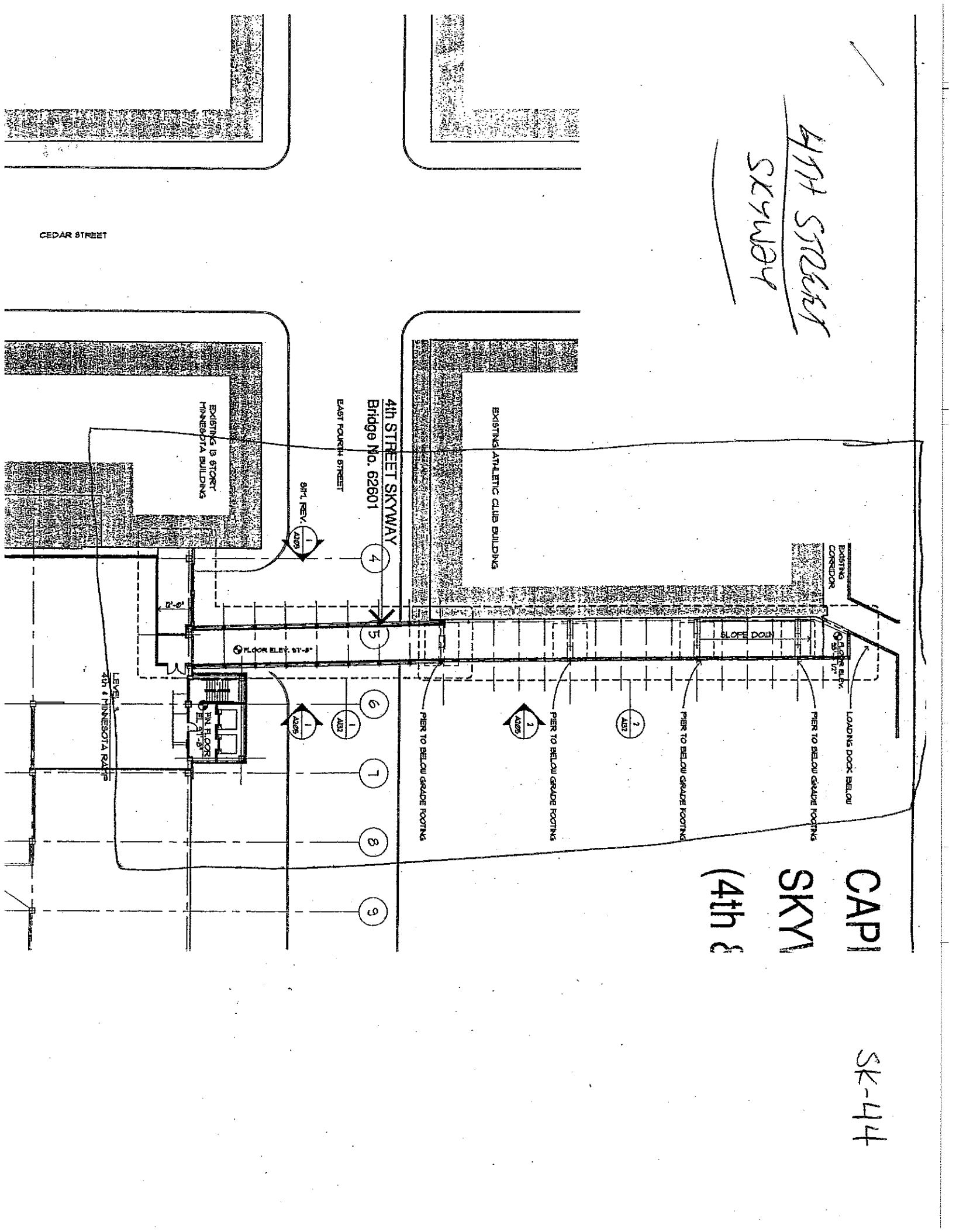


4TH STREET  
skyway

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SKY1  
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SK-44



CEDAR STREET

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Agreement Regarding  
Construction, Maintenance and Operation  
of a Skyway Bridge Over Fourth Street  
Between Cedar Street and Minnesota Street  
and Associated Pedestrian Concourses

Capital City Plaza Parking Ramp

By and Among

City of Saint Paul, Minnesota;

Port Authority of the City of Saint Paul;  
Lowell W. Hellervik and Mary Catherine Shea Hellervik,  
his spouse;  
Minnesota Building, Inc.;

and

Capital City Ventures, LLC

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## SKYWAY AGREEMENT

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2001, by and among the CITY OF SAINT PAUL, a municipal corporation, hereinafter referred to as the "City"; the PORT AUTHORITY OF THE CITY OF SAINT PAUL, a body politic and corporate under the laws of Minnesota, hereinafter referred to as the "Port Authority"; Capital City Properties, a non-profit corporation under the laws of Minnesota hereinafter referred to as "CCP"; and CAPITAL CITY VENTURES, LLC, a Minnesota limited liability company, hereinafter referred to as "340 Cedar Building"; Lowell W. Hellervik, and Mary Catherine Shea Hellervik, his spouse, hereinafter referred to as "Hellervik"; and Minnesota Building, Inc., a Minnesota corporation hereafter referred to as "Minnesota Bldg".

WITNESSETH:

WHEREAS, the City of Saint Paul and the Housing and Redevelopment Authority of the City of Saint Paul ("HRA"), through the Downtown Urban Renewal Project, Minn. R-20, undertook to develop a pedestrian skyway system within the Downtown Central Business District, hereinafter referred to as the "System"; and

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

WHEREAS, the City has transferred responsibility for the Skyway system from the HRA to the Real Estate Division, of the Department of Finance.

WHEREAS, the Port Authority and CCP own part of the block bounded by Cedar Street, Minnesota Street, Fourth Street, and Kellogg Boulevard (the "Development Block"); and

WHEREAS, the Port Authority and CCP will construct an approximately 1,000-car public parking facility, (the "Garage") on that portion of the Development Block legally described on Exhibit A attached hereto; and

WHEREAS, Hellervik owns the surface parking lot (the "Lot") located on the side of Fourth Street legally described in Exhibit B attached hereto.

WHEREAS, Capital City Ventures, LLC is the owner of the Downtown University Club building located at 340 Cedar Street (the "340 Cedar Building") on the property legally described on Exhibit C attached hereto; and

WHEREAS, Minnesota Bldg. is the owner of the Minnesota Building located at 45 E. 4<sup>th</sup> Street, St. Paul Minnesota legally described in Exhibit D attached hereto.

