

Fifth Street

MIDWEST FEDERAL

MINNESOTA  
MUTUAL LIFE

SK-29

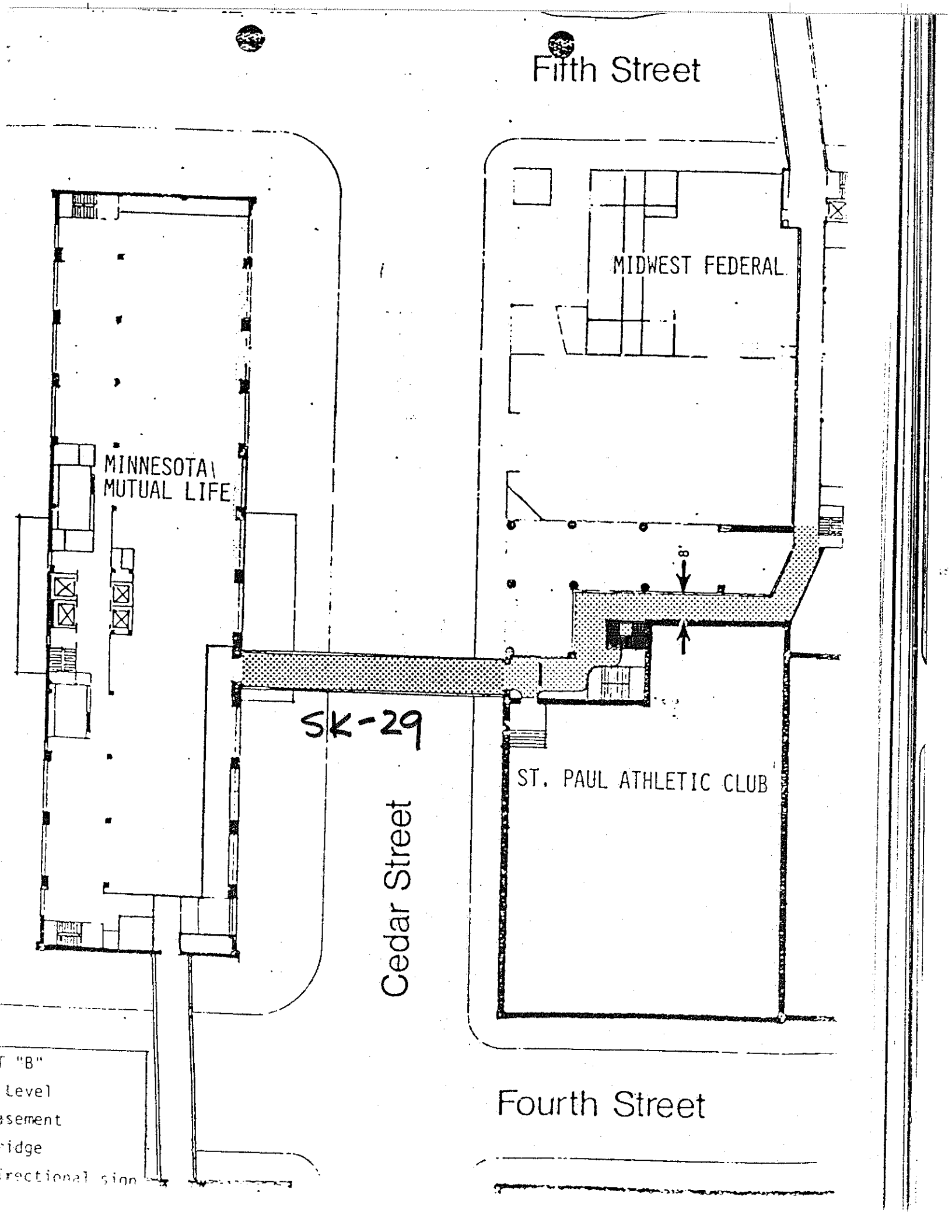
8'

ST. PAUL ATHLETIC CLUB

Cedar Street

Fourth Street

"B"  
Level  
Assessment  
Bridge  
Directional sign



WHITE - CITY CLERK  
PINK - FINANCE  
CANARY - DEPARTMENT  
E - MAYOR

City Attny/PBB

# CITY OF SAINT PAUL Council Resolution

Council File NO. \_\_\_\_\_

Presented By \_\_\_\_\_

Referred To \_\_\_\_\_ Committee: Date \_\_\_\_\_

Out of Committee By \_\_\_\_\_ Date \_\_\_\_\_

BE IT RESOLVED, by the Council of the City of Saint Paul, that the City Clerk is directed to accept and keep on file that certain agreement dated April 5, 1982, between Economics Laboratory, Inc., (EL) and The Minnesota Mutual Life Insurance Company (MML), attached hereto, in which agreement EL is assigned and assumes all the rights, duties, responsibilities and covenants of MML under several agreements more particularly described therein relating to the skyway system, which agreements contain covenants and obligations touching and concerning the following described property in the City of Saint Paul:

Lots 4, 5, 6, 7, 8 and 9, Block 19, City of St. Paul (St. Paul Proper);

Lots 14, 15 and 16, Block 20, City of Saint Paul (St. Paul Proper); and

Lots 1 and 4, Block 23, City of Saint Paul (St. Paul Proper);

and

BE IT FURTHER RESOLVED, that the City Clerk is authorized and directed to file a certified copy of this Resolution (with attachment) in the Office of the County Recorder, Ramsey County.

### COUNCILMEN

|      |           |       |          |
|------|-----------|-------|----------|
| Yeas |           | Nays  |          |
|      | Hunt      |       |          |
|      | Levine    | _____ | In Favor |
|      | Maddox    |       |          |
|      | McMahon   | _____ | Against  |
|      | Showalter |       |          |
|      | Tedesco   |       |          |
|      | Wilson    |       |          |

Adopted by Council: Date \_\_\_\_\_

Certified Passed by Council Secretary \_\_\_\_\_

By \_\_\_\_\_

Requested by Department of: \_\_\_\_\_

By \_\_\_\_\_

Form Approved by City Attorney \_\_\_\_\_

By \_\_\_\_\_

## AGREEMENT

THIS AGREEMENT, made and entered into this 5th day of April, 1982, by and between ECONOMICS LABORATORY, INC., a Delaware corporation (hereinafter referred to as "EL") and THE MINNESOTA MUTUAL LIFE INSURANCE COMPANY, a Minnesota corporation (hereinafter referred to as "MML");

## WITNESSETH:

WHEREAS, as part of the pedestrian skyway system within the downtown central business district of St. Paul, Minnesota, there exists a skyway bridge over Cedar Street between the buildings occupied by the Saint Paul Athletic Club (hereinafter referred to as "AC") and MML (hereinafter referred to as the "Cedar Skyway");

WHEREAS, on February 20, 1980 AC and MML entered into a Skyway Bridge Maintenance Agreement under which AC and MML mutually agreed to be bound by the terms contained therein regarding the operation and maintenance of the Cedar Skyway (hereinafter referred to as the "Cedar Maintenance Agreement");

WHEREAS, as part of the pedestrian skyway system within the downtown central business district of St. Paul, Minnesota, there exists a skyway bridge over East Fourth Street between the buildings occupied by the Degree of Honor Protective Association (hereinafter referred to as "Degree") and MML (hereinafter referred to as "East Fourth Skyway");

WHEREAS, on February 13, 1980 Degree and MML entered into a Skyway Bridge Maintenance Agreement under which Degree and MML mutually agreed to be bound by the terms contained therein regarding the operation and maintenance of the East Fourth Skyway (hereinafter referred to as the "East Fourth Maintenance Agreement");

WHEREAS, on January 11, 1980, the Housing and Redevelopment Authority of the City of St. Paul, Minnesota (hereinafter referred to as "HRA"), the City of St. Paul, Minnesota (hereinafter referred to as the "City"), AC and MML entered into an Agreement concerning the construction, operation and maintenance of the Cedar Skyway and the easements necessary to incorporate the same into the pedestrian skyway system (hereinafter referred to as the "City Cedar Agreement");

WHEREAS, on January 22, 1980, HRA, the City, Degree and MML entered into an Agreement concerning the construction, operation and maintenance of the East Fourth Skyway and the easements necessary to incorporate the same into the pedestrian skyway system (hereinafter referred to as the "City East Fourth Agreement");

WHEREAS, concurrently with the delivery of this Agreement EL is purchasing the building at 345 Cedar Street, St. Paul, Minnesota, which is owned by MML and connected to the Cedar Skyway and the East Fourth Skyway; and

WHEREAS, EL and MML intend that in connection with the sale of said building to EL that EL shall succeed to the rights and assume the obligations of MML under the various agreements relating to the pedestrian skyway system connected to said building;

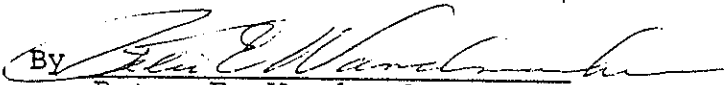
NOW THEREFORE, it is hereby agreed between the parties hereto as follows:

1. MML shall and hereby does assign to EL all its rights in and under the Cedar Maintenance Agreement, the East Fourth Maintenance Agreement, the City Cedar Agreement and the City East Fourth Agreement.


2. EL shall and hereby does fully and without limitation assume all duties, responsibilities and covenants of MML under the Cedar Maintenance Agreement, the East Fourth Maintenance Agreement, the City Cedar Agreement and the City East Fourth Agreement.

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

ECONOMICS LABORATORY, INC.

By   
Peter E. Wandmacher  
Vice President and Treasurer

THE MINNESOTA MUTUAL LIFE  
INSURANCE COMPANY

By   
PAUL GOODING, SECOND VICE PRESIDENT

A G R E E M E N T

THIS AGREEMENT made and entered into this 11<sup>th</sup> day of January, 1980, by and between the HOUSING AND REDEVELOPMENT AUTHORITY OF THE CITY OF SAINT PAUL, MINNESOTA, a Minnesota public body corporate and politic, hereinafter referred to as the "HRA", CITY OF SAINT PAUL, a municipal corporation, hereinafter referred to as the "City", SAINT PAUL ATHLETIC CLUB, a Minnesota non-profit corporation, hereinafter referred to as the "Athletic Club" and MINNESOTA MUTUAL LIFE INSURANCE COMPANY, a Minnesota insurance company, hereinafter referred to as "MML".

