

3584

APPROVED BY CITY COUNCIL
JAN 29 1993
19
City of Minneapolis 083093

SKYWAY AGREEMENT

THIS AGREEMENT is entered into effective as of the 1st day of January, 1994, by and between the City of Minneapolis, a municipal corporation organized and existing under the laws of the State of Minnesota (the "City"), and Venture 701 Limited Partnership, a Minnesota limited partnership ("701").

R E C I T A L S

The City is the owner of the premises legally described on attached Exhibit "A" (the "City Parcel"), and has constructed thereon a building (referred to herein as the "City Building"), commonly known as Centre Village, which is currently used for public parking, commercial and residential purposes.

701 is the owner of the premises legally described on attached Exhibit "B" (the "701 Parcel"), commonly known as 701 Fourth Avenue South. The 701 Parcel is located adjacent to the City Parcel. There presently exists upon the 701 Parcel a building commonly known as Craig-Hallum Center (referred to herein as the "701 Building").

A prior owner of the 701 Parcel has caused a skyway bridge (the "701 Building Skyway") to be constructed between the 701 Building and the City Building as part of a skyway complex (the portion of the complex other than the 701 Building Skyway being referred to herein as the "City Building Skyway Complex"). The location of the 701 Building Skyway and the City Building Skyway Complex is indicated on attached Exhibit "C".

The City has caused a skyway (the "Seventh Street Skyway") to be constructed across South Seventh Street connecting the City Building with the building shown on attached Exhibit "D", labelled thereon and commonly known as the "Lutheran Brotherhood Building".

A skyway (the "Fourth Avenue Skyway") has been constructed providing access from the 701 Parcel to the building shown on attached Exhibit "D", labelled thereon and commonly known as the "Lincoln Centre".

The parties desire to memorialize their existing agreements providing for the use, operation, maintenance, repair and replacement of the 701 Building Skyway, City Building Skyway Complex and the Seventh Street Skyway and to provide for certain easements in favor of 701, its successors and assigns, through portions of the City Building for use in connection with the Seventh Street Skyway, the 701 Building Skyway and the City Building Skyway Complex, as well as certain easements in favor of the City of Minneapolis through the 701 Building Skyway and portions of the 701 Building for use in connection with the Seventh Street Skyway, the City Building Skyway Complex and the Fourth Avenue Skyway.

AGREEMENT

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

I. EASEMENTS

1.1 Easements for the benefit of 701. The City hereby grants to 701, its successors and assigns, for the benefit of the 701 Parcel the following easements:

a. A nonexclusive, appurtenant easement over the portions of the City Parcel and the City Building, including the City Building Skyway Complex, shown on attached Exhibit "C" for the construction, reconstruction, maintenance, repair, removal, replacement, restoration, use and operation of the 701 Building Skyway, including such portals and building penetrations as may be necessary in connection therewith and in and through the City Building Skyway Complex for purposes of performing neglected maintenance or repair, of the City Building Skyway Complex, including such portals and building penetrations as may be required in connection therewith, to the extent provided for in this instrument;

b. A nonexclusive, appurtenant easement for pedestrian access through the public access ways and common areas of the City Building, including the City Building Skyway Complex, to and from the 701 Parcel and the 701 Building Skyway, as well as to and from Seventh Street, Eighth Street, Fifth Avenue and to, from and through the Seventh Street Skyway during those times of the day and on such days of each year as ordinary business is being conducted in the City Building or the parking areas in the City Building are otherwise open for parking. It is understood that unless a contrary agreement is entered into between the parties, the hours during which such public access ways and common areas are to be deemed open for this purpose shall be as follows:

| | |
|---------------------------|-------------------------|
| Monday through Friday | 6:30 a.m. to 10:00 p.m. |
| Saturday | 9:30 a.m. to 8:00 p.m. |
| Sunday and legal holidays | Noon to 6:00 p.m. |

701 and the City may, from time to time, mutually agree to other, or additional, days and hours during which the public access ways and common areas are to remain open.

1.2 Right to prevent access. The City shall be permitted to prevent access as follows:

a. During those times of the day and on such days of the year not set out in Section 1.1, above, so long as pedestrian access otherwise is not being made available through the public access ways and common areas of the City Building for public thoroughfare;

b. For the minimum period of time and the minimum extent reasonably possible if, despite the City's diligent efforts to keep such public access ways and common areas in the City Building open, major repairs or renovation require the same to be closed;

c. For such temporary periods and to the minimum extent as the City reasonably may deem necessary under the then existing circumstances to facilitate the remodeling, refixturing or repair of the City Building; or

d. For the minimum time as may reasonably be necessary to prevent a dedication or the creation of an easement by prescription to any third party.

e. Notwithstanding anything in subparagraphs b and c to the contrary, five (5) business days advance notice to 701 shall be required (except in an emergency) prior to preventing the access permitted by this instrument.

f. The City may from time to time relocate the public access ways and common areas subject to these easements so long as reasonably comparable substitutes are provided for.

