duties delegated to it in this Assignment on and after the date of this Assignment, or (ii) any negligence or willful misconduct by Assignee, its employees or agents, in connection with the use, operation, maintenance, and repair of Skywalk Bridge II described in the Skywalk Operating Agreement on and after the date of this Agreement.
3. Assignor shall indemnify, defend and hold Assignee harmless from and against any and all loss, liability, damage, and expense whatsoever, including reasonable attorney fees, resulting from or proximately caused by, (i) the failure of Assignor to perform the duties delegated to it in the Skywalk

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Operating Agreement prior to the date of this Assignment, or (ii) any negligence or willful misconduct by Assignor, its employees or agents, in connection with the use, operation, maintenance and repair of Skywalk Bridge II described in Skywalk Operating Agreement prior to the date of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment the day and year first above written.

PARKFAIR LIMITED PARTNERSHIP, a Nebraska limited partnership

By: Metro Center Realvest, Inc., a Nebraska corporation, general partner

By: Harold W. Andersen
Harold W. Andersen, President
(Printed Name and Title)

J.D. WAREHOUSE CO., a Nebraska general partnership

By: J. J. Esch
Partner

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 24th day of January, 1991, by Harold W. Andersen, President of Metro Center Realvest, Inc., a Nebraska corporation, on behalf of the corporation as general partner of ParkFair Limited Partnership, a Nebraska limited partnership, on behalf of the partnership.

[Signature]
Notary Public

My commission expires:

July 10, 1992

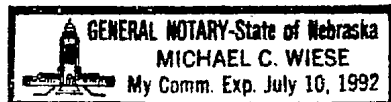


EXHIBIT A
OPERATING AGREEMENT
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THIS AGREEMENT is entered into by and between the City of Omaha, ParkFair Limited Partnership and River Cities Limited Partnership.

Separate development agreements between the City of Omaha and the other respective parties hereto have been entered into which contemplate a skywalk system between and through the respective redevelopment projects. The purpose of this Agreement is to effectuate that system and to provide for private maintenance responsibilities for the public skywalk system.

In consideration of the mutual covenants herein, the parties hereto agree as follows:

Section 1. Definitions.

The following terms shall have the following meanings for the purpose of this Agreement:

"Brandeis" shall mean the Brandeis/Braiker building and appurtenant parking structure lying within the area described on Exhibit "A".

"Center" shall mean the commercial center to be built on the area described in Exhibit "B".

"Developers" shall mean "ParkFair" and "River Cities".

"ParkFair" shall mean MetroCenter Realvest, Inc. and the Park Fair Limited Partnership and its successors or assigns, owner of the "Center".

"River Cities" shall mean the River Cities Limited Partnership (which shall also include Braiker/Brandeis Development Company and the Braiker Company, Inc.) or its successors or assigns, owner of "Brandeis"

"Skywalk Bridge I" shall mean that structure described on Exhibit "C".

"Skywalk Bridge II" shall mean that structure described on Exhibit "D".

Section 2. Obligations of the City.

The City shall upon receipt of Title to Skywalk Bridge II:

2.1. Maintain adequate casualty insurance up to eighty percent replacement value on Skywalk Bridge II so long as the Center and Brandeis are both operating as viable commercial/office facilities.

2.2. Upon acceptance, maintain Skywalk Bridge II in a good and serviceable condition for a period of at least fifteen years, including the structural system, exterior walls and roof, glass and the air handling units with their appurtenant plumbing so long as all foregoing items are located within the Sixteenth Street right-of-way and adjacent alley rights of way.

2.3. The obligations, stated above, are contingent upon the City receiving clear title to a structurally sound Skywalk Bridge II built and accepted in such a manner as approved by the City Planning and Public Works Directors, respectively, in writing, and certified by the architect who designed same.

Section 3. Obligations of ParkFair.