WHEREAS, this Agreement touches and concerns the Garage and the 340 Cedar Building, legally described in Exhibit A and C attached hereto, and the Lot, which is legally described in Exhibit B attached hereto and the Minnesota Bldg., described in Exhibit D.; and

WHEREAS, 340 Cedar Building, Hellervik, the City, the Minnesota Bldg., and the Port Authority agree to the construction of a skyway pedestrian bridge across Fourth Street from the 340 Cedar Building to the Garage (sometimes referred to herein as the "bridge" or the "skyway bridge"); and

WHEREAS, the parties hereto believe it to be desirable that the System be extended by public easement through the Lot and then to the 340 Cedar Building and through and to the Garage and then in the Minnesota Bldg. by construction of the skyway bridge across Fourth Street and declare their intention to so extend the System; and

WHEREAS, the said extension of the System necessitates pedestrian ingress, egress and transit through certain portions of the 340 Cedar Building Building, the Lot, the Minnesota Bldg., and the Garage; and

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

WHEREAS, substantial public monies will be expended for the design and construction of the skyway bridge connecting the Garage to the 340 Cedar Building Building, the Minnesota Bldg., and the 340 Cedar Building; and

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

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

#### BRIDGE CONSTRUCTION AND COST RESPONSIBILITIES

1. Design and Construction. The Port Authority and CCP agree to cause to be constructed a skyway bridge connecting the Garage and the Minnesota Bldg., with the 340 Cedar Building Building, including necessary support structures to be located on the Lot property and a penetration into the 340 Cedar Building Building, in accordance with the plans and specifications prepared by Palanisami and Associates Architects and approved by the Port Authority and CCP. Any subsequent changes to such plans and specifications shall be submitted by the Port Authority and CCP to 340 Cedar Building, the Minnesota Bldg. and Hellervik for approval, which approval may not be withheld unreasonably and shall be deemed given if no response has been received by the Port Authority within ten (10) days following submission to 340 Cedar Building, the Minnesota Bldg., and Hellervik. The Port Authority will construct any mechanical, electrical and drainage systems, installations and connections, which are shown in the approved plans and specifications to be part of the construction, contract. The Port Authority and CCP each agree to pay the cost of design and construction of such skyway bridge. The costs for the provision of necessary bridge support structure and utility and HVAC connections in and to the Garage shall

be the obligation of the Port Authority and CCP. The parties to this Agreement acknowledge and represent to one another that they are familiar with the skyway and concourse construction schedule attached hereto as Exhibit I. The parties agree to grant such access to their respective properties as is reasonably necessary to accommodate such schedule.

For purposes of this Agreement, the term "skyway bridge" shall mean the entire bridge commencing at the northerly wall of the garage traversing north over 4<sup>th</sup> Street and over the Lot property connecting at the northeast corner of the 340 Cedar Building as depicted on the above referenced plans prepared by Palanisami and Associates. If and when a building is constructed on the Lot property, the term "skyway bridge" shall then be restricted to mean only that portion of the original skyway bridge commencing at the northerly wall of the garage traversing north over 4<sup>th</sup> Street to the most southerly wall of any improvement constructed on the Lot property.

2. Bridge HVAC. Lighting. Drainage Systems. Said Skyway Bridge shall include the necessary mechanical and electrical equipment for heating, ventilating and air conditioning ("HVAC"), lighting and roof drainage. The electrical, mechanical and roof drainage systems (including HVAC) of the bridge shall be tied into the respective systems of the Garage. The said skyway bridge shall include integrated supports inclusive of finishes, a linear metal ceiling, carpeted floors, triple insulated glass to the extent glass is used to enclose said skyway bridge, and automatic sliding glass doors at both ends of the bridge. The bridge costs in Section 2 are a part of the total design and construction costs for the bridge.

3. Port Authority's Assignment of Warranties. The Port Authority will include a provision in its contract for the construction of the skyway bridge whereby the contractor consents to the assignment of warranties to 340 Cedar Building, the Minnesota Bldg., and Hellervik, and the Port Authority upon request shall assign such warranties to 340 Cedar Building, the Minnesota Bldg., and Hellervik upon approved contract completion without relinquishing its own rights under such warranties; and, if necessary, will cooperate and assist in any prosecution of lawful and proper claims such owners may later assert against the contractor(s) or others arising from faulty design or construction of the skyway bridge. Port Authority agrees to assign to 340 Cedar Building, the Minnesota Bldg., and Hellervik, upon request, all warranties on machinery and equipment, if any, installed in connection with the bridge construction, without relinquishing its own rights under such warranties; and, if necessary, will cooperate and assist in any prosecution of lawful and proper claims which may later be asserted against the vendors or others arising from faulty design or manufacture of such machinery and equipment.

#### PEDESTRIAN CONCOURSE CONSTRUCTION AND COSTS

4. Concourse Access. The Port Authority and CCP, and 340 Cedar Building, and Hellervik (if and when a building is constructed on the Lot property) shall at their expense construct and be responsible for skyway pedestrian concourses, and for skyway vertical access facilities in the 340 Cedar Building and in the Garage, respectively, in accordance with this Agreement, and the General Policy Statement for the Construction of the Saint Paul Skyway System, adopted March 10, 1987. The location and physical dimensions of vertical access facilities and pedestrian concourses shall be described and shown on Exhibits E, F and G attached hereto.

5. Concourse Construction. All costs and expense in connection with the construction and extension of the pedestrian concourses and vertical access facilities described above, shall be borne by 340 Cedar Building for the facilities located within the 340 Cedar Building Building, the Port Authority and CCP for the facilities located within the Garage, the Minnesota Bldg. for facilities located within the Minnesota Bldg., and by Hellervik for the facilities located within the Lot if and when a building is constructed on the Lot property. Notwithstanding the above, if and when Hellervik notifies the Port Authority that it will be improving the Lot with a structure, the Port Authority agrees to remove the portions of the Skyway located on the Lot as necessary for the construction of said improvements at the cost and expense of the Port Authority. The Port Authority prior to undertaking any such demolition or removal of portions of the Skyway may require reasonable assurance from Hellervik that any proposed improvements to the Lot will in fact be undertaken and completed. Hellervik agrees to design and construct at its expense any improvements to the Lot such that access to the Skyway Bridge over 4<sup>th</sup> Street and to the 340 Cedar Building is restored within a reasonable period of time after completion of construction of the building and improvements on the Lot.