1.3 Easements for the benefit of the City. 701 hereby grants to the City, its successors and assigns, the following easements:

a. A nonexclusive, appurtenant easement through the public access ways and common areas on the ground and skyway levels of the 701 Building, as the same may, from time to time, be located and relocated, and in and through the 701 Building Skyway for purposes of performing neglected maintenance or repair, of the 701 Building Skyway, including such portals and building penetrations as may be required in connection therewith, to the extent provided for in this instrument and through the 701 Building Skyway for performing necessary maintenance repair, removal, replacement, restoration, use and operation of the City Building Skyway Complex;

b. A nonexclusive, appurtenant easement for pedestrian access through the 701 Building Skyway and the public access ways and common areas on the ground and skyway levels of the 701 Building to and from the City Building, the City Building Skyway Complex, the Seventh Street Skyway (and to the extent 701 is permitted to do so, through the Fourth Avenue Skyway) during those times of the day and on such days of each year as ordinary business is being conducted in the 701 Building. It is understood that unless a contrary agreement is entered into between

the parties, such public access ways and common areas shall be open during the hours and days as provided for in Paragraph b of Section 1.1, above.

1.4 Right to prevent access. 701 shall be permitted to prevent access as follows:

a. During those times of the day and on such days of the year not set out in Paragraph b of Section 1.1, above, so long as pedestrian access otherwise is not being made available through the public access ways and common areas of the ground and skyway levels of the 701 Building for public thoroughfare;

b. For the minimum period of time and the minimum extent reasonably possible if, despite 701's diligent efforts to keep such public access ways and common areas in the 701 Building open, major repairs or renovations require the same to be closed;

c. For such temporary periods and to the minimum extent as 701 reasonably may deem necessary under the then existing circumstances to facilitate the remodeling, refixturing or repair of the 701 Building; or

d. For the minimum time as may reasonably be necessary to prevent a dedication or the creation of an easement by prescription to any third party.

e. Notwithstanding anything in subparagraph b and c to the contrary, five (5) business days advance notice to the City shall be required (except in an emergency) prior to preventing the access permitted by this Instrument.

f. 701 may from time to time relocate the public access ways and common areas subject to these easements so long as reasonably comparable substitutes are provided therefor.

1.5 Use Subject to Covenants. The use of the easements described in this article shall be subject to the terms, covenants and conditions contained in this agreement.

1.6 Duration of easements. The easements granted in this Article and the rights and obligations of the parties under this agreement shall continue in effect for so long as the buildings to which the respective skyway is affixed continue to exist and all necessary permits and approvals to maintain and use the skyways remain in effect. Upon the demolition or condemnation of either the City Building or the 701 Building, the respective easements shall terminate and, if required, the 701 Building Skyway shall be removed as provided in this instrument. Upon reconstruction of any building so demolished and upon reconstruction and reconnection of the 701 Building Skyway the easements granted hereunder shall be reinstated unless otherwise agreed by the parties in writing.

II. OPERATION AND MAINTENANCE

2.1 701 Building Skyway and 701 Building Easement Areas. 701 shall pay two thirds of all "Maintenance Costs" (which for purposes of this agreement shall mean the costs for light, heat, ventilation, repair, replacement and security) of the 701 Building Skyway. 701 shall be responsible to keep and maintain the 701 Building Skyway in good and clean condition and state of repair and in compliance with all applicable laws and ordinances; provided, however, 701 shall be entitled to take advantage of any provisions permitting 701 not to strictly comply with any applicable laws and ordinances (such as provisions relating to existing, nonconforming uses or other "grandfathering" provisions, as well as any provisions under the Americans With Disabilities Act or other similar acts which excuse strict compliance such as when conformance is not readily achievable). 701 shall be responsible

for the payment of any real estate taxes attributable to the 701 Building Skyway. The City acknowledges that the 701 Building Skyway is the property of 701 and shall be deemed to be an appurtenance to the 701 Parcel. 701 shall be responsible for all costs and expenses relating to the operation and maintenance of the access ways and common areas within the 701 Building that are subject to the easements described in Section 1.3. The City shall be responsible for paying one-third of the Maintenance Costs related to the 701 Building Skyway. Promptly following the effective date of this Agreement, as to the first year hereof, and prior to the commencement of each calendar year, as to subsequent years, 701 shall deliver to the City an itemized statement of the estimated costs to be incurred during such calendar year as Maintenance Costs (i.e. the costs for light, heat, ventilation, repairs, replacement and security) for the 701 Building Skyway. The City shall pay one thirty-sixth of such estimated costs on the first day of each month of each calendar year. On or before March 31st of each year, 701 shall submit to the City an itemized statement of the actual costs incurred during the previous calendar year as Maintenance Costs and promptly after such submission a cash adjustment shall be made between the parties hereto so that the amount paid shall equal the Maintenance Costs actually incurred. Failure by the City to pay any amount becoming due hereunder within thirty days after written notice thereof by 701 to the City shall be deemed a default hereunder.