ParkFair shall:

3.1. Be responsible for the ordinary maintenance of Skywalk Bridge II unless such is being performed by River Cities. Ordinary maintenance shall include, but not be limited to, janitorial work so that the Skywalk is kept in a clean and safe condition, in a good and workmanlike manner, and in compliance with all laws or ordinances of the City or the State of Nebraska. Such maintenance shall not be less than that given to the public walkways through the Center. Sweeping shall be done at least at the close of every day of operation. Every reasonable attempt shall be made to keep the interior free of stain or blemish, including the cleaning of any windows.

3.2. Hereby grants the public reasonable pedestrian and handicapped access through the Center from Skywalk Bridge II to public right-of-way and the north tower of the Central Park Plaza (on the east half of Block 118, Original City of Omaha), so long as continued public access is provided through that tower to Skywalk Bridge I. Such access way shall be in compliance with all laws and ordinances of the City or State of Nebraska, and shall serve as the fire exitway from the respective Skywalk Bridges I and II. The access way shall be approved in writing by the City Planning and Public Works Directors, respectively, as to exact location and dimension. Such designation shall be in the form of a recordable easement at the option of the City. Such approval shall include the nature of the physical connection between the Skywalk Bridge II, the Center, Brandeis, public right-of-way and the Central Park Plaza. Such access shall be available during the hours of operation of the Center.

3.3. Provide utilities for the Skywalk Bridge II and the public access way through the Center. Utilities shall include air conditioning, heating, lighting and ventilation. Such provision shall include construction and maintenance of all necessary equipment not maintained by City, and the payment of all service or use charges.

Section 4. Obligations of River Cities.

River Cities shall:

4.1. Hereby grants the City and ParkFair the right to connect, for the purpose of the access described hereinbelow, Skywalk Bridge II to Brandeis. Such connection shall be at such location and in such a manner as described on Exhibit "E".

4.2. (River Cities) Hereby grants to the public reasonable pedestrian and handicapped access through the public mall located on the second floor of Brandeis (as the same may exist from time to time; provided, however, that the location and design of such public mall shall be in the sole discretion of River Cities). Such access way shall be in compliance with all laws and ordinances of the City and State of Nebraska, and, subject to

the following sentence, may serve as fire exitway from Skywalk Bridge II. Such access shall be available during all hours that the second floor mall of Brandeis is otherwise open to the public, which hours shall be determined in the sole discretion of River Cities.

Section 5. Obligations of the Developers.

The Developers shall:

5.1. Indemnify and hold harmless the City from any claim or judgment for any loss or damage occurring on the access ways through their own individual structures, respectively Brandeis and the Center; or, on SkyWalk Bridge II as a result of developers' construction or maintenance of same.

5.2. Hereby grant the City the right to enter on their respective properties, as described in Exhibits "A" and "B" attached hereto to make repairs to Skywalk Bridge II. Such access shall be limited to the extent that no permanent injury to the respective properties shall occur; and, that access shall be during normal business hours after reasonable notice, except in the case of an emergency.

5.3. Developers or any other party performing the maintenance, repair and cleaning responsibilities under this Agreement shall provide adequate worker's compensation insurance for all labor contracted or otherwise provided in performing such maintenance, repair and cleaning responsibilities as required by the Nebraska Workman's Compensation Law. A certificate or certificates of such insurance shall be filed with the City Clerk. All such policies of insurance and the certificates therefor shall provide that such insurance cannot be cancelled until after ten (10) days written notice of such cancellation shall have been filed with the City Clerk.

5.4. Waiver of Claims and Subrogation. The City, ParkFair and River Cities each waive any and every claim which arises or may arise in its favor and against any other party during the term of this agreement or any extension thereof for any and all loss of, or damage to, Skywalk Bridge II, the Center, the Brandeis, or any of their respective property located within or upon the foregoing, which loss or damage is covered by valid and collectible fire and extended coverage insurance policies, to the extent that such loss or damage is recoverable under such insurance policies. This waiver shall be in addition to, and not a limitation or derogation of, any other waiver or release contained in this agreement with respect to any loss of, or damage to, the property of any party. Inasmuch as such waiver will preclude the assignment of any aforesaid claim, by subrogation or otherwise, to an insurance company (or any other person), each party agrees immediately to give each insurance company which has issued or hereafter issues policies of fire and extended coverage insurance written notice of the terms of such waiver, and to have such insurance policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverage by reason of such waiver.