#### EASEMENTS AND HOURS

6. Grant of Easement and Hours. The Port Authority, CCP, the Minnesota Bldg., 340 Cedar Building, and Hellervik hereby agree to grant to the City of Saint Paul a public easement for the pedestrian skyway system through the Garage, the Minnesota Bldg., and the 340 Cedar Building and over the Lot in accordance with Exhibits H and I attached hereto. Said easements to be granted shall be in the form attached hereto as Exhibits G and H and shall grant to the public the right of use of said pedestrian skyway system through 340 Cedar Building Building, the Minnesota Bldg., the Garage and the Lot for purposes of pedestrian ingress, egress, and transit, except for such reasonable police measures regarding open hours and closing all or part of the concourse through their property as the City may, by ordinance, from time to time determine, or regarding public conduct therein as may be prohibited by skyway ordinance, as it may be amended from time to time. It is agreed by all parties that the skyway bridge herein and the new pedestrian concourses provided for in the Garage, the Minnesota Bldg., the 340 Cedar Building and the Lot shall be open for public ingress, egress and transit limited to the hours of 6:00 a.m. to 11:00 p.m., Sunday through Thursday, and 6:00 a.m. to 1:00 a.m. Friday and Saturday, unless other operating hours are prescribed by City codes and ordinances, provided that after-hours emergency egress from the skyway system as may be required by code shall be available from the skyway bridge and pedestrian concourse through elements of the pedestrian skyway system on adjoining properties; but nothing herein shall prohibit the respective property owners from opening such facilities for longer hours. These hours are subject to revision by mutual agreement and subject to the general power of the City to prescribe System hours by ordinance.

7. Easement Description. The public easement through the 340 Cedar Building Building, the Minnesota Bldg., the Garage and over the Lot shall be in accordance with Exhibit H and I, attached hereto.

8. Width of Easement. The public easements provided for herein shall be continuously at least 12 feet in width, except at nodes, if any, where it may be larger; or where stairways or the structural design of the building is such that a width of 12 feet is impossible (including, without limitation a narrower width at building columns and at doorways within the 340 Cedar Building Building, the Minnesota Bldg., and the Garage and for the pedestrian access route at the street level of the 340 Cedar Building Building, the Minnesota Bldg., and the Garage); as is otherwise provided by the Exhibits F and G (Easement Plan).

9. Easement Survey. The Port Authority shall, at its expense, cause the initial easements in the 340 Cedar Building Building, the Minnesota Bldg., and the Garage to be more particularly described by registered land surveyors following completed construction of the public concourse access areas. 340 Cedar Building, the Minnesota Bldg., and Hellervik shall have the right to review and approve any completed surveys for accuracy, and any errors shall be corrected at the Port Authority's expense.

10. Easements Public and Subject to Law. The Port Authority, CCP, the 340 Cedar Building, the Minnesota Bldg., and Hellervik agree that the pedestrian concourse within the easements herein described, the adjacent access easements shall be designated as public easements, and that all ordinances of the City, which by force of law are applicable to the System, shall govern.

11. Waiver of Share in Damages. The City and the HRA hereby waives any right it may have to share in an award of damages in the event that a public body acquires all or any part of the previously mentioned 340 Cedar Building Building, the Minnesota Bldg., the Lot, and Garage, by condemnation, or under the threat of condemnation. Said waiver applies to the easements through the properties only and any condemnation shall be deemed regarding the fee title to be a termination of such easements but not to the skyway bridge or its end portions within respective air rights easements, which shall be treated as the "personal property" of the City.

12. Ownership of Bridge. It is agreed by and between the parties hereto that the skyway bridge between buildings shall at all times be owned by the City, and said skyway bridge 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 skyway bridge is intended to benefit the public generally.

#### OPERATION, MAINTENANCE AND REPAIR

13. Port Authority Transfer of Plans, Drawings. Etc. The Port Authority and CCP shall deliver to 340 Cedar Building and Hellervik and to the City copies of all plans, specifications, drawings, operating manuals, written warranties, etc., and any other documents necessary or useful in the maintenance, repair and operation of the structure and the electrical, drainage, and HVAC facilities in and serving the skyway bridge.

14. Scope of Maintenance: Approval of Modifications. The Garage further agrees to provide the necessary repair, maintenance and operation of the skyway bridge and its integral parts, including electrical, drainage and HVAC facilities in and serving the skyway bridge, at their sole expense, without cost to the City. Such maintenance shall be to a reasonable standard

of safety and cleanliness and 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. Except for routine repairs and replacement or when an emergency situation requires rapid action, the City shall be furnished with plans and specifications for all additions, alterations or repairs and replacements to the skyway bridge, which plans and specifications shall be subject to their reasonable and timely approval or disapproval before commencement of the work contemplated therein.

15. 340 Cedar Building, Minnesota Bldg. and Garage Agreement to Maintain. The 340 Cedar Building, the Minnesota Bldg., and the Garage hereby agree to share on a 50 per cent, 25 per cent and 25 per cent allocation respectively the maintenance, operation, insurance and repair costs and responsibilities for the skyway bridge, its integral parts and related equipment, all as more fully described in Section 14 hereof. If a building is built on the Lot, the term skyway bridge shall be adjusted as set forth in Section 1, and the allocation shall be adjusted such that the owner of the Lot and 340 Cedar Building shall each pay 25 percent of said costs, and Garage and the Minnesota Bldg. shall each pay 25 per cent of said costs. The Garage shall perform the actual maintenance, operation and repair, and the owner of the Garage shall perform such obligations. It is agreed that the Garage will provide all necessary systems and equipment to adequately supply all HVAC, electrical and other operating utilities for said skyway bridge with the costs of maintaining, operating, insuring and repairing such systems and equipment to be shared as set forth above by 340 Cedar Building, Minnesota Bldg. and Garage and Lot if a building is built thereon as an operating expense. If such HVAC, electrical and other utilities are not separately metered, the costs of such services shall be equitably apportioned based on engineering studies or as the parties may otherwise agree. The shared costs shall be paid as follows:

- a. Prior to the beginning of each calendar year, the Garage shall compute and deliver to the 340 Cedar Building, the Minnesota Bldg. and Hellervik, if a payee, a bona fide estimate of the costs of providing services under this Section 15 and procuring the insurance and bonds required under Sections 19 – 21 hereof. The 340 Cedar Building, the Minnesota Bldg. and Hellervik, if a payee, shall pay to the Garage its share of such cost in equal monthly installments on or before the first day of each month of such calendar year. As soon as practicable after the end of each calendar year the Garage shall deliver to the 340 Cedar Building, the Minnesota Bldg. and Hellervik, if a payee, a written statement ("Annual Statement") setting out in reasonable detail the actual cost thereof and certified to be correct by an officer or general partner, as appropriate. If the aggregate of the monthly installments actually paid by Garage differs from the amount determined from the Annual Statement, the 340 Cedar Building, the Minnesota Bldg. and Hellervik, if a payee, shall pay or Garage as appropriate, shall refund the difference, as the case may be.
- b. If during any calendar year any major repairs or replacements to the skyway bridge are necessary and are not budgeted as part of the costs under Subsection 15(a), hereof the 340 Cedar Building, the Minnesota Bldg. and Hellervik shall pay to Garage as apportioned the 340 Cedar Building, the Minnesota Bldg. and Hellervik's allocated portion of such cost within 30 days of invoice therefore. Except in an emergency, Garage shall furnish the 340 Cedar Building, the

Minnesota Bldg. and Hellervik an estimate of the cost before commencing such work.

16. Maintenance of the Concourse and Carpet. 340 Cedar Building hereby agrees to provide all repairs and maintenance to maintain the pedestrian concourse in or on the 340 Cedar Building to a reasonable standard of safety and cleanliness and to provide for the operation for said pedestrian concourse; if and when a building is constructed on the Lot property, Hellervik hereby agrees to then provide all repairs and maintenance to maintain the pedestrian concourse in or on the improvements constructed on the Lot property to a reasonable standard of safety and cleanliness and to provide for the operation for said pedestrian concourse; similarly the Garage so agrees with respect to the pedestrian concourse and the elevator and stairway complex on and within the Garage, and the Minnesota Bldg. so agrees with respect to the pedestrian concourse and elevator and stairway complex on and within the Minnesota Bldg.. Except for those repairs and replacements which are (1) routine, (2) the result of normal wear and tear, (3) required by an emergency requiring rapid action, or (4) involve solely aesthetic considerations relating to colors and surface finishes, City shall be furnished with both preliminary and final plans and specifications for all additions, or repairs and replacements to the pedestrian concourse, which plans and specifications shall be subject to their reasonable and timely approval or disapproval before commencement of work contemplated therein. If the Port Authority, CCP, Minnesota Bldg. or 340 Cedar Building or Hellervik if and when a building is constructed on the Lot property uses or installs carpet or other less durable flooring material for concourse corridors, such carpet shall be replaced with new carpet or other material matching as closely as possible the original in quality at such intervals as may be determined jointly by the City, and the party responsible for replacing carpet in the applicable corridors. Such new carpet or other material to be submitted to City for its review and approval, which approval shall not be unreasonably withheld or delayed. Such review shall be limited to appearance and design in order to insure reasonable uniformity for all parts of the skyway system, and to achieve the design identity, continuity, and ease of orientation necessary for the skyway system to function effectively.

17. Failure to Maintain; Remedies. If the Port Authority, CCP, Hellervik, the Minnesota Bldg. and 340 Cedar Building fail to adequately to maintain, repair and operate the said skyway bridge or if any of them fail adequately to maintain, repair and operate the pedestrian concourse areas through their respective properties to a reasonable standard of safety and cleanliness within 30 calendar days after receipt by the defaulting party or parties of written demand from the City specifying the actions to be taken, the City may undertake said reasonable and necessary maintenance, repair and operating tasks, and the cost by City for said maintenance, repair and operation shall be assessed to and shall be paid forthwith by the defaulting party or their sureties as applicable; provided, however, that the City retains the right to assess such costs against the defaulting party as a local improvement in the manner provided by law. Notwithstanding the foregoing, if the condition which prompts the 30 day notice by the City cannot reasonably be remedied within 30 calendar days, then the 30 day period shall be extended by the City to such time as may be reasonable for curing the condition.

18. Advertising; Signage. The skyway bridge and pedestrian concourses, which are the subject of this Agreement, shall not be operated for the purpose of advertising the name of any product or business or any other commercial purpose except as may be permitted under Sections 140.06 and 140.07 of the St. Paul Legislative Code. Signage identifying a tenant on a

doorway or other entry from a skyway concourse shall not be deemed to be advertising. Permanent storefront signage shall not project out from the wall into the easement area except as subject to the reasonable approval of the City and the Port Authority before installation. Nothing herein contained shall prevent the installation and maintenance of skyway directional signs. Plans for all permanent signage shall be submitted to City prior to sign construction and installation, and the City shall approve such plans if such signage is comparable to that existing elsewhere in the System, is not confusingly similar to the skyway directional signs, and is consistent with good design practices.

## SURETY BONDS AND INSURANCE

19. \$100,000 Surety Bond; Contractor's Insurance. The Port Authority and CCP, at all times, shall each furnish and maintain, or cause to be furnished and maintained, a surety bond for the skyway bridge to and in favor of the City, as obligee, conditioned that said entity shall indemnify and hold harmless the City against its respective share of all expenses and liability on account of all costs, claims, suits, and judgments arising out of or connected with the maintenance, operation and repair of the skyway bridge, its integral parts and related equipment, and further conditioned upon CCP's and the Port Authority's, 340 Cedar Building's, Minnesota Bldg's. and Hellervik's complying with all terms and conditions expressed and contained in this Agreement as to maintenance, operation and repair of the skyway bridge, which surety bonds shall be in the amount of \$100,000, shall be in such form as shall be approved by the City Attorney and shall have such sureties as shall be approved by the Director of Finance and Management Services for the City. The cost of such bonds shall be paid, respectively, by the owners of the 340 Cedar Building, Minnesota Bldg. and of the Garage. If the Port Authority, CCP, Minnesota Bldg. and 340 Cedar Building all agree, in lieu of the separate surety bonds required above, the parties may have obtain one surety bond in the amount of \$200,000 to and in favor of the City covering the surety bond obligation under this Section 19 for the Garage, Minnesota Bldg. and the 340 Cedar Building Building, with the cost of such bond allocated and paid as an operating expense pursuant to Section 15 of this Agreement. The Port Authority and CCP shall procure from the general contractor and provide to the parties upon request, documentation evidencing that the general contractor is maintaining, throughout the entire period of construction and erection of the skyway bridge, such insurance as set forth in the plans and specifications described in Section 1 herein, naming 340 Cedar Building, Minnesota Bldg., Hellervik and the abutting property owners to the skyway bridge as additional insured's as required by said plans and specifications, specifically in accordance with Section 4., General Conditions, and Section 6., Special Conditions of the construction contract.