WITNESSETH:

WHEREAS, the City and the HRA, through the Downtown Urban Renewal Project, Minn. R-20, undertook to develop a pedestrian skyway and concourse system within the Downtown Central Business District, hereinafter "the System"; and

WHEREAS, the City, pursuant to Chapter 764, Laws of Minnesota 1973, is authorized to operate the System; and

WHEREAS, an extension of the System by bridging over Cedar Street between Fourth and Fifth Streets, from the Athletic Club to MML, has been approved as part of the Community Development Revenue Sharing Year III Block Grant Program; and

WHEREAS, because of the extension of the System by bridging over Cedar Street and the incorporation of the said skyway bridge into the operating System built as part of the Downtown Urban Renewal Project, it is necessary for pedestrian traffic to traverse through certain portions of the Athletic Club and the MML Building; and

WHEREAS, all parties hereto are desirous of the construction of the said skyway bridge over Cedar Street; and

WHEREAS, substantial public monies will be expended for the design and construction of said skyway bridge over Cedar Street; and

WHEREAS, a benefit will inure to the respective building owners by virtue of being linked to the System; and

WHEREAS, the City, by Ordinance No. 16362, Council File No. 269927, granted the HRA permission to construct and operate a skyway bridge across Cedar Street between Fourth and Fifth Streets, which Ordinance is attached hereto as Exhibit A and incorporated herein by reference.

NOW THEREFORE, BE IT RESOLVED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

BRIDGE CONSTRUCTION

1. That this Agreement is subject to all the terms and conditions of the aforesaid Ordinance, adopted November 3, 1977, by the Council of the City of Saint Paul, the terms of which are hereby incorporated herein by reference. All parties hereto other than the City and HRA are considered to be permittee's successors under the terms of said Ordinance.

2. The HRA agrees to design, construct and pay for a skyway bridge connecting the Athletic Club and MML in accordance with HRA and City approved plans and specifications for the skyway bridge and pedestrian concourse herein prepared for HRA by Hammel, Green and Abrahamson dated November 9, 1979, also known as Bid No. A8422-S, and reviewed by the Athletic Club and MML. Said skyway bridge shall include support structure at the MML end and related mechanical/electrical facilities located on the skyway bridge for heating, ventilating, air conditioning, lighting and roof drainage to be tied into the respective systems within the Athletic Club, and glass

3.

and aluminum doors at each end of the skyway bridge, finishing at skyway bridge ends, and insulated glass to the extent glass is used to enclose said skyway bridge. The Athletic Club expansion will provide structural support for the skyway bridge at its end. HRA will accomplish and pay for any mechanical system and electrical system installations and connections which are shown in the approved plans and specifications to be part of the HRA construction contract.

CONCOURSE CONSTRUCTION AND COST RESPONSIBILITIES

3. As to Athletic Club, HRA shall pay a proportion of costs and expenses incurred in connection with the construction of the pedestrian concourse in accordance with the Pedestrian Concourse Agreement dated August 30, 1979 by and between Athletic Club and HRA, the terms of which are hereby incorporated herein by reference. The Athletic Club agrees that in the construction, maintenance and operation of the pedestrian concourse, it shall be bound by all codes and ordinances governing buildings and operations of improvements relating to public thoroughfares and the skyway system insofar as applicable.

4. Rights and responsibilities respecting a connecting concourse through the MML property shall be in accordance with the Skyway and Concourse Agreement for the skyway bridge over Fourth Street between Cedar and Wabasha Streets by and among City, HRA, MML and Degree of Honor Protective Association.

5. The HRA will include a provision in its contract for construction of skyway bridge whereby the contractor consents to the assignment of warranties to the owners of the buildings

abutting the bridges, and HRA shall assign such warranties to them upon final completion, without relinquishing its own rights under such warranties, and, if necessary, HRA will cooperate and assist in any prosecution of lawful and proper claims such owners may later assert against the contractor(s) and/or architects or others arising from faulty design or construction of the skyway bridge.

#### EASEMENTS

6. Upon completion of construction and furnishing to the building owners an architect's certificate certifying completion according to the approved plans and specifications, Athletic Club shall grant to the City without further consideration a permanent public easement for the System and its pedestrian concourse through its building in accordance with the aforesaid plans and the attached Exhibit B. A more detailed description of such public easement shall be determined by a registered land surveyor after construction. Said public easement shall be granted in precisely the form attached hereto as Exhibit C, and shall grant to the public use of said System for purposes of ingress, egress and pedestrian transit, except for such reasonable police measures regarding open hours and closing any part of the concourse within the building as the City may, by ordinance, from time to time determine, or regarding such public conduct in the skyway system as may be prohibited by skyway ordinance, as amended. The pedestrian concourse herein concerned shall be open from at least 7:00 a.m. to 1:30 a.m., Monday through Saturday, including until 1:30 a.m. Sunday mornings, and at the option of St. Paul Joint Venture (as owner of the Radisson St. Paul Hotel), for designated hours between the hours



4a.

of 7:00 a.m., Sundays to 1:30 a.m., Mondays on two weeks prior written notice by St. Paul Joint Venture to City, Athletic Club and MML. However, Athletic Club may close street ingress only (not egress) at 10:00 p.m. at the street level door

5.

north of and adjacent to the Athletic Club. Athletic Club is obligated only to keep the easement area itself accessible to the public during such hours.

7. That said easement shall conform to that shown in Exhibit B and shall traverse from the Midwest Federal/Athletic Club property line to the west property line of Athletic Club as it connects to the skyway bridge over Cedar Street and shall also traverse down stairs to Cedar Street and the public sidewalk; said easement shall be 12 feet in width except at enlarged areas for nodes or where the structural design of the building is such that a width of 12 feet is impossible, all in conformity with the said Pedestrian Concourse Agreement by and between Athletic Club and HRA dated August 30, 1979, previously incorporated herein by reference. It is understood that the easement areas on Exhibit B shall, upon completion, extend from existing floor to existing ceiling.

8. All parties agree that the skyway bridge and pedestrian concourse and adjacent access easements shall be designated as public easements and all ordinances and Codes of the City applicable to the System shall govern. HRA warrants that the design and construction of the skyway bridge and pedestrian concourse shall be in accordance with all applicable ordinances and state and local codes, and/or shall be approved as constructed according to such ordinances and codes.

9. The grant of easement herein shall be subject to the right of the grantor to change the location of the easement areas, conditioned upon the grant of a new easement which shall permit the continuity of the System, and, on the further condition that

the new easement area(s) shall be constructed and completed at the sole cost and expense of the grantor, and, on the further condition that no change in the easement location shall be made without the prior approval of the HRA and City, and on the further condition that said new easement area(s) shall be surveyed and described by a registered land surveyor, at grantor's expense.

10. Notwithstanding anything to the contrary herein, the easement to be granted herein by Athletic Club shall be limited to the life of the improvements constituting the System and shall terminate upon the happening of either of the following events:

- A. In the event the easement granted is vacated abandoned or discontinued in the manner required by law.
- B. In the event the building(s) in, upon or over which the easement area is located shall be substantially destroyed or demolished and such building(s) shall not be repaired or reconstructed; provided, however, that in the event such building(s) be reconstructed or replaced, grantor, its successors and assigns, agree that, without further consideration, a substitute easement of substantially equal convenience, area and general configuration shall be given. In the event the easement or any portion thereof is relocated, vacated or terminated under the provisions hereof, City shall furnish a release of such easement or portion thereof, to grantor, its successors or assigns.

11. The HRA and the City hereby waive any right they may have to share in an award of damages in the event that a public body acquires all or any part of the aforesaid buildings by condemnation or under the threat of condemnation. Said waiver applies to the

easement on or through the respective buildings or properties, but not to the skyway bridge itself except insofar as property owners incur, as a result of condemnation, expense due to property owners' demolition of said skyway bridge.

It is agreed by and between the parties hereto that the skyway bridge shall at all times be owned by the City and/or HRA, and said skyway bridges shall not constitute property leased, loaned or otherwise made available to second parties, or any one of them (within the meaning of Chapter 272.01(2) of Minnesota Statutes), it being understood that said bridge is intended to benefit the public generally.

#### OPERATION AND MAINTENANCE

13. Athletic Club and MML, their respective successors in interest, grantees and assigns, shall maintain and operate the electrical and heating, ventilating, air conditioning and drainage facilities in and serving the skyway bridge at their sole cost and expense, and shall keep and maintain the skyway bridge in repair and shall keep it reasonably clean and free of litter and debris.

Athletic Club and MML

further agree to provide the necessary repairs and maintenance of the skyway bridge its related equipment and its integral parts at their sole expense without cost to the HRA or City. Such maintenance shall include, but not be limited to, glass, floor, hardware and metal trim cleaning, polishing, repair and replacement, roof maintenance, repainting, light bulb replacement and light fixture cleaning. The HRA and City shall be furnished with plans and specifications for all additions or alterations or for

major repairs or replacements to the skyway bridge and pedestrian concourse, which plans and specifications shall be subject to their reasonable and timely approval before commencement of the work contemplated therein. Failure to approve or disapprove such plans and specifications in whole or in part within 14 days of receipt of same shall be deemed approval thereof.

14. Athletic Club and MML shall enter into a separate written agreement for sharing the maintenance, operating and repair costs for said skyway bridge, its integral parts and related equipment.

15. Athletic Club hereby agrees to provide all repairs and maintenance so as to maintain the pedestrian concourse and adjacent access areas at a reasonable standard of safety and cleanliness, and to provide all operating costs therefor.

16. If Athletic Club and/or MML fail to adequately maintain, repair and operate the skyway bridge, its integral parts and related equipment to a reasonable standard of cleanliness and safety, or if Athletic Club shall fail to undertake maintenance or repair of the stated portions of the pedestrian concourse and adjacent access areas, within 30 days after receipt of written demand by the City, the City may undertake the necessary maintenance, repair and operating tasks, and the costs for said maintenance, repair and operation shall be assessed to and payable forthwith by the defaulting property owners or their sureties and demand therefor shall first be made in accordance with the maintenance agreement executed by and between the parties, as amended from time to time; provided, however, that the City retains

the right to assess such costs against the parties as a local improvement in the manner provided by law.