Section 6. Provisions of the Contract.

6.1. Equal Employment Opportunity Clause. Annexed hereto as Exhibit "F" and made a part hereof by reference are the equal employment provisions of this contract, wherein "ParkFair" is referred to as "Contractor".

6.2. Non-discrimination. The Developers shall not in the performance of this contract, discriminate or permit discrimination in violation of federal or state laws or local ordinances because of race, color, sex, age, political or religious opinions, affiliations or national origin.

6.3. Captions. Captions used in this contract are for convenience and are not used in the construction of this contract.

6.4. Applicable Law. Parties to this contract shall conform with all existing and applicable city ordinances, resolutions, state laws, federal laws, and all existing and applicable rules and regulations. Nebraska law will govern the terms and the performance under this contract.

6.5. Interest of the City. Pursuant to Section 8.05 of the Home Rule Charter, no elected official or any officer or employee of the City shall have a financial interest, direct or indirect, in any City contract. Any violation of this section with the knowledge of the person or corporation contracting with the City shall render the contract voidable by the Mayor or Council.

6.6. Merger. This contract shall not be merged into any other oral or written contract, lease or deed of any type.

6.7. Modification. This contract contains the entire agreement of the parties. No representations were made or relied upon by either party other than those that are expressly set forth herein. No agent, employee or other representative of either party is empowered to alter any of the terms hereon unless done in writing and signed by an authorized officer of the respective parties.

6.8. Assignment. ParkFair may not assign its rights under this contract without the express prior written consent of the City.

6.9. Strict Compliance. All provisions of this contract and each and every document that shall be attached shall be strictly complied with as written, and no substitution or change shall be made except upon written direction from authorized representatives of the parties.

6.10 This Agreement shall be binding upon the Developers successors and assigns, and shall run with the land described in Exhibits "A" and "B" attached hereto, to the benefit of the City.

*

6.11. The term of this Agreement, its grants and covenants, shall be until the City files a written notice of abandonment of Skywalk Bridge II, or its replacement, in the Office of the Douglas County Register of Deeds and with the Developers.

Section 7. Authorized Representative.

In further consideration of the mutual covenants herein contained, the parties hereto expressly agree that for purposes of notice, including legal service of process, during the term of this contract and for the period of any applicable statute or limitations thereafter, the following named individuals shall be the authorized representatives of the parties:

(1) City of Omaha:

c/o Martin H. Shukert
Director, Planning Department
Omaha/Douglas Civic Center
1819 Farnam Street
Omaha, NE 68183

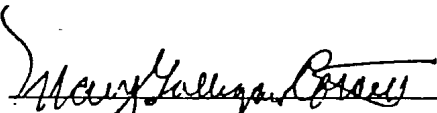
(2) ParkFair:

R. Steven Thompson
Executive Director
Omaha Development Foundation
1301 Harney Street
Omaha, NE 68102

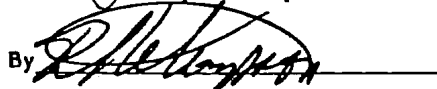
(3) River Cities:

Morton Braiker
Mezzanine Level
Braiker/Brandeis Building
210 South 16th Street
Omaha, NE 68102

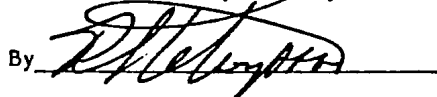
ATTEST:



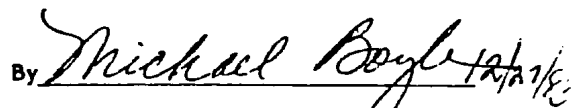
METROCENTER REALVEST, INC.,
a Nebraska non-profit corporation