20. Skyway Hazard, Liability Insurance Cost Shared. Insurance required by Section 22 hereunder for hazard and liability for the skyway bridge shall be maintenance cost to be assumed by the Garage, which shall be shared in accordance with Section 15 as hereof, provided herein.

21. Concourse Hazard, Liability Insurance. Insurance required hereunder for hazard and liability for the areas designated as easements for access and the pedestrian concourse shall be a maintenance cost to be assumed by the Garage, the Minnesota Bldg. and by 340 Cedar

Building for the portions of the pedestrian concourse located within the Garage, the Minnesota Bldg. and the 340 Cedar Building Building, respectively.

22. Amount of Insurance. The Garage shall furnish and maintain public liability and casualty insurance coverage for the skyway bridge, and each shall do so as to liability insurance for their respective portions of the pedestrian concourse, with a duly licensed insurance company, wherein the City shall be designated as additional insured, said insurance containing the following minimum coverages: for property damage to the extent of \$500,000.00 in any single accident, for personal injuries, including death, \$1,000,000.00 for each occurrence. Such minimum amounts shall be subject upon 60 days notice, to reasonable change by official action of the Council of the City of Saint Paul, in the event statutory municipal liability limits are altered by legislation or judicial decision at any time after the date hereof. The casualty insurance shall have an all-risk or physical loss coverage for replacement cost of the skyway bridge, as reasonably determined by the City from time to time.

### DIRECTIONAL SIGNS

23. Approval; Cost of Signs. The location of directional or other skyway signs that may be installed in the pedestrian concourse herein shall be determined by the City provided, however, that the Port Authority, CCP and 340 Cedar Building shall be entitled to notice of and a right to comment on any changes to such signage. The cost of installation, including electrical connections and mounting hardware (pendants, or ceiling channel, and support above ceiling), shall be considered part of the cost of construction of the concourse, the liability for the payment of which shall be governed by paragraphs 4 and 5 herein above. The cost of operating, maintaining and repairing the directional signs shall be borne by the parties on whose properties or leaseholds, such signs are located. If the location of the pedestrian concourse public easement is changed, the said signs shall be moved accordingly, and the cost of moving and reinstalling signs to a new easement area shall be borne by each building owner. If the sign moving or a change in the name of the Garage, the Minnesota Bldg., the 340 Cedar Building or the Lot requires a change in the sign face, the changes shall be made in a manner consistent with the graphic design system established for skyway signs, and the cost of such change shall be borne as provided in the immediately preceding sentence.

### BINDING OBLIGATIONS

24. Subject to City Codes. The parties agree that in the construction, maintenance, repair and operation of the pedestrian concourses, they shall be bound by all City Codes and ordinances governing the System, insofar as they are applicable by force of law.

25. Successors and Assigns Bound. 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, their successors and assigns, and shall continue in force until such time as said System or that part herein provided for is vacated or abandoned in the manner permitted by law, or terminated in accordance with the Grant of Easement.

26. Agreement Survives Conveyance, Is Not Merged. This Agreement shall survive conveyance and delivery of the Grant of Easement provided for herein and shall not be considered merged therein.

27. Owners Retain Property Rights; Obligations Conveyed. 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, individual(s), partnerships or other form of venture. In the event of transfer of any property owner's interest in the property, the owner (seller) shall 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 the 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. For the purposes of this Section, "owner" shall include, but not be limited to lessors, lessees, sublessors and sub lessees.

28. Effective Date of Obligations - Skyway. Seven (7) calendar days after the issuance of the Written Notice of Final Inspection by the City, and its furnishing to the Port Authority, to CCP the Minnesota Bldg. and to the 340 Cedar Building the obligations and duties contained in Sections 15 - 17 - 19, and 22 hereof, as to said skyway bridge, shall become operative

29. Effective Date of Obligations - Concourses. Upon substantial completion of the pedestrian concourse, City shall give written notice of such completion to the Port Authority, to CCP, the Minnesota Bldg., and to the 340 Cedar Building. Seven (7) days thereafter, the obligations and duties contained in sections 19 and 22 hereof, as to said pedestrian concourse, and shall become operative. All other obligations and duties are effective upon the date of execution of this Agreement.

30. Notices - Address. Any notice to the parties hereunder shall be considered sufficiently delivered if mailed, by registered or certified mail, postage prepaid, as follows:

- a. To: City of Saint Paul  
Director, Department of Technology and Management Services,  
Real Estate Division  
140 City Hall  
St. Paul, Minnesota 55102

and

HRA of the City of Saint Paul, Minnesota  
Executive Director  
Suite 1300 City Hall Annex  
25 West Fourth Street  
St. Paul, Minnesota 55102

- b. To: Capital City Ventures, LLC  
Attention: John Rupp  
340 Cedar Street  
St. Paul MN 55101
- c. To: Port Authority of the City of Saint Paul and/or Capital City Properties  
1900 Landmark Towers  
345 St. Peter Street  
St. Paul, MN 55102
- d. To: Hellervik  
Attention: Lowell W. Hellervik  
Unit 25  
Park Towers Condominiums  
54 E. Fourth Street  
St. Paul, MN 55102
- e. To: Minnesota Bldg.  
Attention: John Rupp  
40 E. Fourth Street  
St. Paul, MN 55101

A party may, by written notice, designate a different address to which notices to it shall be directed.

#### SAVINGS CLAUSE

31. Skyway Policy. The General Policy Statement for the Construction of the Saint Paul Skyway System, adopted March 10, 1987, attached hereto as Exhibit J, is hereby incorporated into this Agreement and its terms shall be binding as to the bridge and concourse areas constructed pursuant to this Agreement. In the event any provision of the General Policy Statement conflicts or is inconsistent with this Agreement, this Agreement shall supersede and be controlling.

32. Captions, Headings, or Titles. All captions, headings or titles in the paragraphs or sections of this Agreement are inserted for convenience of reference only and shall not constitute a part of this Agreement as a limitation or enlargement of the scope of the particular paragraphs or sections to which they apply.

33. 340 Cedar Building and Garage. All obligations of the 340 Cedar Building, the Minnesota Bldg., the Lot or the Garage stated above shall inure to and be an operating expense of and the responsibility of the legal or equitable owner of said 340 Cedar Building, the Minnesota Bldg., the Lot, and Garage.

In Witness Whereof, the parties have caused this Agreement to be executed and delivered as of the day and year first above written.