SURETY BONDS AND INSURANCE

17. The building owners

shall together furnish and maintain a surety bond in the amount of \$50,000.00 for the skyway bridge, to and in favor of the City of Saint Paul, as obligee, conditioned that said building owners, their respective successors in interest and assigns, shall comply with the terms and conditions of the Ordinance and shall forever indemnify and hold harmless the City in accordance with said Ordinance against any expenses and liability on account of all costs, claims, suits and judgments arising out of or connected with the removal, maintenance, operation and/or repair of the skyway bridge, its integral parts and related equipment and the adjacent access areas associated with each of the respective buildings, and, further conditioned upon the building owners complying with all terms and conditions expressed and contained in this Agreement, as to such removal, maintenance, operation and repair which surety bond shall be in such form as shall be reasonably approved by the Director of Finance and Management Services for the City. The HRA shall also procure from the general contractor, documentation evidencing that the general contractor is maintaining, throughout the entire period of construction and erection of the skyway bridge,

such insurance as is set forth in the plans and specifications described in paragraph 1. herein, naming the abutting property owners to the skyway bridge as additional insureds as required by said plans and specifications, specifically Section 4. of the General Conditions, and Section 6. of the Special Conditions thereof, copies of which are attached hereto as Exhibits C-1 and C-2, respectively.

18. Insurance required hereunder for casualty and liability shall be a maintenance cost to be assumed by Athletic Club and MML for the skyway bridge and shall be shared in accordance with the separate agreement for the sharing of operating, maintenance and repair costs that Athletic Club and MML shall enter into as herein provided.

19. Insurance required hereunder for casualty and liability for the areas designated as easements for the pedestrian concourse herein shall be a maintenance cost to be assumed by Athletic Club.

20. Athletic Club and MML shall furnish and maintain public liability and casualty insurance coverage for the skyway bridge, and Athletic Club shall do so as to its pedestrian concourse with a duly licensed insurance company, wherein the City and HRA shall be designated as additional insureds, said insurance shall be in conformity with the requirements of paragraph f. of the Ordinance, containing the following minimum coverages: for personal injuries, including death, \$500,000.00 for each occurrence; for property damage to the extent of \$200,000.00 in any single accident; which minimum amounts are subject to increase in increments of up to 50% in any five year period by official action of the Council of the City of Saint Paul from time to time in the event statutory municipal liability limits are altered at any time after the date hereof. The casualty insurance shall have an all-risk or physical loss coverage in the amount of the full replacement cost of the skyway bridge.

SKYWAY DIRECTIONAL SIGNS

21. The location of directional and other signs that may be installed in the concourse in the aforesaid buildings shall be determined jointly by the HRA and the building owners. The initial cost of purchase of these signs shall be borne by the HRA. The cost of installation, operating, maintaining and repairing the signs shall be borne individually by the party on whose property the sign is located. If the location of the easement is changed, the sign shall be moved accordingly; the cost of moving and re-installing signs to a new easement area shall be borne by the respective property owners. If the sign moving requires a change in the sign face, this shall be done at the property owner's expense and consistent with the graphic design system established for skyway signs.

22. The skyway bridge and pedestrian concourse which are the subject of this Agreement shall not be operated for the purpose of advertising the name of any product or business, nor for any other commercial purpose other than on store fronts, which store front signs shall not project out from the wall surface; provided, however, that nothing herein contained shall prevent the installation and maintenance of the aforementioned directional sign(s) identifying the building names.

BINDING OBLIGATIONS

23. The respective rights and obligations of the parties set forth in this Agreement shall be binding upon and inure to the benefit of the respective parties and their successors in interest, grantees and assigns, and shall continue in force until



such time as the concourse system or that part referred to herein is vacated, abandoned, or terminated in the manner permitted by law.

24. The property owners herein reserve unto themselves the unconditional right and privilege of selling, conveying and transferring their abutting and/or encumbered or involved real estate herein and assigning and transferring this Agreement to any other corporation, corporations, trust, trusts, individuals, partnerships or other form of venture. In the event of transfer of property owner's interest in the property, the owner (seller) may be freed and relieved, from and after the date of such transfer, of all liability as respects the performance of any covenants or obligations on the part of owner (seller) contained in this Agreement thereafter to be performed; provided that owner's successor fully and without limitation assumes in writing all duties, responsibilities and covenants of the owner (seller) under this Agreement.

#### INTERPRETATION

25. In the event of any unresolvable, direct conflict which may arise as between the terms of this Agreement and the Ordinance, the Ordinance shall control, and as between this Agreement and the form of Grant of Easement attached hereto as Exhibit C, the form of Grant of Easement shall control. The Agreement, however, may assign duties and responsibilities in addition to those contained in the Ordinance as long as not in mutually exclusive direct conflict with the terms of the Ordinance.

IN WITNESS WHEREOF, the parties hereto have set their hands  
as of the day and year first above written.

HOUSING AND REDEVELOPMENT AUTHORITY  
OF THE CITY OF SAINT PAUL, MINNESOTA

By Joanne Showalter  
Its

By Greg M. McKen  
Its

APPROVED AS TO FORM

Richard H. Zehring

CITY OF SAINT PAUL

By George Latimer  
Its Mayor

By Ray Sh...  
Its Director, Department of Planning  
and Economic Development

By Donna...  
Its Director, Department of Finance  
and Management Services

By Rose...  
Its City Clerk

SAINT PAUL ATHLETIC CLUB

BY George S. Withy  
 J. R. Bird, President  
 BY Marlys Mahle  
 Secretary

MINNESOTA MUTUAL LIFE INSURANCE COMPANY

BY J. R. Bird  
 J. R. BIRD, SENIOR VICE PRESIDENT  
 BY Marlys Mahle  
 MARLYS MAHLE, ASSISTANT SECRETARY

STATE OF MINNESOTA )  
 ) SS.  
 COUNTY OF RAMSEY )

On this 11<sup>th</sup> day of JANUARY, 1980, before me, a Notary Public within and for said County, appeared George S. Withy and Victor Rein, to me personally known, who, being each by me duly sworn, did say that they are respectively the President and Secretary of SAINT PAUL ATHLETIC CLUB, a Minnesota non-profit corporation, that said instrument was signed by authority of its Board of Directors, and said President and SECRETARY acknowledged that said instrument was the free act and deed of said corporation.

Don W. Dahlberg  
 DON W. DAHLBERG  
 Notary Public, Ramsey County, Minn;  
 My Commission Expires Dec. 12, 1981

STATE OF MINNESOTA )  
 ) SS.  
 COUNTY OF RAMSEY )

On this 11th day of January, 1980, before me, a Notary Public within and for said County, appeared J. R. Bird and Marlys Mahle, to me personally known, who, being each by me duly sworn, did say that they are respectively the Senior Vice President and Assistant Secretary of the MINNESOTA MUTUAL LIFE INSURANCE COMPANY, a Minnesota insurance company, that said instrument was signed by authority of its Board of <sup>Trustees</sup> ~~Directors~~, and said J. R. Bird and Marlys Mahle acknowledged said instrument was the free act and deed of said company.

XXX  
 SUZANNE D. HUSTINGS  
 NOTARY PUBLIC - MINNESOTA  
 RAMSEY COUNTY  
 My Commission Expires May 17, 1985  
 XXX

Suzanne D. Hustings

STATE OF MINNESOTA )  
                                  ) SS.  
COUNTY OF RAMSEY )

On this 9<sup>th</sup> day of January, 1980, before me, a Notary Public within and for said County, appeared Josune Schwatter and George M. Mahon, to me personally known, who, being each by me duly sworn, did say that they are respectively the Chairman and Secretary of the HOUSING AND REDEVELOPMENT AUTHORITY OF THE CITY OF SAINT PAUL, MINNESOTA, a Minnesota public body corporate and politic, that said instrument was signed by authority of its Board of Commissioners, and said Josune Schwatter and George M. Mahon acknowledged that said instrument was the free act and deed of said corporation.

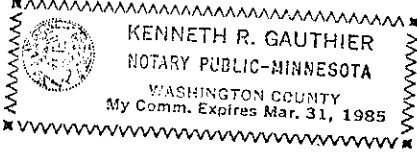
\*\*\*\*\*  
KENNETH R. GAUTHIER  
NOTARY PUBLIC-MINNESOTA  
WASHINGTON COUNTY  
My Comm. Expires Mar. 31, 1985  
\*\*\*\*\*

Kenneth R. Gauthier

STATE OF MINNESOTA )  
COUNTY OF RAMSEY ) SS.

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of January, 1980 by GEORGE LATIMER, Mayor of the City of Saint Paul, a municipal corporation of the State of Minnesota, on behalf of said City of Saint Paul.

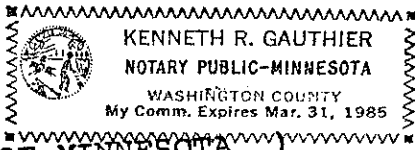
Kenneth R. Gauthier



STATE OF MINNESOTA )  
COUNTY OF RAMSEY ) SS.

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of January, 1980 by GARY E. STOUT, Director of the Department of Planning and Economic Development for the City of Saint Paul, a municipal corporation of the State of Minnesota, on behalf of said City of Saint Paul.

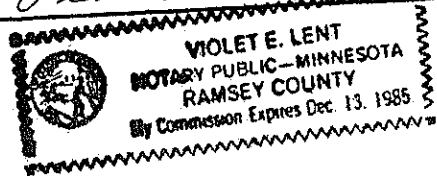
Kenneth R. Gauthier



STATE OF MINNESOTA )  
COUNTY OF RAMSEY ) SS.

The foregoing instrument was acknowledged before me this 9 day of January, 1980, by BERNARD J. CARLSON, Director of the Department of Finance and Economic Development for the City of Saint Paul, a municipal corporation of the State of Minnesota, on behalf of said City of Saint Paul.

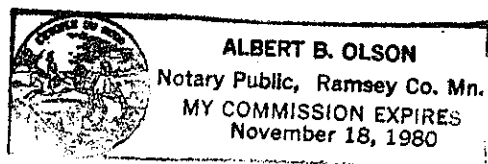
Violet E. Lent



STATE OF MINNESOTA )  
COUNTY OF RAMSEY ) SS.

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of January, 1980, by ROSE MIX, City Clerk for the City of Saint Paul, a municipal corporation of the State of Minnesota, on behalf of said City of Saint Paul.