2.2 Signage. 701 shall have the exclusive right, with the approval of the City, which approval shall not be unreasonably withheld or delayed, to install and maintain in the 701 Building Skyway such directional and identifying signs and graphics as may be deemed necessary or proper. No commercial advertising shall be permitted in the 701 Skyway.

2.3 City Building Skyway Complex, Seventh Street Skyway and City Building Easement Areas. During such period as the easements described in Section 1.1 of this instrument remain in effect, the City shall pay, or cause to be paid, all costs and expenses relating to the operation and maintenance of the access ways and common areas in the City Building, two thirds of the Maintenance Costs (which for purposes of this agreement shall mean the costs for light, heat, ventilation, cleaning, repair, replacement and security) of the City Building Skyway Complex as well as the portion of the Maintenance Costs of the Seventh Street Skyway for which the City is responsible under existing third-party agreements governing such matters, and all Maintenance Costs of the structural elements of the City Building related to the Seventh Street Skyway. As between the City and 701, the City shall be responsible to keep the City Building Skyway Complex and the Seventh Street Skyway in good and clean condition and state of repair and in compliance with all applicable laws and ordinances. City shall be responsible for the payment of any real estate taxes attributable to the City Building Skyway Complex or the Seventh Street Skyway. Notwithstanding anything to the contrary contained in this agreement, 701 shall not be liable for any cost or expense related to the repair, reconstruction or replacement of the structural elements of the City Building, the City Building Skyway Complex, the Seventh Street Skyway or the Lutheran Brotherhood Building. During such period as the easements granted in Section 1.1 remain in effect, 701 shall be responsible for one third of the Maintenance Costs of the City Building Skyway Complex, and one third of that part of the Maintenance Costs for the Seventh Street Skyway for which the City is responsible under its existing agreement or agreements with third parties. Promptly following the effective date of this

Agreement, as to the first year hereof, and prior to the commencement of each calendar year, for subsequent years, the City shall deliver to 701 an itemized statement of the estimated cost to be incurred during such calendar year as Maintenance Costs. 701 shall pay one thirty-sixth of the estimated Maintenance Costs of the City Building Skyway Complex and one thirty-sixth of that part of the estimated Maintenance Costs of the Seventh Street Skyway for which the City is otherwise responsible on the first day of each month of each calendar year. On or before June 1st of each year, the City shall submit to 701 an itemized statement of the actual costs incurred during the previous calendar year for such Maintenance Costs, and promptly after such submission, a cash adjustment shall be made between the parties hereto so that the amount paid shall equal the Maintenance Costs actually incurred. The failure by 701 to pay any amount becoming due hereunder within the thirty days after written notice thereof by the City to 701 shall be deemed to be a default hereunder.

III. REMOVAL AND RECONSTRUCTION

3.1 Removal and reconstruction of the 701 Building Skyway. In the event that the 701 Building is voluntarily or involuntarily destroyed or demolished or taken by condemnation and 701 elects not to rebuild or restore the 701 Building, 701 shall remove the 701 Building Skyway and, at its expense, restore the exterior of the City Building Skyway Complex in the area where it connects to the 701 Building Skyway or reimburse the City for the reasonable costs of completing said restoration if the City should elect to perform the restoration itself. In the event the 701 Building Skyway is removed as provided above, then 701 shall restore or reconstruct the 701 Building Skyway to its original condition or to such other condition as the City shall approve, which approval shall not be unreasonably withheld

or delayed, whenever it restores or reconstructs the 701 Building or another building on the 701 Parcel. In the event that the 701 Building Skyway is involuntarily damaged or destroyed, and the 701 Building is not so involuntarily damaged or destroyed, 701 shall promptly restore and reconstruct the 701 Building Skyway to substantially its original condition or such other condition as the City shall approve, which approval shall not be unreasonably withheld or delayed. 701 shall be responsible for the total cost incurred in connection with such restoration or reconstruction of the 701 Building Skyway.

In the event that the City Building is voluntarily or involuntarily damaged or destroyed, or taken by condemnation, 701 shall be obligated to remove the 701 Building Skyway unless the City elects to repair or reconstruct the City Building and the 701 Building Skyway can be maintained in place while such repair or reconstruction takes place. The cost of such removal shall be shared equally by the City and 701. In the event that following a casualty to the City Building, 701 is so required to remove the 701 Building Skyway and the City or its successor restores or replaces the City Building, the City shall be responsible for restoring the 701 Building Skyway, at the City's expense, to its original condition or such other condition as may be approved by 701, which approval shall not be unreasonably withheld or delayed.