CITY OF SAINT PAUL, MINNESOTA

(SEAL):

By *Susan Kimberly*  
Its Mayor

By *Peter Hame*  
Its Director, Office of Financial Services

DUN  
8/22/01

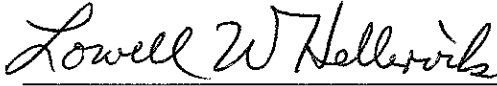
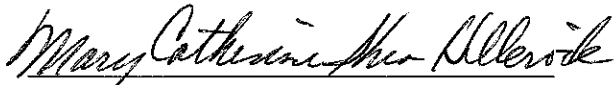
Approved as to form:

*Peter Hame* 8/21/01  
Assistant City Attorney

By *Friedrich K. Davis*  
Its City Clerk

**CAPITAL CITY VENTURES, LLC**, a Minnesota  
limited liability company

By \_\_\_\_\_  
Its Chief Manager

  
\_\_\_\_\_  
Lowell W. Hellervik  
  
\_\_\_\_\_  
Mary Catherine Shea Hellervik

**MINNESOTA BLDG., LLC**

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

PORT AUTHORITY OF THE CITY OF SAINT  
PAUL

By Paul A. Gzywinski  
Its Chair

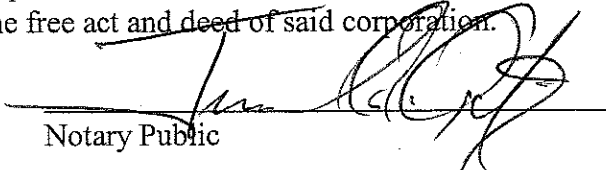
And Kathy Rarty  
Its Secretary

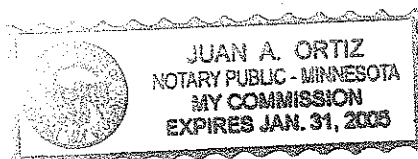
CAPITAL CITY PROPERTIES

By Janice Hansen  
Its CFO

STATE OF MINNESOTA    )  
                                  ) ss.  
COUNTY OF RAMSEY    )

On this 5<sup>TH</sup> day of September, 2001 before me, a Notary Public in and for said County, appeared Susan Kimberly, Peter Hames, and Frederick K. Owusu to me personally known, who, being, by me duly sworn, did say that they are respectively the Mayor, Director, Office of Financial Services and City Clerk of the City of Saint Paul, Minnesota, a municipal corporation under the laws of the State of Minnesota, and acknowledged that said instrument was the free act and deed of said corporation.

  
Notary Public



STATE OF MINNESOTA    )  
                                  ) ss.  
COUNTY OF RAMSEY    )

On this \_\_\_\_ day of \_\_\_\_\_, 2001 before me, a Notary Public in and for said County, appeared \_\_\_\_\_ to me personally known, who, being, by me duly sworn, did say that \_\_\_\_\_ is the Chief Manager of Capital City Ventures, LLC, a limited liability company under the laws of the State of Minnesota, and acknowledged that said instrument was the free act and deed of said limited liability company.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA     )  
                                       ) ss.  
 COUNTY OF RAMSEY     )

On this 11<sup>th</sup> day of JUNE, 2001 before me, a Notary Public in and for said County, appeared Lowell W. Hellervik and Mary Catherine Shea Hellervik to me personally known, who, acknowledged that said instrument was their free act and deed.

Mark Young  
 Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

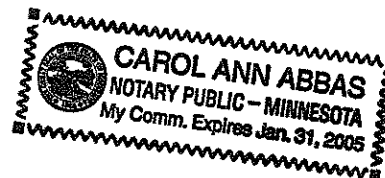
Terrence J. Garvey, Atty. No. 33674  
 1900 Landmark Towers  
 345 St. Peter Street  
 St. Paul MN 55102



STATE OF MINNESOTA   )  
                                          ) ss.  
COUNTY OF RAMSEY    )

On this 13<sup>th</sup> day of July, 2001, before me, a Notary Public in and for said County, appeared Joan Grzywinski and Kathy Lantry to me personally known, who, being by me duly sworn, did say that they are respectively the Chair and Secretary of the Port Authority of the City of Saint Paul, a public body politic and corporate under the laws of the State of Minnesota, said Grantor, and acknowledged that said instrument was the free act and deed of said Grantor.

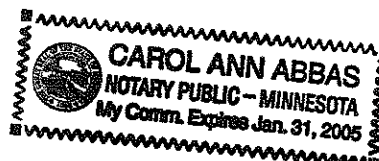
Carol A. Abbas  
Notary Public



STATE OF MINNESOTA   )  
                                          ) ss.  
COUNTY OF RAMSEY    )

On this 13<sup>th</sup> day of July, 2001, before me, a Notary Public in and for said County, appeared Laurie J. Hansen to me personally known, who, being by me duly sworn, did say that she is the Chief Financial Officer of Capital City Properties, a Minnesota nonprofit corporation.

Carol A. Abbas  
Notary Public



Exhibits:

**EXHIBIT A**

**GARAGE LEGAL DESCRIPTION**

**Parcel 1:**

Lots 1, 2 and 3, Block 24, St. Paul Proper; Lot 4, except the rear or Southerly 12 feet thereof, Block 24, St. Paul Proper, and all that part of Lot 5, except the rear or Southerly 12 feet thereof; Block 24, St. Paul Proper which lies Easterly of a line drawn through said Lot 5 and described as follows:

Commencing at a point on the Northerly line of said Lot 5, being the Southerly side of Fourth Street, 73.98 feet Northeasterly from the Northwestern corner of Lot 6, Block 24, St. Paul Proper; thence running in a Southerly direction to a point on the Northerly line of the Southerly 12 feet of said Lot 5 which point is 73.73 feet Northeasterly from the Northwestern corner of the Southerly 12 feet of Lot 6, Block 24, St. Paul Proper; and the Easterly 44.48 feet of that certain East-West alley in Block 24, St. Paul Proper, which alley is legally described as the Southerly 12 feet of Lots 4, 5 and 6, Block 24, St. Paul Proper taken for alley purposes; all according to the recorded plat thereof, Ramsey County, Minnesota.

**Parcel 2:**

**Tract 1:**

The Northerly 40.08 feet of Lot 7 and the Northerly 40.08 feet of the Westerly 3/5ths of Lot 8, Block 24, "St. Paul Proper".