Albert B. Olson



after its passage, approval and publication.

Adopted by the Council November 3, 1977.

Yeas — Councilmen Butler, Hozza, Hunt, Levine, Roedler, Sylvester, Tedesco—7.

Nays—0.

Approved November 4, 1977.

GEORGE LATIMER  
Mayor  
(November 12, 1977)

Council File No. 269927—Ordinance No. 16362—By Ruby Hunt—

AN ORDINANCE MAKING PROVISION THEREFOR AND GRANTING UNTO THE HOUSING AND REDEVELOPMENT AUTHORITY OF THE CITY OF SAINT PAUL, MINNESOTA, A MINNESOTA CORPORATION, AND ITS SUCCESSORS OR ASSIGNS, PERMISSION TO CONSTRUCT, MAINTAIN AND OPERATE THE FOLLOWING OVERHEAD PEDESTRIAN PASSAGeways OVER PUBLIC STREETS WITHIN THE CORPORATE LIMITS OF THE CITY OF SAINT PAUL; AND

- 1) ACROSS EAST SEVENTH PLACE BETWEEN THE INTERSECTION THEREWITH OF MINNESOTA STREET AND ROBERT STREET, SAID OVERHEAD PEDESTRIAN PASSAGeway TO BE EXTENDED FROM THE EXISTING BREMER BUILDING ON THE SOUTH SIDE OF EAST SEVENTH PLACE TO DONALDSON'S ON THE NORTH SIDE OF EAST SEVENTH PLACE.
- 2) ACROSS ROBERT STREET BETWEEN THE INTERSECTION THEREWITH OF EAST SEVENTH PLACE AND EIGHTH STREET, SAID OVERHEAD PEDESTRIAN PASSAGeway TO BE EXTENDED FROM EXISTING DONALDSON'S ON THE WEST SIDE OF ROBERT STREET TO THE METRO SQUARE BUILDING ON THE EAST SIDE OF ROBERT STREET.
- 3) ACROSS CEDAR STREET BETWEEN THE INTERSECTION THEREWITH OF EAST FOURTH STREET AND EAST FIFTH STREET, SAID OVERHEAD PEDESTRIAN PASSAGeway TO BE EXTENDED FROM THE EXISTING ATHLETIC CLUB BUILDING ON THE EAST SIDE OF CEDAR STREET TO THE MINNESOTA MUTUAL LIFE BUILDING ON THE WEST SIDE OF CEDAR STREET.
- 4) ACROSS EAST FOURTH STREET BETWEEN THE INTERSECTION THEREWITH OF CEDAR STREET AND WABASHA STREET, SAID OVERHEAD PEDESTRIAN PASSAGeway TO BE EXTENDED FROM THE EXISTING MINNESOTA MUTUAL LIFE BUILDING ON THE NORTH SIDE OF EAST FOURTH STREET TO THE DEGREE OF HONOR BUILDING ON THE SOUTH SIDE OF EAST FOURTH STREET.

The Council of the City of Saint Paul Does Ordain:

#### SECTION 1

That permission and authority hereby are granted to the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota, a Minnesota corporation and/or its successors in interest to construct, maintain and operate the following overhead pedestrian passageways over the public streets within the corporate limits of the City of Saint Paul; and

- 1) across East Seventh Place between the intersection therewith of Minnesota Street and Robert Street, said overhead pedestrian passageway to be extended from the existing Bremer Building on the south side of East Seventh Place to Donaldson's on the north side of East Seventh Place.
- 2) across Robert Street between the intersection therewith of East Seventh Place and Eighth Street, said overhead pedestrian passageway to be extended from existing Donaldson's on the west side of Robert Street to the Metro Square Building on the east side of Robert Street.
- 3) across Cedar Street between the intersection therewith of East Fourth Street and East Fifth Street, said overhead pedestrian passageway to be extended from the existing Athletic Club Building on the east side of Cedar Street to the Minnesota Mutual Life Building on the west side of Cedar Street.
- 4) across East Fourth Street between the intersection therewith of Cedar Street and Wabasha Street, said overhead pedestrian passageway to be extended from the existing Minnesota Mutual Life Building on the north side of East Fourth Street to the Degree of Honor Building on the south side of East Fourth Street.

#### SECTION 2

That the Director of Public Works is hereby authorized to issue necessary permits to said permittee, the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota, for the construction, maintenance, and operation of said overhead pedestrian passageways according to the plans and specifications approved by the Department of Public Works and at the separate cost and expense of said permittee, upon said permittee's compliance with the following conditions.

- a. The said permittee and/or its successors in interest shall, at its own cost and expense and in accordance with all applicable ordinances of the City of Saint Paul, statutes of the State of Minnesota and regulations of public authority having cognizance, construct, maintain, and operate said overhead pedestrian passageway hereunder;
- b. That said permittee shall pay the costs for the publication of this ordinance;
- c. That said permittee shall pay the costs of administration, engineering, and inspection incurred by the Department of Public Works due to this

undertake to be (\$600.00) passageway account of plans; b.

d. That the Department head part to its limited tracts, plans; e. That each of the Public Works approved the Housing Authority of Minnesota specific pedestrian works construction plan of State Officials amended Code and of Comm. Housing ment;

f. That successors in fee, hold of Saint employee claims, losses of what son(s) or or construction or removal passageway, permit, their passageway hereunder successor maintain other ex insurance Casualty extent of person an incident for damages accident, Saint Paul of all claim jury to arising from construction operation, figures here furnish coverage, Director of Services c.

g. That proceed with unless an have full provisions re determination of Saint Paul "Stat" cations

Exhibit A

undertaking, said costs are estimated to be a sum of Six Hundred Dollars (\$600.00) for each overhead pedestrian passageway noted above and shall be accounted for under separate Department of Public Works Project Numbers;

d. That said permittee shall furnish the Department of Public Works all documents of record, for each overhead pedestrian passageway, that are a part of each contract or incidental to its execution including, but not limited to, addendums, award of contracts, contract amount, "as built" plans, tracings and tracings of shop plans;

e. That said permittee shall construct each overhead pedestrian passageway to the satisfaction of the Director of Public Works and in accordance with approved plans and specifications of the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota. Copies of said plans and specifications for each overhead pedestrian passageway hereunder are to be filed with the Department of Public Works prior to bidding. Such construction shall be made in strict compliance with the American Association of State Highway and Transportation Officials (AASHTO) Specifications, as amended, and the Uniform Building Code and be authorized under a building permit issued by the Department of Community Services, Division of Housing and Building Code Enforcement.

f. That said permittee and/or its successors in interest shall fully indemnify, hold harmless, and defend the City of Saint Paul, its agents, officers and employees from any and all damages, claims, losses, judgments, suits or expenses and on account of all claims of whatever nature for injury to person(s) and/or property arising out of or connected with the construction, erection, maintenance, operation and/or removal of each overhead pedestrian passageway hereunder; and that supplemental to all other obligations, on their part, jointly and/or severally, hereunder, said permittee and/or its successors in interest shall furnish and maintain and pay all premiums and other expenses therefor, Casualty Insurance Coverage, with a duly licensed Casualty Insurance Company to the extent of \$500,000.00 for injury to any person and/or persons in any single incident, and to the extent of \$200,000.00 for damage to property in any single incident, indemnifying the City of Saint Paul against liability on account of all claims of third persons for injury to person(s) and/or property arising from or connected with the construction, erection, maintenance, operation and/or removal of said structures hereunder, at all times, and to furnish competent evidence of said coverage, from time to time, to the Director of Finance and Management Services of the City of Saint Paul;

g. That said permittee shall not proceed with the applicable construction unless and until said permittee shall have fully complied with the provisions regarding insurance and indemnification contained in the Department of Public Works, City of Saint Paul "Standard Supplemental Specifications for Highway Construction,"

dated September 1, 1976, Section numbered 1305.2 for each overhead pedestrian passageway noted above. For the purpose of this Ordinance, the aforesaid Section of said Specifications shall be read as though the word "permittee" was substituted for the word "contractor" wherever same appears therein. Section 1305.2 of the Department of Public Works, City of Saint Paul "Standard Supplemental Specifications for Highway Construction" dated September 1, 1976 is hereby incorporated herein by reference as fully and as completely as if set forth herein verbatim.

h. That said permittee and/or its successors in interest, shall among other things, at their own cost and expense, make adequate and effective provisions therefor and drain all moisture, rain and snow which shall accumulate thereon by proper devices through each overhead pedestrian passageway noted above and in a manner so that the flowing and/or spilling of same on any part of said sections of said public streets or private property shall be prevented at all times. Said permittee and/or its successors in interest shall maintain and operate each overhead pedestrian passageway at its sole cost and expense in a safe condition for pedestrian travel, such maintenance to include, but shall not be limited to, glass, floor, metal trim, and hardware cleaning, polishing, and replacement; roof maintenance; repainting; light bulb replacement and light fixture cleaning; and the supply of heated and cooled air within each bridge to maintain temperature comparable to that normally maintained within heated and air-conditioned rental office spaces;

i. That said permittee and/or its successors in interest shall, at all times, construct and maintain all of the supports of each overhead pedestrian passageway noted above entirely within the lines of the subject private real estate and entirely without public street rights-of-way;

j. That said permittee shall notify the Traffic Bureau of the Department of Public Works if the construction or maintenance of the above overhead pedestrian passageways shall make necessary the closing of certain public streets or any part thereof; all expenses incurred by the Traffic Bureau in furnishing, installing, or removing barricades, signs, and other control devices shall be paid by the permittee;

k. That said permittee and/or its successors in interest shall not use any part of the above overhead pedestrian passageways for advertisement or display purposes, without the written consent of the City of Saint Paul and the application thereto of any advertising material or display shall be deemed prohibited by this Ordinance;

l. That said permittee and/or its successors in interest shall, at all pertinent times, in the construction, maintenance, and operation of each overhead pedestrian passageway hereunder, provide respectively a minimum vertical clearance of at least 17' 3" on the bridges across Cedar Street and across East Fourth Street and at least 17' 4" on the bridges across East Seventh Place and across Robert Street between and throughout the course of the bot-

tom of said structures and the surface of said sections of public streets; except as may be altered by the City's future street work;

m. That said permittee expressly agrees to comply with Chapter 216 of the Saint Paul Legislative Code, as amended, pertaining to street obstructions;