In the event the City Building Skyway Complex is involuntarily damaged or destroyed, the City shall promptly restore and reconstruct the City Building Skyway Complex substantially to its original condition or such other condition as 701 shall approve, which approval shall not be unreasonably withheld or delayed. City shall be responsible for the

total cost incurred in connection with such restoration or reconstruction of the City Building Skyway Complex.

3.2 Removal and reconstruction of the Seventh Street Skyway. In the event that the City Building or the Lutheran Brotherhood Building are voluntarily or involuntarily destroyed or demolished or taken by condemnation, and the Seventh Street Skyway is removed, then the City shall exercise any rights it may possess to require or cause the restoration or reconstruction of the Seventh Street Skyway and the public access ways and common areas within the City Building to their original condition whenever the City Building and or the Lutheran Brotherhood Building is restored or reconstructed. In the event that the Seventh Street Skyway should be damaged or destroyed, the City shall have the obligation, without expense to 701, to cause the prompt restoration and reconstruction of the Seventh Street Skyway to substantially its original condition or to such condition as may be approved by 701, which approval shall not be unreasonably withheld or delayed.

IV. INSURANCE

4.1 Insurance to be maintained by 701. 701 shall maintain, at all times from and after the opening of the 701 Building Skyway until the termination of the easements granted hereunder in connection with said Skyway, (i) public liability insurance insuring 701 against all claims, demands or actions for injury or death and property damage, in amount not less than one million dollars (\$1,000,000) combined single limit, arising from, related to, or connected with the operation of the 701 Building Skyway; (ii) insurance on the 701 Building Skyway covering those risks covered by an "All-Risk" policy of property insurance, with coverage for the full replacement cost of the 701 Building Skyway, as determined annually

by the property insurer, proceeds of which shall be applied to repair and restoration of the 701 Building Skyway in the event restoration of the 701 Building Skyway is required hereunder. The aforesaid insurance shall be in form reasonably satisfactory to both parties and with an insurer reasonably satisfactory to both parties. Each policy shall provide that it will not be subject to cancellation or change except after thirty days prior written notice to each of the insureds and the holder of any mortgage encumbering the 701 Parcel. The holder of any mortgage encumbering the 701 Parcel shall be named as an additional insured on the policies of insurance. A certificate evidencing each policy required hereunder shall be delivered to the City prior to the execution hereof, and renewals not less than thirty days prior to the expiration of the term of the expiring policy. The costs of insurance obtained pursuant to this Section 4.1 shall be a cost which shall be borne by 701.

4.2 Insurance to be maintained by the City. The City shall maintain, at all times from and after the opening of the Seventh Street Skyway and City Building Skyway Complex until the termination of the easements granted hereunder in connection therewith, (i) public liability insurance insuring the City against all claims, demands or actions for injury or death and property damage, in amount not less than one million dollars (\$1,000,000) combined single limit, arising from, related to, or connected with the operation of the Seventh Street Skyway and City Building Skyway Complex; (ii) insurance on the Seventh Street Skyway and the City Building Skyway Complex covering those risks covered by an "All-Risk" policy of property insurance, with coverage for the full replacement cost of the Seventh Street Skyway and City Building Skyway Complex, as determined annually by the property insurer, proceeds of which shall be applied to repair and restoration of the Seventh Street Skyway and

City Building Skyway Complex in the event restoration of the Seventh Street Skyway or City Building Skyway Complex is required hereunder. The aforesaid insurance shall be in form reasonably satisfactory to both parties and with an insurer reasonably satisfactory to both parties. Each policy shall provide that it will not be subject to cancellation or change except after thirty days prior written notice to each of the insureds and the holder of any mortgage encumbering the 701 Parcel. 701 and the holder of any mortgage encumbering the 701 Parcel shall be named as additional insured on the policies of insurance. A certificate evidencing each policy required hereunder shall be delivered to the City prior to the execution hereof, and renewals not less than thirty days prior to the expiration of the term of the expiring policy. The costs of insurance obtained pursuant to this Section 4.2 shall be a cost which shall be borne by the City. Notwithstanding the foregoing, while the City (but not its successors, unless its successors are municipal corporations) owns the City Parcel, the City may self insure in lieu of obtaining the insurance required by this Article; provided, that if the City elects to self insure, its liability shall be subject to and in conformance with the provision of Minnesota Statutes, Chapter 466 with limits of liability as prescribed in Minnesota Statutes Section 466.04. However, the City shall, to the extent required hereunder, have the same restoration obligations otherwise provided for in this agreement, whether or not insurance proceeds are available.

fees incident thereto) arising out of injury, death or property loss or damage occurring in the 701 Building Skyway, except to the extent caused by the negligent acts or intentional misconduct of the City or its partners, officers, agents or employees. The City agrees to indemnify, defend and hold 701 and its partners, officers, agents and employees harmless from all losses, damages, claims, obligations, liabilities and expenses (and all actions, proceedings, judgments and attorneys' fees incident thereto) arising out of injury, death or property loss of damage occurring in the City Building Skyway Complex or the Seventh Street Skyway, except to the extent caused by the negligent acts or intentional misconduct of 701 or its partners, officers, agents or employees.