By 

PARK FAIR LIMITED PARTNERSHIP,
a Nebraska Limited partnership

By 

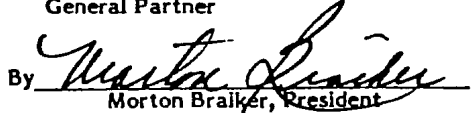
CITY OF OMAHA, a Municipal Corporation,

By 

RIVER CITIES LIMITED PARTNERSHIP, a
Nebraska Limited partnership

By BRAIKER/BRANDEIS DEVELOPMENT
COMPANY, a California limited
partnership, Its Sole General Partner

By THE BRAIKER COMPANY, INC., a
California corporation, Managing
General Partner

By 
Morton Braiker, President



STATE OF NEBRASKA)
) ss
COUNTY OF DOUGLAS)

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Before me, a Notary Public qualified for said County, personally came R. Steven Thompson, President of MetroCenter Realvest, Inc., known to me to be the President and identical person who signed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed as such officer and the voluntary act and deed of said corporation.

Witness my hand and notarial seal on this 16th day of December, 1983.



Daisy L. Cain
NOTARY PUBLIC

My commission expires on April 12, 19 87.

STATE OF NEBRASKA)
) ss
COUNTY OF DOUGLAS)

Before me, a Notary Public qualified for said County, personally came R. Steven Thompson, Vice President of Park Fair Limited Partnership, known to me to be the Vice President and identical person who signed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed as such officer and the voluntary act and deed of said limited partnership.

Witness my hand and notarial seal on this 16th day of December, 1983.



Daisy L. Cain
NOTARY PUBLIC

My commission expires on April 12, 19 87.

STATE OF NEBRASKA)
) ss
COUNTY OF DOUGLAS)

Before me, a Notary Public qualified for said County, personally came Morton Braiker, President of River Cities Limited Partnership, known to me to be the President and identical person who signed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed as such officer and the voluntary act and deed of said limited partnership.

Witness my hand notarial seal on this 15 day of December, 1983.