**Tract 2:**

The Southerly 12 feet of Lots 4, 5 and 6, Block 24, "St. Paul Proper", except the Easterly 44.48 feet thereof.

**Parcel 3:**

Lot 7 and the Westerly 3/5ths of Lot 8, Block 24, "St. Paul Proper" except the North 40.08 feet thereof. The Easterly 20 feet of Lot 8 and the Westerly 5 feet of Lot 9, Block 24, "St. Paul Proper".

**EXHIBIT B**

340 CEDAR BUILDING LEGAL DESCRIPTION

**EXHIBIT C**

SURFACE LOT LEGAL DESCRIPTION

**EXHIBIT D**  
**GARAGE EASEMENT PLAN**

**EXHIBIT E**

**340 CEDAR BUILDING EASEMENT PLAN**

## EXHIBIT F

### GRANT OF EASEMENT

WHEREAS, the Capital City Ventures, LLC, a limited liability corporation under the laws of the State of Minnesota, hereinafter called "Grantor", is the owner in fee and of that certain land situated in the City of Saint Paul, County of Ramsey, State of Minnesota, more particularly described in Exhibit A, attached hereto, hereinafter called "Grantor's Property"; and

WHEREAS, Grantor has agreed pursuant to that Agreement dated \_\_\_\_\_, 1998 by and among the City of Saint Paul, Minnesota, Grantor, the Port Authority of the City of Saint Paul, Minnesota and Hellervik, LLC to grant to the City of Saint Paul, an easement for purposes of pedestrian ingress, egress and transit (all as described below) through Grantor's Property for the pedestrian Concourse System of the City of Saint Paul, hereinafter the "System".

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 (the "City"), an easement for public pedestrian ingress, egress and transit, (all as described below), and through the Grantor's Property and the structures thereon, described as:

See Exhibit B, attached hereto and incorporated herein, the easement area subject hereto being crosshatched on said Exhibit B, all subject to amendment hereof at such time as "as built" surveys have been completed to more particularly and legally describe such easement area; all of which areas described and shown on Exhibit B shall be collectively referred to as the "easement area".

Public use of 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 area 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 pedestrian ingress, egress and transit, in and through the easement area granted to the City herein, shall also be limited to the hours of 6 a.m. to 11 p.m., Sunday through Thursday, and 6:00 a.m. to 1:00 a.m. on Friday and Saturday, unless other operating hours are prescribed by City codes and ordinances, and such additional hours as the parties may from time to time agree, subject to the general power of the City to close part or all of the easement area temporarily or to prescribe system hours by ordinance, provided such agreed or legislated hours shall not restrict City's easement interest, but shall affect only the public's rights to pedestrian ingress, egress and transit in the City's easement during the hours so agreed or legislated.

Notwithstanding anything to the contrary herein, the easement granted herein shall only be used for the purposes expressly granted herein and shall not be expanded or modified without the prior written consent of Grantor.

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 following as short a period of closing off the easement for construction purposes as is reasonably possible 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 City of Saint Paul, such approval not to be unreasonably withheld, delayed or conditioned, and, on the further condition that said new easement shall, upon request of City, be surveyed and described by a registered land surveyor at the expense of Grantor.

Notwithstanding anything to the contrary herein, the easement granted herein 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 any easement granted herein is vacated, abandoned or discontinued in the manner permitted 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 buildings 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, the 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 shall be responsible for providing for the cost of any repairs, improvements and to the extent required herein replacements of the easement area as described herein, it being understood that the aforesaid covenant shall run with the land.

TO HAVE AND TO HOLD said easement for pedestrian ingress, egress and transit until the System is vacated or abandoned in the manner permitted by law or terminated, in accordance herewith.

IN WITNESS WHEREOF, Grantor has hereunto set its hand this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

Capital City Ventures, LLC

By \_\_\_\_\_

Its \_\_\_\_\_

STATE OF MINNESOTA )  
): SS  
COUNTY OF RAMSEY )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2001 before me, a Notary Public in and for said County, appeared \_\_\_\_\_ to me personally known, who, being, by me duly sworn, did say that \_\_\_\_\_ is the Chief Manager of Capital City Ventures, LLC, a limited liability company under the laws of the State of Minnesota, and acknowledged that said instrument was the free act and deed of said limited liability company.

\_\_\_\_\_  
Notary Public

# JOINDER OF HELLERVIK

Hellervik, hereby joins in this Grant of Easement and subordinates its interest in Grantor's Property to the terms and provisions thereof.

*Lowell W. Hellervik*

Lowell W. Hellervik

*Mary Catherine Shea Hellervik*

Mary Catherine Shea Hellervik

MARY

STATE OF MINNESOTA    )  
                                          ) ss.  
COUNTY OF RAMSEY    )

On this 11<sup>th</sup> day of JUNE, 2001, before me, a Notary Public in and for said County, appeared Lowell W. Hellervik and Mary Catherine Shea Hellervik to me personally known, who, acknowledged that said instrument was their free act and deed.

*Mark Young*

Notary Public



## EXHIBIT G

### GRANT OF EASEMENT

WHEREAS, the Port Authority of the City of Saint Paul, Minnesota, a body politic and corporate under the laws of the State of Minnesota, hereinafter called "Grantor", is the owner in fee and of that certain land situated in the City of Saint Paul, County of Ramsey, State of Minnesota, more particularly described in Exhibit A, attached hereto, hereinafter called "Grantor's Property"; and

WHEREAS, Grantor has agreed pursuant to that Agreement dated \_\_\_\_\_, 2001 by and among the City of Saint Paul, Minnesota, Grantor, the Housing and Redevelopment Port Authority of the City of Saint Paul, Minnesota and Degree Associates, LLC to grant to the City of Saint Paul, an easement for purposes of pedestrian ingress, egress and transit (all as described below) through Grantor's Property for the pedestrian Concourse System of the City of Saint Paul, hereinafter the "System".

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 (the "City"), an easement for public pedestrian ingress, egress and transit, (all as described below), and through the Grantor's Property and the structures thereon, described as:

See Exhibit B, attached hereto and incorporated herein, the easement area subject hereto being crosshatched on said Exhibit B, all subject to amendment hereof at such time as "as built" surveys have been completed to more particularly and legally describe such easement area; all of which areas described and shown on Exhibit B shall be collectively referred to as the "easement area".