5.2 701's liability. The City shall look solely to the estate and property of the 701 Parcel for the collection of any claim or judgment (or any other judicial procedures requiring payment of money by 701), and no other assets or property of 701 shall be subject to levy, execution or other procedures for satisfaction of such claims. Upon transfer or assignment by 701, its successors or assigns, of ownership of the 701 Parcel, and upon the assumption by the transferee or assignee of the benefits of this agreement, such transferee or assignee shall be subject to the provisions hereof and thereafter no further liability or obligation shall accrue against 701, its successors and assigns hereunder.

5.3 City's liability. The City (but not its successors unless such successors are bodies corporate and politic) shall be entitled to take advantage of any limitations on liability provided under Chapter 466 of the Minnesota Statutes.

5.4 Default. If 701 or the City shall default hereunder, by not performing its obligations, if any, hereunder with respect to the operation, maintenance, repair, removal,

replacement, restoration or reconstruction of the Seventh Street Skyway, City Building Skyway Complex, the 701 Building Skyway, or any required support systems thereof or access thereto, the non-defaulting party may, immediately in cases of emergency or the wrongful denial of access, and in any other case, after thirty days written notice to the defaulting party, cure the default, unless the defaulting party shall have cured the default within said thirty day period after receiving notice thereof or shall have begun to cure the default and continue to make reasonable progress in effecting such cure. The defaulting party shall immediately reimburse the non-defaulting party for its reasonable costs of effecting such cure, together with interest thereon as hereinafter provided. Any party defaulting hereunder shall be liable to the non-defaulting party for its reasonable attorneys fees and expenses incurred in the enforcement hereof, together with interest on any amount due hereunder from and after the date of default at the lower rate of either 12% per annum or the highest rate allowed by applicable law. The non-defaulting party may also exercise any other remedy available at law or in equity.

The City agrees to provide the holder of any mortgage encumbering the 701 Parcel with a notice of default. In the event that 701 fails to cure such default within the time provided in this Section 5.4, such mortgagee shall have an additional thirty (30) days from the date such notice of default is served upon mortgagee within which to cure such default at its option and without obligation; provided, however, if such default cannot be cured within such thirty (30) day period, then said mortgagee shall have such additional time as may be reasonably necessary to cure such default, provided mortgagee has commenced the cure

during such thirty (30) day period and thereafter diligently prosecutes said cure to completion.

5.5 Lien. The City shall be entitled to a lien upon the 701 Parcel after a default by 701 and the expiration of any applicable cure period hereunder for any amounts due to the City pursuant hereto, which lien shall run with the 701 Parcel. 701 shall be entitled to a lien upon the City Parcel after a default hereunder by the City and the expiration of any applicable cure period for any amounts due to 701 pursuant hereto, which lien shall run with the City Parcel. Notwithstanding the forgoing, any such lien shall be subordinate to the lien of any first mortgage encumbering the parcel in question and to any renewals, extensions or replacements thereof.

5.6 Suspension. Upon sixty days written notice following a default hereunder and the expiration of the cure period provided in Section 5.4 hereof, a non-defaulting party may suspend the rights of the defaulting party to use the easements granted in this instrument, such suspension to remain in effect until the default is cured.

5.7 Certification. Each party to this agreement agrees to execute and deliver, within ten days after written request therefor, a statement certifying: (i) that this agreement is in full force and effect, represents the entire agreement between the parties as to the subject matter hereof, and has not been assigned, modified, supplemented or amended in any way, or if there has been any assignment, modification, supplement or amendment, identifying the same; and (ii) there is no default under this agreement by any of the parties, or if there is any default, identifying the same.

5.8 Civil rights provision. The parties hereto shall comply with all provisions of Minnesota Statutes, § 181.59 and Minneapolis Code of Ordinances, § 139.50, which provisions relate to civil rights and nondiscrimination, and which shall be considered a part of this agreement as though set forth in their entirety.

5.9 Notices. If at any time it is necessary or permissible to give any notice or make any demand under the terms of this agreement to either party hereto, such notice or demand shall be deemed to have been given or made on the date the same is delivered by professional, third party courier service or one day following the date the same is deposited in the United States mail, registered or certified, return receipt requested, postage prepaid and addressed as follows:

If to the City: City of Minneapolis
 City Hall
 Minneapolis, MN 55415
 Attn: Traffic Engineering Department

If to 701: Venture 701 Limited Partnership
 c/o Northco Corporation
 701 Fourth Avenue South
 Minneapolis, MN 55415-1606

copy to: Larry J. Berg
 Fredrikson & Byron
 1100 International Centre
 900 Second Avenue South
 Minneapolis, MN 55402-3397

copy to: General Electric Capital Corporation
 209 West Jackson Boulevard
 Suite 200
 Chicago, IL 60606
 Attn: Leslie Andren
 Dan Miranda

Either party (or any person or entity entitled to notice) may change the address to which notice or demand is to be given to it by giving written notice thereof to the other parties not less than thirty days prior to the effective date of change.