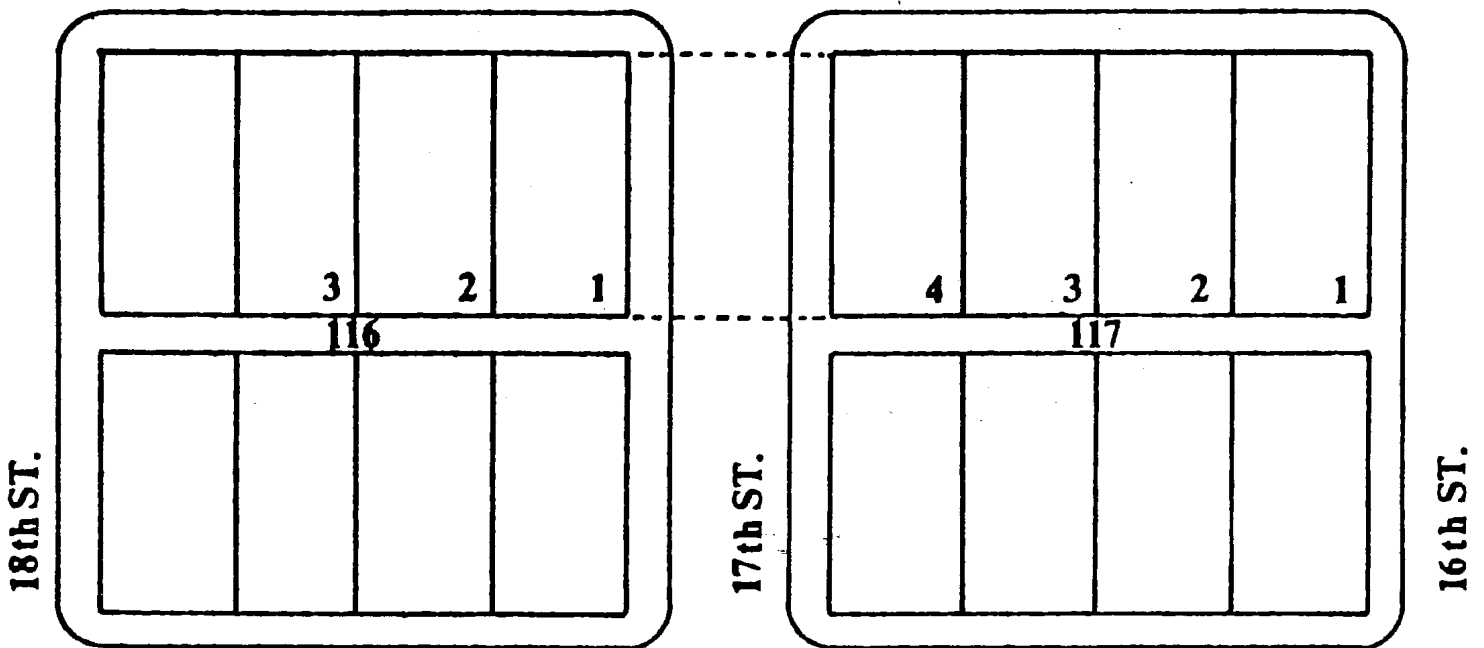
Patricia L. Welch
NOTARY PUBLIC

My commission expires on January 24, 19 85.

APPROVED AS TO FORM:

Ken Bungay
Ken Bungay
Assistant City Attorney

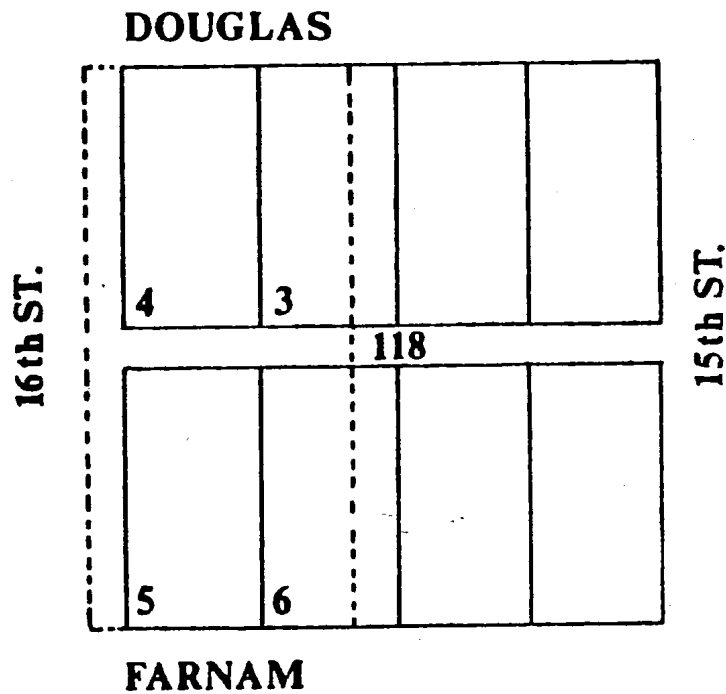
DOUGLAS



FARNAM

The legal description of the Braiker Brandeis Building and Parking Garage is Lots 1 thru 4, Block 117, Original City of Omaha, Douglas County, Nebraska and Lots 1 thru 3, Block 116, Original City of Omaha, Douglas County, Nebraska.

EXHIBIT A



The legal description of ParkFair is the west 43.55 feet of Lots 3 and 6 and all of Lots 4 and 5, including the vacated westerly 109.55 feet of the east-west alley and a 20 foot wide parcel of vacated 16th Street right-of-way adjacent to Lots 4 and 5 and the vacated alley Block 118, Original City of Omaha, Douglas County, Nebraska.

EXHIBIT B

Bridge One

Bridge One is the pedestrian skywalk that crosses Douglas Street between 15th and 16th Streets. This skywalk connects OmahaPark One on the north to the Central Park Plaza on the south. OmahaPark One is a 750 stall public parking structure located on the north side of Douglas Street between 15th and 16th Streets. Central Park Plaza on the south side of Douglas Street is a twin towered office and commercial complex containing approximately 510,000 square feet and is privately owned.

Bridge One connects the third floor of the parking garage to the second floor of the office complex. The bridge is approximately 125 feet long and has an interior walkway of approximately 10 feet. This skywalk is not climate controlled.