n. That said permittee and/or its successors in interest shall complete the construction and erection of each overhead pedestrian passageway by not later than one (1) year after commencement of construction. Said commencement shall be evidenced by Public Works' receipt of a written notification thereof, and shall be dated therein, as further provided for under Paragraph (o) below;

o. That said permittee shall notify the Bridge Engineer of the Department of Public Works before and when construction has been completed to allow for a final inspection of each overhead pedestrian passageway hereunder;

p. That each overhead pedestrian passageway hereunder shall be removed by and at the sole cost and expense of said permittee and/or its successors in interest whenever the Council of the City of Saint Paul shall by Resolution determine such removal necessary in the public interest and accordingly order the removal of said structure from said location;

q. That said permittee shall, within the period of 10 days after the publication of this Ordinance, file with the City Clerk its written acceptance of this Ordinance and agreement to be bound by all the provisions, terms and conditions thereof without limitation which written instrument of acceptance and agreement shall be in the form approved by the City Attorney;

r. That upon the execution of an Agreement by and between the City of Saint Paul, the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota, and the applicable building/property owners respecting the aforesaid pedestrian passageways noted above, the permittee being the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota, shall be relieved of any further obligation under the terms of this Ordinance, and the successors in interest of the permittee, i.e. the applicable building/property owners respecting the aforesaid overhead pedestrian passageways as noted above shall be responsible for paying the insurance premiums for the overhead pedestrian passageway(s) connecting their buildings and also for providing the maintenance and operation same;

s. That upon the Housing and Redevelopment Authority's conveyance of its obligations under the terms of this Ordinance to the above successors in interest, said permittee's successors in interest shall furnish and deliver unto the City of Saint Paul a Surety Bond in the amount of Fifty Thousand Dollars (\$50,000.00) for each completed overhead pedestrian passageway (bridge) hereunder, made and executed by said permittee's successors in interest as Principal, and a Corporate Surety Company duly authorized to transact business in the State of Minnesota as Surety, to and in favor

of the City of Saint Paul as obligee, conditioned upon the permittee's successors in interest complying with the terms and conditions of this Ordinance and also conditioned that, in the event the permittee's successors in interest fail to maintain or repair said overhead pedestrian passageway to a reasonable standard of safety, or fail to remove said overhead pedestrian passageway upon order by the Council, the City of Saint Paul may undertake the maintenance, repair, or removal thereof and may recover its reasonable cost incurred thereby from said surety, which Surety Bond shall remain in full force and effect as long as said overhead pedestrian passageway or any part thereof remains in that portion of public right-of-way as shown on plans to be filed with the Department of Public Works. The Surety Bond shall be in form as shall be approved by the City Attorney, and shall have such surety as shall be approved by the Director of Finance and Management Services;

t. That said permittee and/or its successors in interest shall submit proposed plans and specifications to the Department of Public Works for review and approval of any intended structural repairs or major maintenance work on each bridge before any such work is carried out. Upon completion of such structural repairs approved by the Department of Public Works, permanent reproducible tracings shall be furnished the Department showing the work done and marked with any "as built" changes, as well as reproducible shop drawing tracings of the same;

u. That said permittee shall submit the necessary insurance documents to the Office Engineer of the Department of Public Works for each overhead pedestrian passageway hereunder. The Office Engineer in turn shall submit said documents to the City Attorney of the City of Saint Paul for review and, if said insurance is sufficient, said documents shall be appropriately filed with the Director of Finance and Management Services of the City of Saint Paul.

### SECTION 3

That this Ordinance shall take effect and be in force thirty (30) days from and after its passage, approval and publication.

Adopted by the Council November 3, 1977.

Yeas — Councilmen Butler, Hozza, Hunt, Levine, Roedier, Sylvester, Tedesco—7.  
Nays—0.

Approved November 4, 1977.

GEORGE LATIMER  
Mayor  
(November 12, 1977)

### RESOLUTIONS

Council File No. 270043—By Rosalie L. Butler—

Whereas,

1. On October 18, 1977, the Port Authority of the City of Saint Paul

adopted Resolution preliminary approval of revenue bonds in the total amount of \$1,250,000 to finance the construction, mixing and paving at their asphalt storage complex in Red Rock Park.

2. Laws of Minnesota, Chapter 234, provides that bonds authorizing the City of Saint Paul issued only with the approval of the City Council or by resolution in conformity with law;

3. The Port Authority of Saint Paul, has requested the Council give its approval to said bonds in the amount of \$1,250,000. The Port Authority of Saint Paul, subject to the details of said bonds, has the authority of the City of Saint Paul.

4. It is estimated that the principal amount of said bonds is approximately \$1,250,000 and the interest cost will not exceed \$125,000.

Resolved, By the Council of the City of Saint Paul, Minnesota, with Laws of Minnesota, Chapter 234, the City of Saint Paul to the issuance of revenue bonds for the amount of \$1,250,000 in the aforesaid Resolution No. 125,000 amount of approximately \$1,250,000 at a net interest rate of 8%, the exacting, but not including, to maturity, redemption, amount of additional interest determined pursuant to the Resolution of the Port Authority of Saint Paul, hereby authorized (additional bonds) by the Port Authority for carrying out the aforesaid Resolution. Adopted by the Council of the City of Saint Paul, Minnesota, on November 4, 1977.

Approved by the Council of the City of Saint Paul, Minnesota, on November 4, 1977.

Council File No. 270043—By Rosalie L. Butler—  
Whereas,  
City of Saint Paul Council has approved its budget and operations for 1978 to the amount of \$1,250,000 for industrial development. Whereas, the amount of \$1,250,000 for industrial development is filed with the Council of the City of Saint Paul, Minnesota, for the approval of the Council of the City of Saint Paul, Minnesota, for the issuance of revenue bonds in the amount of \$1,250,000 to finance the construction, mixing and paving at their asphalt storage complex in Red Rock Park.



Fifth Street

MIDWEST FEDERAL

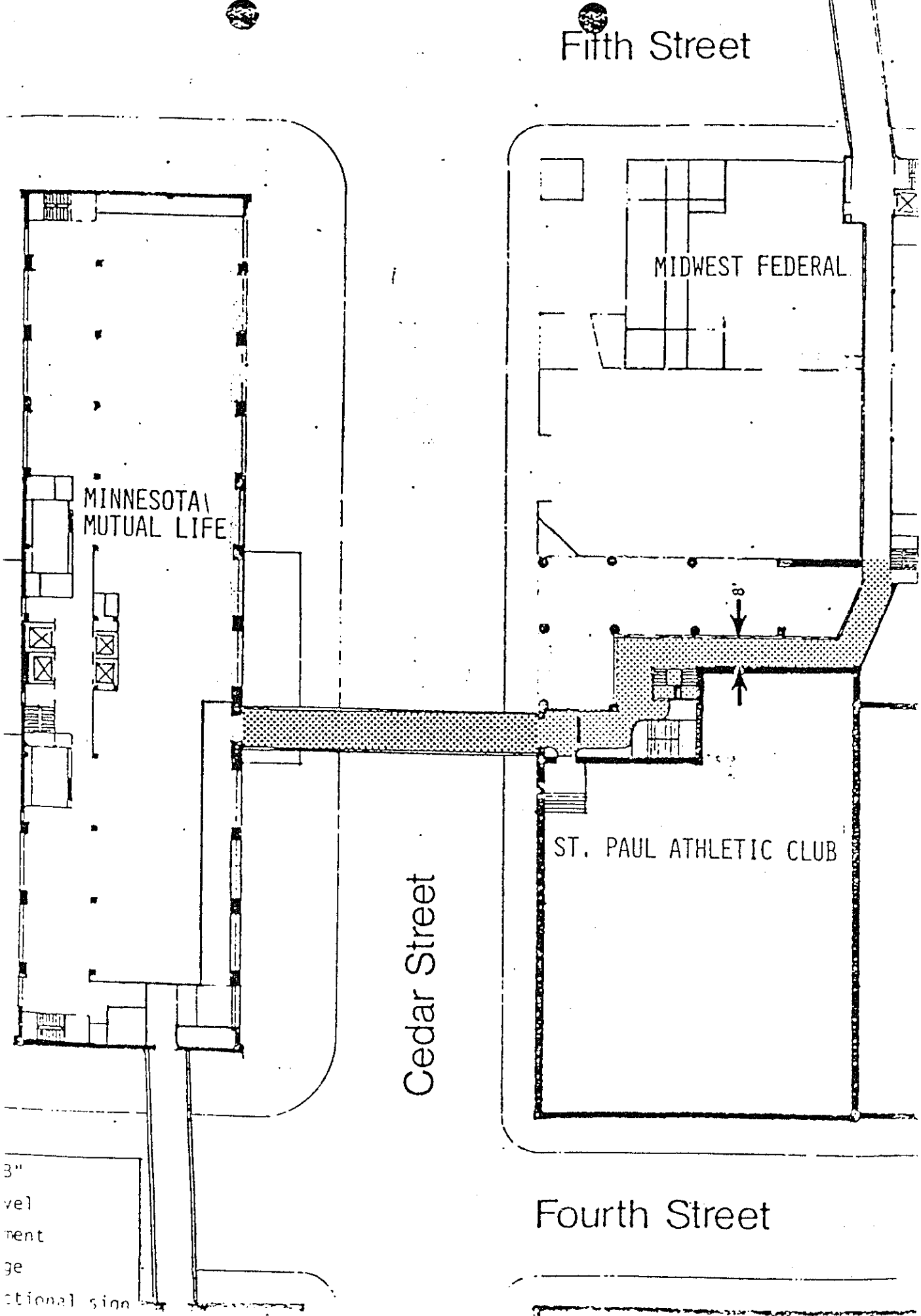
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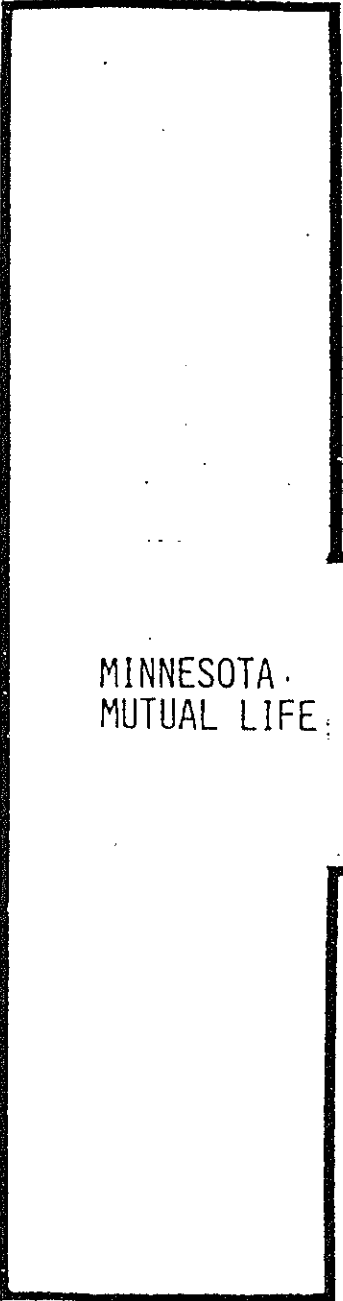
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Fourth Street