5.10 Running of benefits and burdens. All provisions of this instrument, including the benefits and burdens, run with the land and, subject to the provisions of Sections 5.2 and 5.3 hereof, are binding upon and inure to the benefit of heirs, assigns and successors of the parties hereto and their respective invitees, and may be amended without the consent of any tenant.

5.11 Construction. The rule of strict construction shall not apply to the grant of easements set out in this agreement. This agreement shall be given a reasonable construction so that the intention of the parties to confer reasonably useable rights and reasonable enforceable obligations is carried out.

Neither the public nor any occupants and/or tenants of the 701 Building, the City Building or the Lutheran Brotherhood Building, nor any customer, licensee or invitee of the parties or of said occupants and/or tenants, nor any other persons or entities except the parties shall have rights under this agreement or be deemed to be third party beneficiaries of this agreement. The non-exclusive rights of use described in this agreement are private rights of use. The parties expressly disclaim any intention to dedicate to public use (whether expressly or by implication by virtue of acts, omissions or otherwise) the 701 Parcel, the City Parcel, the 701 Building Skyway, the City Building Skyway Complex or any segment thereof or any extension thereto. Neither the non-exclusive right of use referred to in this agreement, nor any acts or omissions in connection with this agreement, shall, or shall be

deemed to, permit the public, any occupant of the 701 Building, the City Building or the Lutheran Brotherhood Building, or any person to acquire any prescriptive easement or other right in or interest with respect to the 701 Parcel, the City Parcel, the 701 Building Skyway, or the City Building Skyway Complex, or any segment thereof or any extension thereto.

In witness to this agreement the parties have caused this instrument to be duly executed as of the date first set forth above.

**VENTURE 701 LIMITED
PARTNERSHIP, a Minnesota
limited partnership**

**BY VENTURE 701 INVESTORS, INC.,
its general partner**

By [Signature]
Its PRESIDENT

CITY OF MINNEAPOLIS

By [Signature]
Mayor

[Signature]
Assistant City Clerk

Countersigned:



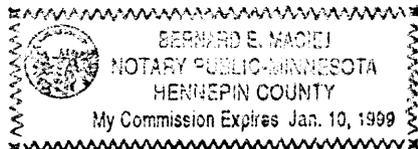
By [Signature]
Finance Officer

Approved as to form
and execution.

[Signature]
Asst. City Attorney

STATE OF MINNESOTA)
) SS
COUNTY OF HENNEPIN)

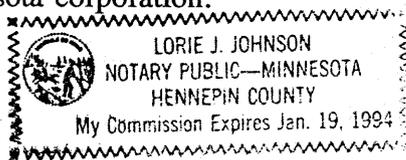
The foregoing instrument was acknowledged before me this 11th day of November, 1993 by Donald Fraser and Steven Ristuben, the Mayor and City Clerk respectively of the City of Minneapolis, a Minnesota Municipal Corporation, on behalf of said municipal corporation.



Bernard E Machej
Notary Public

STATE OF MINNESOTA)
) SS
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 1st day of September, 1993 by Dale R. Edstrom the President of Venture 701 Investors, Inc. the general partner of Venture 701 Limited Partnership, a Minnesota corporation.



Lorie J. Johnson
Notary Public

This instrument was drafted by:

Larry J. Berg, Esq.
Fredrikson and Byron, P.A.
1100 International Centre
900 Second Avenue South
Minneapolis, MN 55402-3397

200713

CONSENT OF MORTGAGEE

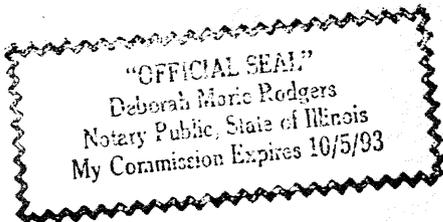
The undersigned, Mortgagee under that certain First Mortgage Security Agreement and Fixture Financing Statement dated June 29, 1992, recorded 7113, 1992 in the Office of the Hennepin County Recorder as Document No. 5939829 does hereby consent to the foregoing document and agrees to be bound by the terms thereof and agrees that its interest in the 701 Parcel shall be subordinate to the easements granted therein. The consent hereby given shall in no way operate as consent to any subsequent alteration or modification of the easements granted therein or any modification of the Skyway Agreement to which this consent is attached.

GENERAL ELECTRIC CAPITAL CORPORATION

By *Daniel F. Miranda*
Its Regional Vice President *JFM*

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 29th day of SEPTEMBER, 1993, by DANIEL F. MIRANDA, the REGIONAL VICE PRESIDENT, of General Electric Capital Corporation, a corporation under the laws of New York, on behalf of the corporation.