EXHIBIT D

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Bridge Two

Bridge Two is a pedestrian skywalk that crosses 16th Street at midblock between Douglas and Farnam Streets. This skywalk connects ParkFair on the east to the Braiker-Brandeis Building on the west. ParkFair is a 100,000 square foot 3 level retail facility located on the east side of 16th Street. The Braiker-Brandeis Building is located on the west side of 16th Street on the north half of the block. This building contains 2 levels of retail and 8 levels of office.

Bridge Two connects the third level of the ParkFair retail complex to the second level of the Braiker-Brandeis Building. The second level of this building is also known as the 17th Street level. This bridge will connect to the south facade of the building over the existing alley along the south side of the building. This skywalk will be climate controlled and is approximately 130 feet long and has a 12 foot wide interior walkway.

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EXISTING REINFORCED CONCRETE

EXHIBIT E

EXISTING VERTICAL
EDGE FINISHING

ARTICULAR CONE
(DOUGH)

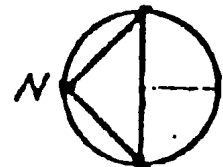
MODIFY EXIST. RAMP SO
THAT TOP OF RAMP IS FLUSH
W/ SKYWALK (110'-8")

NOTE:
FLOOR FINISH
= 110'-8"

EXP JT. COVER

12'-0" 1'-5" (TOP)