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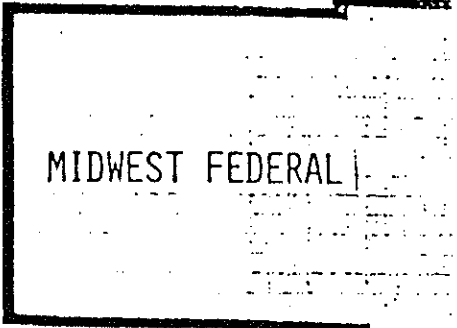


Fifth Street

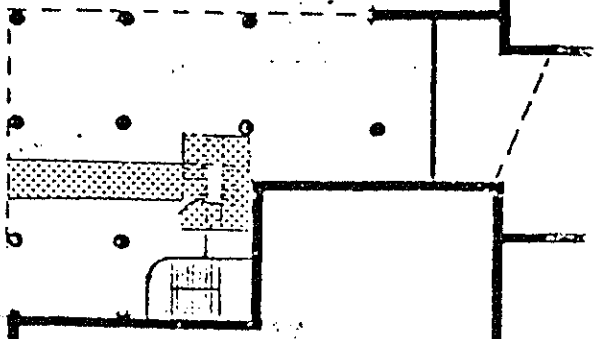


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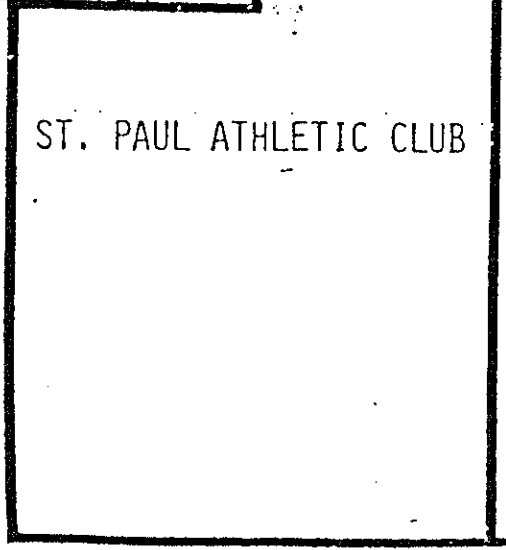
Cedar Street



MIDWEST FEDERAL



ST. PAUL ATHLETIC CLUB



Fourth Street

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GRANT OF EASEMENT

WHEREAS, SAINT PAUL ATHLETIC CLUB, a Minnesota non-profit corporation, hereinafter called "Grantor", is the owner in fee of that certain land situated in the City of Saint Paul, County of Ramsey, State of Minnesota, more particularly described in Exhibit 1 attached hereto, hereinafter called Grantor's "Property"; and

WHEREAS, Grantor has agreed pursuant to that Agreement dated \_\_\_\_\_ by and among the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota, the City of Saint Paul, the Grantor herein, and Minnesota Mutual Life Insurance Company, to grant to the City of Saint Paul a public easement for a second floor level pedestrian way, with vertical access and connecting ground level easement, also described as the Skyway Bridge and Pedestrian Concourse System, through Grantor's \_\_\_\_\_ Property.

NOW, THEREFORE, in pursuance of that Agreement, and in consideration of the sum of ONE DOLLAR (\$1.00) and other valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, Grantor, for itself, its successors and assigns, \_\_\_\_\_ does hereby grant unto the CITY OF SAINT PAUL, a Minnesota municipal corporation, an easement for the Skyway Bridge and Pedestrian Concourse System for the use and benefit of the public as a public way and for public ingress and egress and for pedestrian transit in, through and over the Property and the structures thereon, described as follows:

together with an easement for public ingress to, egress from and transit to and from said System by way of vertical access from \_\_\_\_\_ Street to the pedestrian concourse, described as follows:

and also together with an easement for public access on the ground floor level from the foot of the above described vertical access facilities to public sidewalks, described as follows:

all of which above described areas shall be collectively referred to as the "easement".

The easement area is expressly herein made subject to such reasonable police measures regarding open hours and closing any part or all of the easement within, on or over Grantor's Property during non-business hours and regarding public conduct within the System, as the City of Saint Paul may, by ordinance, from time to time determine.

The public's right herein to ingress and egress and pedestrian transit in and through the easement granted to the City herein shall also be and hereby is made subject to such reasonable measures regarding open hours and temporarily closing part(s) or all of the easement areas within or on Grantor's Property as the City of Saint Paul may, by agreement with Grantor or its successors or assigns, from time to time, determine. This provision shall not diminish the City's right to, from time to time, exercise its police powers unilaterally, by ordinance, concerning open hours or temporarily closing part(s) or all of the easement, or concerning public conduct within the System, nor shall such agreed or legislated hours in any manner restrict City's easement interest, but shall affect only the public's rights to ingress and egress and pedestrian transit in the City's easement.

The grant of easement herein shall be subject to the right of the Grantor to change the location of the easement conditioned upon the grant of a new easement which shall permit the continuity of the System, and, on the further condition that the new easement area shall be installed at the sole cost and expense of the Grantor, and, on the further condition that no change in the easement location shall be made without the approval of the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota and the City of Saint Paul, such approval not be unreasonably withheld, and, on the further condition that said new easement shall be surveyed and described by a registered land surveyor at the expense of the Grantor.

Notwithstanding anything to the contrary herein, the easement given shall be limited to the life of the improvements constituting the System and shall terminate upon the happening of either of the following events:

- A. In the event the easement granted herein is vacated, abandoned or discontinued in the manner required by law.
- B. In the event the building(s) in, upon or over which the easement is located shall be substantially destroyed or demolished and such building(s) shall not be repaired or reconstructed; Provided, however, that in the event such building(s) be reconstructed or replaced, Grantor, its successors and assigns agree that, without further consideration, a substitute easement of substantially equal convenience, area and general configuration shall be given. In the event the

easement or any portion thereof is relocated, vacated or terminated under the provisions hereof, City shall furnish a release of such easement or portion thereof, to Grantor, its successors or assigns.

Grantor, for itself, its successors and assigns, does hereby agree that for and during the life of said easement, Grantor, or its designee by separate agreement, shall be responsible for and/or provide for the cost of all repairs, improvements and replacements of the public way or Skyway Bridge and Pedestrian Concourse System as it passes through its building or on or over its land as described herein, it being understood that the aforesaid covenant shall run with the land.

Grantor reserves unto itself the unconditional right and privilege of selling, conveying and transferring the Property described above to any other corporation, corporations, trust, trusts, individual, partnerships, or other form of venture. In the event of transfer of property owner's interest in the property, the Grantor (seller) may be freed and relieved, from and after the date of such transfer, of all liability as respects the performance of any covenants or obligations on the part of Grantor (seller) contained in the Agreement thereafter to be performed; provided that Grantor's successory fully and without limitation assumes in writing all duties, responsibilities and covenants of the Grantor hereunder.

TO HAVE AND TO HOLD said easement for a public way or Skyway Bridge and Pedestrian Concourse System, together with all rights of ingress and egress appertaining thereto until the System is vacated or abandoned in the manner required by law, or terminated in accordance herewith.

IN WITNESS WHEREOF, Grantor has hereunto set its hand this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

SAINT PAUL ATHLETIC CLUB

By \_\_\_\_\_  
Its

By \_\_\_\_\_  
Its

STATE OF MINNESOTA )  
  ) SS.  
COUNTY OF RAMSEY )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, a Notary Public within and for said County, appeared \_\_\_\_\_ and \_\_\_\_\_, to me personally known, who, being each by me duly sworn, did say that they are respectively the \_\_\_\_\_ and \_\_\_\_\_ of SAINT PAUL ATHLETIC CLUB, a Minnesota non-profit corporation, that said instrument was signed by authority of its Board of Directors, and said \_\_\_\_\_ and \_\_\_\_\_ acknowledged said instrument was the free act and deed of said corporation.

THIS INSTRUMENT WAS DRAFTED BY: \_\_\_\_\_

4. INSURANCE

The contractor shall furnish proof of insurance directly to the City Attorney prior to commencing work. The contractor shall hold harmless and defend the City, where applicable, against any and all claims for property damage and claims for injury to or death of one, or more than one, person, because of accidents which may occur or result from operations under the contract. The contractor shall pay any judgment against the City resulting from any such suit. The City shall have the right at its option to participate in any such litigation without relieving the contractor of any of its obligations. The contractor shall carry the following insurance naming the City as a co-insured thereon:

- A. Contractor's Public Liability Insurance with limits of \$500,000/\$500,000 naming and protecting the contractor, all subcontractors, against claims for injury to or death of one or more persons as a result of accidents which may occur at the site from operation under the contract.
- B. Property Damage Insurance with limits of \$150,000/\$300,000.
- C. Workmen's Compensation Insurance in compliance with the Laws of the State of Minnesota.
- D. Automobile Insurance, including owned, hired and nonowned vehicle coverage limits of \$100,000/\$300,000 bodily injury and \$50,000 per occurrence property damage.