Deborah Marie Rodgers
Notary Public

EXHIBIT A

Legal Description of City Parcel

That part of the West Half of the Northwest Quarter of Section 26, Township 29, Range 24, Hennepin County, Minnesota, which lies below an elevation of 925.00 feet N.G.V.D. -- 1929 Sea Level Datum described as follows:

Beginning at the intersection of the Southwesterly line of Seventh Street South with the Northwesterly line of Fifth Avenue South; thence Northwesterly along the Southwesterly line of Seventh Street South to a point which is 165.00 feet Southeasterly from its intersection with the Southeasterly line of Fourth Avenue South, as measured along said Southwesterly line of Seventh Street South; thence Southwesterly parallel with the Southeasterly line of Fourth Avenue South for 155.00 feet more or less to the Northeasterly line of the city alley; thence Southeasterly along said alley line to its intersection with a line drawn parallel with and 145.00 feet Northwesterly of the Northwesterly line of said Fifth Avenue South, as measured along the Northeasterly line of Eighth Street South; thence Southwesterly along said line parallel with Fifth Avenue South 175.00 feet more or less to the Northeasterly line of said Eighth Street South; thence Southeasterly along the Northeasterly line of said Eighth Street South 145.00 feet to its intersection with the Northwesterly line of said Fifth Avenue South; thence Northeasterly along the Northwesterly line of said Fifth Avenue South to the point of beginning, according to the Government Survey thereof;

Subject to and together with covenants, conditions and easements including easements for access, utilities and support as contained in Restated Reciprocal Easement Agreement, Document No. 1584947, Files of the Registrar of Titles; (see Order Document No. 1663187)

Subject to a public sidewalk easement as contained in Hennepin County Recorder Document No. 4637367.

Subject to a public alley easement as contained in Hennepin County Recorder Document No. 4637468.

EXHIBIT B

Legal Description of 701 Parcel

That part of the northwest quarter of the northwest quarter of Section 26, Township 29, Range 24, Hennepin County, Minnesota described as follows:

Beginning at the intersection of the southwesterly line of Seventh Street South with the southeasterly line of Fourth Avenue South; thence southeasterly along said southwesterly line of Seventh Street South a distance of 165.00 feet; thence southwesterly parallel with said southeasterly line of Fourth Avenue South a distance of 165.00 feet; thence northwesterly parallel with said southwesterly line of Seventh Street South to an intersection with said southeasterly line of Fourth Avenue South; thence northeasterly along said southeasterly line of Fourth Avenue South to the point of beginning; except the following two parcels:

That part of the above described tract taken for alley purposes, as shown in Document No. 886827;

and that part of the above described tract which lies Southerly of the following described line:

Commencing at the intersection of the Southwesterly line of Seventh Street South with the Southeasterly line of Fourth Avenue South; thence Southeasterly along said Southwesterly line of Seventh Street South a distance of 165.00 feet; thence Southwesterly parallel with said Southeasterly line of Fourth Avenue South a distance of 145.00 feet to a point hereinafter referred to as point A; thence continuing Southwesterly parallel with said Southeasterly line of Fourth Avenue South a distance of 10 feet; thence Northwesterly parallel with said Southwesterly line of Seventh Street South a distance of 10 feet, to a point hereinafter referred to as point B; thence in an Easterly direction to the aforesaid point A, said point A being the actual point of beginning of the line to be described: thence Westerly along a line that extends between points A and B and its extension Westerly to its intersection with the line drawn parallel with and 10 feet Northeasterly of, as measured at right angles to, the center line of the alley as opened by Document No. 886827, and there terminating.

The aforementioned legal description is correctly delineated by survey dated November 11, 1988, revised December 8, 1988, and revised December 12, 1988 as prepared by C.E. Coulter & Associates, Inc.

Furthermore, said aforementioned legal description covers the same dimensions and describes the same property as the following legal description:

That part of the northwest quarter of Section 26, Township 29, Range 24, Hennepin County, Minnesota described as follows:

Beginning at the intersection of the Southwesterly line of Seventh Street South with and Southeasterly line of Fourth Avenue South; thence on an assumed bearing of South 60 degrees 00 minutes 49 seconds East along said Southwesterly line of Seventh Street South a distance of 165.00 feet; thence South 30 degrees 00 minutes 00 seconds West a distance of 145.00 feet; thence South 74 degrees 59 minutes 35 seconds West a distance of 14.84 feet; thence North 60 degrees 00 minutes 49 seconds a distance of 154.51 feet, more or less, to said Southeasterly line of Fourth Avenue South; thence North 30 degrees 00 minutes 00 seconds East along said Southeasterly line of Fourth Avenue South a distance of 155.49 feet to the point of beginning.