NOTE:
SEE STRUCTURAL SHEET 2B.1
FOR OVERALL DIMENSIONS



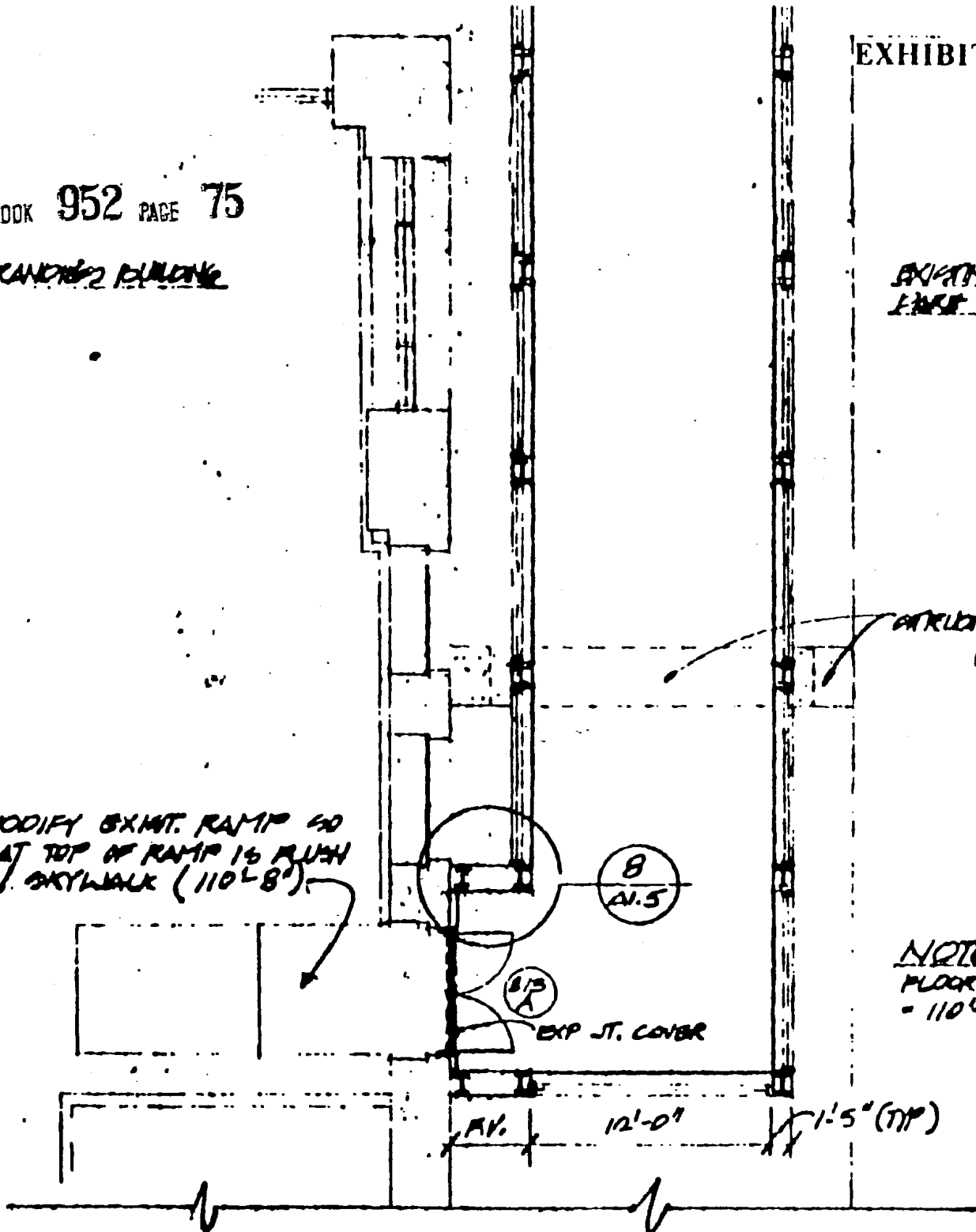
SKYWALK PLAN

SCALE: 1/8" = 1'-0"

1'-5"

ALUM. WINDOW SYSTEM
COVER

ALUM. GUARDRAIL



EQUAL EMPLOYMENT OPPORTUNITY CLAUSE

During the performance of this contract, the Contractor agrees as follows:

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- (1) The Contractor shall not discriminate against any employee applicant for employment because of race, religion, color, sex or national origin. The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex or national origin. As used herein, the word "treated" shall mean and include, without limitation, the following: Recruited, whether advertising or by other means; compensated; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated.

The Contractor agrees to and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officers setting forth the provisions of this non-discrimination clause.

- (2) The Contractor shall, in all solicitations or advertisements for employees placed by or in behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.
- (3) The Contractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or worker's representative of the Contractor's commitments under the Equal Employment Opportunity Clause of the City of Omaha and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The Contractor shall furnish to the Contract Compliance Officer all Federal forms containing the information and reports required by the Federal government for Federal contracts under Federal rules and regulations, and including the information required by Sections 10-192 and 10-194 of the Omaha Municipal Code, inclusive, and shall permit reasonable access to his records. Records accessible to the Contract Compliance Officer shall be those which are related to Paragraphs (1) through (7) of this subsection and only after reasonable notice is given the Contractor. The purpose for this provision is to provide for investigation to ascertain compliance with the program provided for herein.
- (5) The Contractor shall take such actions with respect to any subcontractor as the City may direct as a means of enforcing the provisions of Paragraphs (1) through (7) herein, including penalties and sanctions for noncompliance; however, in the event the Contractor becomes involved in or is threatened with litigation as the result of such directions by the City, the City will enter into such litigation as is necessary to protect the interests of the City and to effectuate the provisions of this division; and in the case of contracts receiving Federal assistance, the Contractor or the City may request the United States to enter into such litigation to protect the interests of the United States.
- (6) The Contractor shall file and shall cause his subcontractors, if any, to file compliance reports with the Contractor in the same form and to the same extent as required by the Federal government for Federal contracts under Federal rules and regulations. Such compliance reports shall be filed with the Contract Compliance Officer. Compliance reports filed at such times as directed shall contain information as to the employment practices, policies, programs and statistics of the Contractor and his subcontractors.
- (7) The Contractor shall include the provisions of Paragraphs (1) through (7) of this Section, "Equal Employment Opportunity Clause", and Section 10-193 in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor.

maea 1807

RECEIVED

JAN 31 3 11 PM '91

REGISTRY OF DEEDS DOUGLAS COUNTY, NE

7C8:9

EXHIBIT F

952 N _____ C/O _____ FEE 80.50
 62-76 N _____ DEL VK MC We
 misc COMP _____ F/B 03-8000