6 INSURANCE

Modify Section 4 of the General Conditions, as follows:

a. Insert the following after City:

"and Hammel, Green and Abrahamson, Inc."

b. Paragraph B: Property Damage Insurance. Delete this portion of the paragraph in its entirety and insert the following in its place: "Property Damage Insurance in the amount of not less than \$500,000 for all damages to or destruction of property in any one accident, and subject to that limit per accident; further subject to a total of not less than \$1,000,000 for all damages to or destruction of property during the policy period.

c. Paragraph C:

The Builder's Risk Insurance shall be for the benefit of the Contractor, the City of St. Paul, the HRA and the abutting property owners as their interests may appear in the value of the cost of the work under this contract, and each shall be specifically named in the policy or policies as an insured; or at the Contractor's option, a Blanket Owner's Protective Policy covering all Owners (including adjacent building owners) may be provided in lieu of the above Builder's Risk Insurance and the City of St. Paul Uniform Certificate of Insurance.

d. Add the following after paragraph D:

E. The Contractor shall also cause to have executed the City of Saint Paul "Uniform Endorsement" required by the Saint Paul Legislative Code, as amended. This form can be obtained at the service desk on the 6th Floor of the City Hall Annex.

## FIRST AMENDMENT TO ACCESS SUSPENSION AGREEMENT

This Amendment to Access Suspension Agreement (the "**First Amendment**") was made and entered into to be effective this \_\_\_\_\_ day of \_\_\_\_\_, 2001 by and between the City of St. Paul, a Minnesota municipal corporation (the "**City**") and Capital City Ventures, LLC, a Minnesota limited liability company (the "**Owner**").

### RECITALS

- A. The parties entered into a certain Access Suspension Agreement (the "**Access Suspension Agreement**") to be effective on or about May 26, 1995, a copy of the Access Suspension Agreement being attached hereto as Exhibit A.
- B. The Access Suspension Agreement referred to a contemplated use of the street level of property owned by the Owner as a outdoor dining facility (the "**Street Level**").
- C. The Owner has determined that the use of the Street Level for purposes of an outdoor dining facility may or may not be a viable or desirable, or even appropriate use of the Street Level, and that the use of the Street Level may require the enclosure or other development thereof.
- D. The parties agree that in order to further induce the Owner to make use of the Street Level, that the Access Suspension Agreement should be amended further to suspend public access by and between the skyway system and the Street Level.
- E. The City reaffirms the recital in the Access Suspension Agreement that the public has adequate alternative access to the skyway system through various other points of entry and exit.

NOW THEREFORE, the parties agree as follows:

1. The foregoing Recitals are true and correct and hereby made a part of this First Amendment.
2. The City hereby suspends the right of the public to have access to the skyway system through or from the Street Level and the right of the public to have access to the Street Level from the skyway system. This right of access shall be suspended for so long as the Owner is:



- a. Marketing or advertising the Street Level for use or occupancy; or,
- b. Actively using the Street Level (which shall include the period of construction of any development thereon)

The suspension of access shall continue until such time as any such use is permanently abandoned by the Owner. (For purposes of this First Amendment, allowing the Street Level to be all or partially vacant on a temporary basis shall not be considered to be a “permanent abandonment”). The City’s agreement to suspend access to the Street Level shall not be interpreted as prohibiting the Owner or other occupants of the Street Level, or their invitees, from having access to and from the skyway system through the vertical stairwell currently in existence.

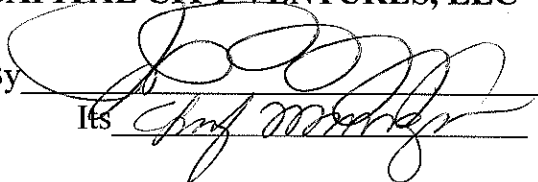
3. Except as otherwise specifically stated herein, the foregoing of Suspension of Access by the City shall not modify, suspend, or eliminate any of the Owner’s obligations contained in the Skyway Agreement (as defined in the Access Suspension Agreement) including, but not limited to, the Owner’s obligation to maintain and repair the pedestrian concourse and skyway bridge improvements.

4. This Agreement may only be modified or amended by written instrument signed by all parties hereto. This Agreement sets forth the entire agreement and understanding of the parties with respect to its subject matter and supercedes all prior negotiations, understandings, and agreements whether written or verbal. This Agreement may be executed in counterparts.

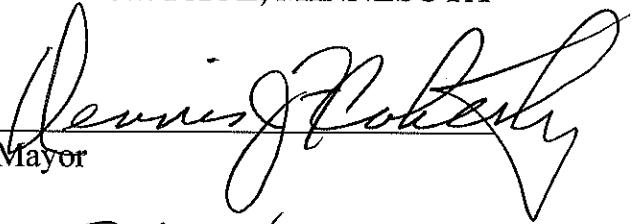
**CAPITAL CITY VENTURES, LLC**

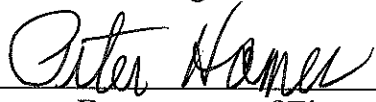
By \_\_\_\_\_

Its \_\_\_\_\_

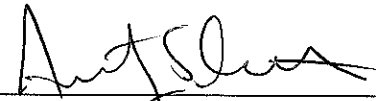


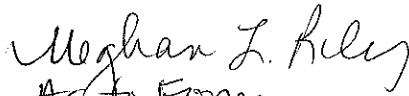
**CITY OF ST. PAUL, MINNESOTA**

By   
Mayor

By   
Director, Department of Finance and  
Management Services

DHW  
12/29/01

By   
Director, Department of Planning and  
Economic Development

  
As to Form

(2)

**ACCESS SUSPENSION AGREEMENT**

This Access Suspension Agreement ("Agreement") is made and entered into as of this 26<sup>th</sup> day of MAY, 1995 by and between the City of Saint Paul, a Minnesota municipal corporation ("City") and Capital City Ventures, LLC, a Minnesota limited liability company ("Owner").

W I T N E S S E T H:

WHEREAS, Owner is the owner of certain real property located at the northeast corner of Fourth and Cedar Streets in the City of Saint Paul, Ramsey County, legally described on Exhibit A to this Agreement (the "Property"), which is improved with a building commonly known as the St. Paul Athletic Club (the "Building"); and

WHEREAS, City and Owner, together with the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota (the "HRA") are parties to an Agreement dated as of MAY 26, 1995 pursuant to which Owner restated a grant of easement in favor of City with respect to construction and maintenance of a skyway bridge and pedestrian concourse system for the use and benefit of the public as part of the City of Saint Paul skyway system and reaffirmed certain obligations of Owner with respect to repair and maintenance of said skyway bridge and pedestrian concourse; and

WHEREAS, Owner intends to develop an outdoor dining facility on the street level of a portion of the Property; and

WHEREAS, Owner is unwilling to commit the necessary time and money to develop such an outdoor dining facility unless public access to and from the street level of the Property to the skyway system and to and from the entrance located on the skyway concourse to the street level of the Property is suspended for as long as such an outdoor dining facility is maintained; and

WHEREAS, the City, as an inducement to Owner to encourage Owner to spend such time and money to develop such an outdoor dining facility, is willing to suspend the right of the public to such access; and

WHEREAS, the City specifically finds that the public has adequate alternative access to the skyway system through various other points of entry and exit;

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

1. The foregoing recitals are true and correct and hereby made a part of this Agreement.

2. City hereby suspends the right of the public to have access to the St. Paul skyway system from the street level of the Property and the right of the public to have access to the street level of the Property from the St. Paul skyway system. This right of access shall be suspended for as long as Owner is maintaining, in season, an outdoor dining facility upon the Property, and upon Owner's failure to maintain or continue such an outdoor dining facility, the foregoing right of access shall be automatically reinstated without need of further action or agreement. In furtherance of the suspension of such right of access, Owner is specifically granted the right to rekey and lock the stairwell doors at the ground level and at the skyway level of such access.

3. The foregoing suspension of access by City shall not modify, suspend or eliminate any of Owner's obligations contained in the Skyway Agreement including, but not limited to, obligations to maintain and repair the pedestrian concourse and skyway bridge improvements.

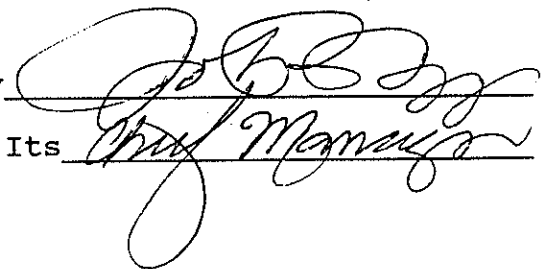
4. This Agreement may only be modified or amended by written instrument signed by all parties hereto. This Agreement sets forth the entire Agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, understandings and agreements, whether written or oral. This Agreement may be executed in counterpart.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first above written.


CAPITAL CITY VENTURES, LLC

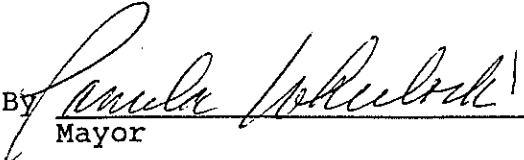
By

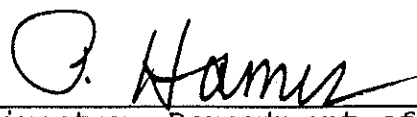
Its

A handwritten signature in cursive script, appearing to read "John M. ...", is written over a horizontal line. Below this line, the word "Its" is printed, followed by another horizontal line.

CITY OF SAINT PAUL, MINNESOTA

FORM APPROVED  
  
CITY ATTORNEY

By   
Mayor

By   
Director, Department of  
Finance and Management  
Services


By   
Director, Department of  
Planning and Economic  
Development

EXHIBIT A

Property located in Ramsey County, Minnesota, legally described as:

Parcel 1:

Lot 8 and the Southerly 112 feet of Lot 7, Block 19, St. Paul Proper, according to the recorded plat thereof, and situate in Ramsey County, Minnesota (Abstract)

Parcel 2:

The Southeasterly 1/6 of Lots 5 and 6, Block 19, St. Paul Proper, according to the recorded plat thereof, and situate in Ramsey County, Minnesota (Abstract)

Parcel 3:

Lot seven (7) except the Southerly one hundred twelve (S'ly 112) feet thereof, in Block nineteen (19), St. Paul Proper, according to the recorded plat thereof, and situate in Ramsey County, Minnesota (Torrens)

PEDESTRIAN CONCOURSE AGREEMENT

This AGREEMENT, made and entered into this 30<sup>th</sup> day of August, 1979, by and between the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota, a body corporate and politic organized and existing under the provisions of Minnesota Statutes, Chapter 462 (hereinafter called the "HRA"), and the Saint Paul Athletic Club, a Minnesota non-profit corporation (hereinafter called the "Company");

WITNESSETH:

WHEREAS:

- A. The Company and the HRA intend that certain meeting rooms, dining facilities and health club be constructed on premises generally described as the northeast corner of Fourth and Cedar. Said facilities and premises are hereinafter called the "Project".
- B. The Company and the HRA intend that the Project will include the construction of an extension within the Company's building to the west property line (hereinafter called the "New Concourse") of an existing pedestrian concourse system (hereinafter called the "Existing Concourse").
- C. The Company shall be the developer and occupant of the Project.
- D. The HRA is willing to reimburse the Company for certain of the expenses incurred incident to the construction of the New Concourse.
- E. The HRA proposes to construct a skyway bridge from the New Concourse across Cedar Street to The Minnesota Mutual Life Insurance Co.