Together with rights and easements, to the extent granted to the general public, for the use of the skyway as presently situated, running between the insured premises and "Centre Village", as shown on the survey dated November 11, 1988 revised December 8, 1988, and revised December 12, 1988 by C.E. Coulter & Associates, Inc. (hereinafter Skyway Easement No. 1).

Together with terms, conditions and easements as set forth in Skyway Agreement dated July 31, 1987, filed January 22, 1988 as Document No. 1903704 (T) and recorded December 15, 1988, as Document No. 5487940 (A), as supplemented by unrecorded Supplemental Agreement dated July 31, 1987, incorporated by reference in paragraph 5.1 of said Skyway Agreement (hereinafter Skyway Easement No. 2).

Together with nonexclusive public alley easement, as created for the general public, in Document No. 886827.

Together with nonexclusive public alley easement, as created for the general public, in Document No. 4637368.

Together with terms and conditions of Minneapolis Special Council Permits dated January 28, 1983 and February 24, 1984.

EXHIBIT C

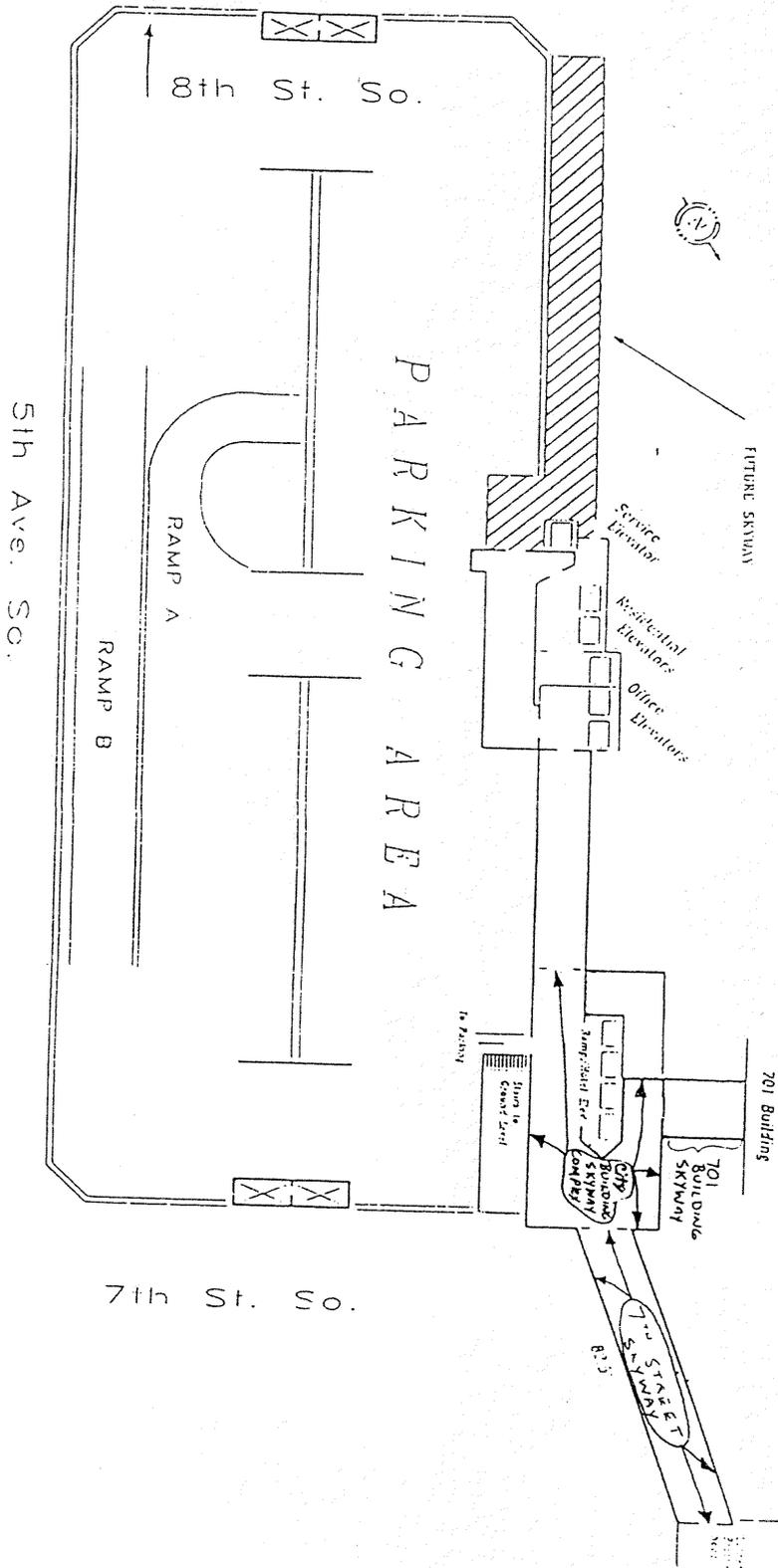


EXHIBIT D

Minneapolis Skyways