NOW THEREFORE, in consideration of the mutual covenants herein contained, it is hereby agreed by and between the parties hereto as follows:

- I. The Company shall cause the New Concourse to be constructed according to the plans and specifications of the firm of Bergstedt, Wahlberg, Berquist, Rohkoh, Inc., which plans and specifications shall be subject to the approval of the HRA and will require that the minimum width of the Concourse be twelve (12) feet, except for limitations as shown on drawings and agreed upon (8/23/79), Comm. No. 7803.3.

2. The HRA agrees to pay to the Company an amount equal to the lesser of fifty thousand dollars (\$50,000) or one-half of the costs and expenses incurred by the Company in connection with construction of the New Concourse (hereinafter called the "Reimbursable Expenses"). The obligations assumed by the HRA by the provisions of this paragraph shall be of no force or effect unless and until the Company complies with the obligations imposed upon it by the terms of paragraph 2 of this Agreement. Reimbursable Expenses are all those costs and expenses attributable to the construction of the New Concourse, including:

- (i) Any and all fees paid or payable for architectural and engineering services rendered in connection with the design and construction of the New Concourse;
- (ii) Any and all costs incurred for the provisions of mechanical and electrical services to the New Concourse and the bridge over Cedar Street;
- (iii) Any and all costs incurred for structural changes and work performed to provide support to the skyway bridge crossing Cedar Street.

The following are specifically excluded from the definition of Reimbursable Expenses:

- (i) Any and all costs attributable to the demolition of the stairway which presently exists between the Existing Concourse and Cedar Street;
- (ii) Any and all costs attributable to the construction of a stairway between the New Concourse and Cedar Street which shall provide ingress and egress necessary for the pedestrian concourse system at grade level and at concourse level.

3. The Company shall submit to the HRA for review and approval an itemized account of the actual Reimbursable Expenses incurred in the construction of the New Concourse and for the referenced architectural and engineering services.

4. The Company shall grant, without consideration, easements for ingress, egress and pedestrian passage within the New and Existing concourses. Said easement shall include the means of vertical access from Cedar Street to the New Concourse. Said easements shall be in form satisfactory to the City of Saint Paul (hereinafter called the "City") and the HRA and shall grant to the public the right of use of said system for purposes of ingress and egress and pedestrian transit, without limitation, except for such reasonable police measures regarding closing such part of the Concourse within the Company's buildings as the City may, by ordinance, from time to time determine. The easements shall be limited to the life of the buildings or building of which they are a part thereof. Nothing herein contained shall limit the right of the Company or its successors in interest to demolish the Saint Paul Athletic Club Building. In the event the Saint Paul Athletic Club Building is demolished and is replaced by a building or buildings prior to the vacation or abandonment of the pedestrian concourse system, the Company or its successors in interest, grantees or assigns, agree to grant new easements which will allow continuation of the pedestrian concourse system into, through and from said building or buildings.



In the event the St. Paul Athletic Club Building is demolished prior to vacation or abandonment of easement, the Club shall provide for end support of the bridge and vertical access thereto, and shall provide for connecting to this bridge, structurally, mechanically and electrically, if the Club is replaced by a new structure.

Subject to the hereinafter recited conditions, the Company shall have the right at any time to change the location of such easements, and the easements shall so provide, on the conditions that new easements are granted which permit the continuity of the pedestrian concourse and the Company installs a new pedestrian concourse on the new easement area at the Company's sole cost and expense.

In the event the Company elects to substitute a new easement location, it shall submit to the City the description thereof, and plans and specifications therefor, and proof of ability to pay and method of payment therefor for the approval of the City, which approval shall not be unreasonably withheld. The City shall have ninety (90) days after the submission in which to approve or reject the submission. If the City rejects the submission, it must do so in writing within the ninety (90) days period and in such writing set forth in detail the valid reasons for such rejection. In the event the City fails to reject the submission within said ninety (90) days period, the City's consent shall be conclusively presumed. The City shall not be required to approve any change in easement location unless the easement to be substituted therefor contains at least the same area and dimensions of the existing easement, and the improvements thereon are of the same character and quality of the initial concourse and accomplishes the same objectives of continuity as the initial concourse. When the City approves the substitution as aforesaid, the parties shall then join in the execution and delivery of an amendatory agreement in recordable form which designates the substitution location and terminates the easement over the old location effective upon completion of the construction of the new pedestrian concourse.

5. The Company or its successor in interest shall maintain, repair and operate the electrical mechanical facilities in the New Concourse at its sole cost and expense, shall keep and maintain said Concourse in repair and in a reasonably safe condition for pedestrian travel, and the facilities shall be operated during all hours that the system is open to the public. The Company or its successor in interest further agrees to provide the necessary repairs and maintenance of the New Concourse and its integral parts at its sole expense and at no expense to the City and the HRA. Such maintenance

shall include, but not be limited to, window, floor, wall, ceiling and metal trim cleaning, polishing, repair and replacement; roof maintenance, repainting; light bulb replacement and light fixture cleaning. The HRA and the City shall be furnished with plans and specifications for all repairs, replacements, additions or alterations to the New Concourse, which plans and specifications shall be subject to their approval before commencement of the work contemplated therein.

In the event that the Company or its successor in interest fails to maintain, repair or replace the New Concourse to a reasonable standard of safety, or shall fail to undertake maintenance repair of the system after receipt of thirty (30) days written demand thereof by the City to do so, the City may undertake the maintenance, repair or replacement thereof and may recover its reasonable costs incurred thereby from the Company or its successor in interest or from its surety; provided, however, that the City retains the right to assess such costs against the Company property as a local improvement in the manner provided by law.

6. The Company or its successor in interest agree to enter into an agreement with The Minnesota Mutual Life Insurance Company or its successor in interest, whereby both agree to operate and provide the necessary repairs and maintenance of the entire skyway bridge and its integral parts at their sole expense and at no expense to the City or the HRA. Such maintenance shall include, but not be limited to, window, floor, hardware and metal trim cleaning, polishing, repair and replacement; roof maintenance; repainting; light bulb replacement and light fixture cleaning. The parties (and/or their respective successors in interest) shall also agree to share the maintenance, operating and repair costs for said skyway bridge and its related mechanical/electrical equipment.

7. The Company agrees that overhead directional signs may be installed within the Existing and New Concourse. The location of said directional signs shall be determined jointly by the HRA and the building owner. The initial purchase of the directional signs shall be borne by the HRA. The cost of installation, operating, maintaining and repairing the signs shall be borne by the Company. If for any reason the location area of the easement is changed, the signs shall be moved accordingly, and the cost of removing and re-installing signs within the new easement areas shall be borne by the Company. If the sign moving requires a change in the sign face, this shall be done at the Company's expense and shall be consistent with the graphic design system established for skyway signs.

8. The skyway bridge which is referred to in this Agreement shall not be operated for the purpose of advertising the names of products or businesses, nor for the conduct of any commercial activity whatsoever; provided, however, nothing herein contained shall prevent the installation and maintenance of the aforesaid skyway directional signs, or signs identifying the building names in the New Concourse.

9. The Company or its successor in interest shall furnish and maintain a surety bond in the sum of \$50,000, to and in favor of the City, the HRA as obligees, conditioned that said Company or its successor in interest shall forever indemnify, defend, and hold harmless the City and the HRA against all expense and liability on account of all costs arising out of or connected with the maintenance, operation and/or removal of the New Concourse, and further conditioned upon the Company or its successor in interest complying with all the terms and conditions expressed in and contained in this Agreement, which surety bond shall be in such form as shall be approved by the City.

This obligation shall be binding upon the Company and its successors and assigns, and its surety, and the obligations to pay costs for repairs, improvements or replacement of the public way constituting the system, shall, in addition to applicable law, be a covenant running with the land and the grant of easement shall so provide.

10. The Company or its successor in interest shall furnish and maintain and pay all premium and other expenses for public liability and "All Risk" physical loss coverage in a duly licensed insurance company, wherein the City and the HRA shall be designated as co-insureds, said insurance containing the following minimum coverages: For personal injuries, including death, \$500,000; for property damage, to the extent of \$200,000 in any single accident. The "All Risk" physical loss shall provide coverage in the amount of the full replacement cost of the bridge.

11. The parties agree that in the construction, maintenance and operation of the New Concourse, they shall be bound by all codes and ordinances governing buildings and operations of improvements and relating to public thoroughfares insofar as applicable.

12. The respective rights and obligations of the parties set forth in this Agreement shall be binding upon or inure to the benefit of the respective parties and their successors and assigns, and shall continue in force until such time as the concourse system or part thereof is vacated or abandoned in the manner required by law.

IN WITNESS WHEREOF, the parties have hereto caused these presents to be executed as of the day and year first above written.

In the presence of:

\_\_\_\_\_  
\_\_\_\_\_

(CORPORATE SEAL)

HOUSING AND REDEVELOPMENT AUTHORITY  
OF THE CITY OF SAINT PAUL

*David H. Brown*  
\_\_\_\_\_  
Chairman

*Joanne Showalter*  
\_\_\_\_\_  
Secretary

In the presence of:

*Frederick L. Bergmann*  
\_\_\_\_\_  
*Sam M. Callahan*  
\_\_\_\_\_

(CORPORATE SEAL)

SAINT PAUL ATHLETIC CLUB

*Raymond W. White*  
\_\_\_\_\_  
President

*Miss B. Stein*  
\_\_\_\_\_  
Secretary