Public use of 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 area 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 pedestrian ingress, egress and transit, in and through the easement area granted to the City herein, shall also be limited to the hours of 6 a.m. to 11 p.m., Sunday through Thursday, and 6 a.m. to 1:00 a.m. Friday and Saturday, unless other operating hours are prescribed by City codes and ordinances, and such additional hours as the parties may from time to time agree, subject to the general power of the City to close part or all of the easement area temporarily or to prescribe system hours by ordinance, provided such agreed or legislated hours shall not restrict City's easement interest, but shall affect only the public's rights to pedestrian ingress, egress and transit in the City's easement during the hours so agreed or legislated.

Notwithstanding anything to the contrary herein, the easement granted herein shall only be used for the purposes expressly granted herein and shall not be expanded or modified without the prior written consent of Grantor.

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 following as short a period of closing off the easement for construction purposes as is reasonably possible 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 City of Saint Paul, such approval not to be unreasonably withheld, delayed or conditioned, and, on the further condition that said new easement shall, upon request of City, be surveyed and described by a registered land surveyor at the expense of Grantor.

Notwithstanding anything to the contrary herein, the easement granted herein 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 any easement granted herein is vacated, abandoned or discontinued in the manner permitted 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 buildings 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, the 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 shall be responsible for providing for the cost of any repairs, improvements and to the extent required herein replacements of the easement area as described herein, it being understood that the aforesaid covenant shall run with the land.

TO HAVE AND TO HOLD said easement for pedestrian ingress, egress and transit until the System is vacated or abandoned in the manner permitted by law or terminated, in accordance herewith.

IN WITNESS WHEREOF, Grantor has hereunto set its hand this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

PORT AUTHORITY OF THE CITY OF SAINT  
PAUL

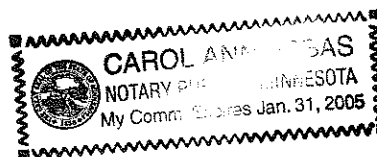
By Joan A. Grzywinski  
Its Chair

And Kathy Lantry  
Its Secretary

STATE OF MINNESOTA    )  
                                      ) ss.  
COUNTY OF RAMSEY    )

On this 13<sup>th</sup> day of July, 2001 before me, a Notary Public in and for said County, appeared Joan Grzywinski and Kathy Lantry to me personally known, who, being, by me duly sworn, did say that they are respectively the Chair and \_\_\_\_\_ Secretary of the Port Authority of the City of Saint Paul, a public body politic and corporate under the laws of the State of Minnesota, said Grantor, and acknowledged that said instrument was the free act and deed of said Grantor.

Carol A. Abbas  
Notary Public



## **EXHIBIT H**

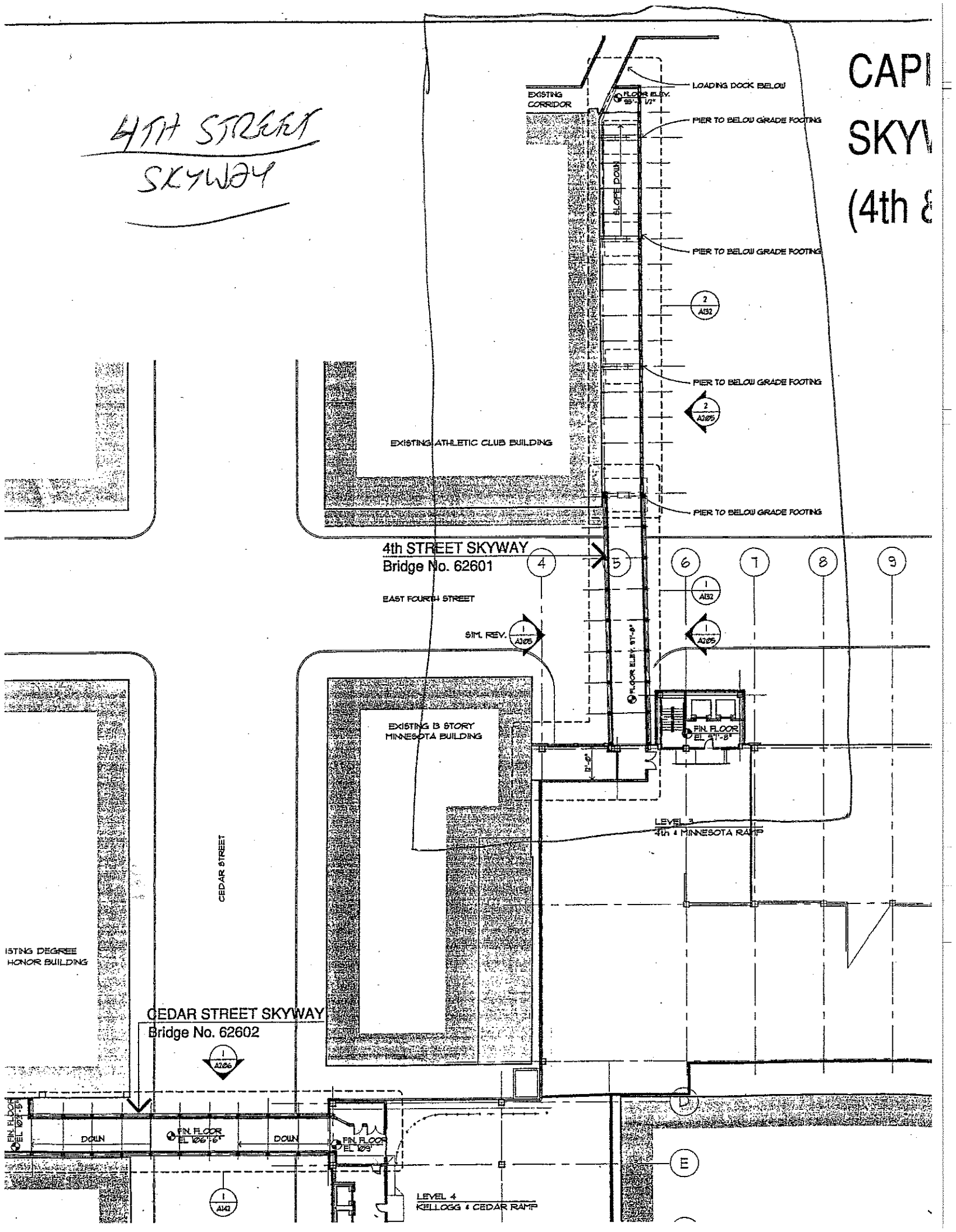
### **GENERAL POLICY STATEMENT FOR THE CONSTRUCTION OF THE SAINT PAUL SKYWAY SYSTEM, ADOPTED MARCH 10, 1987**

## **EXHIBIT I**

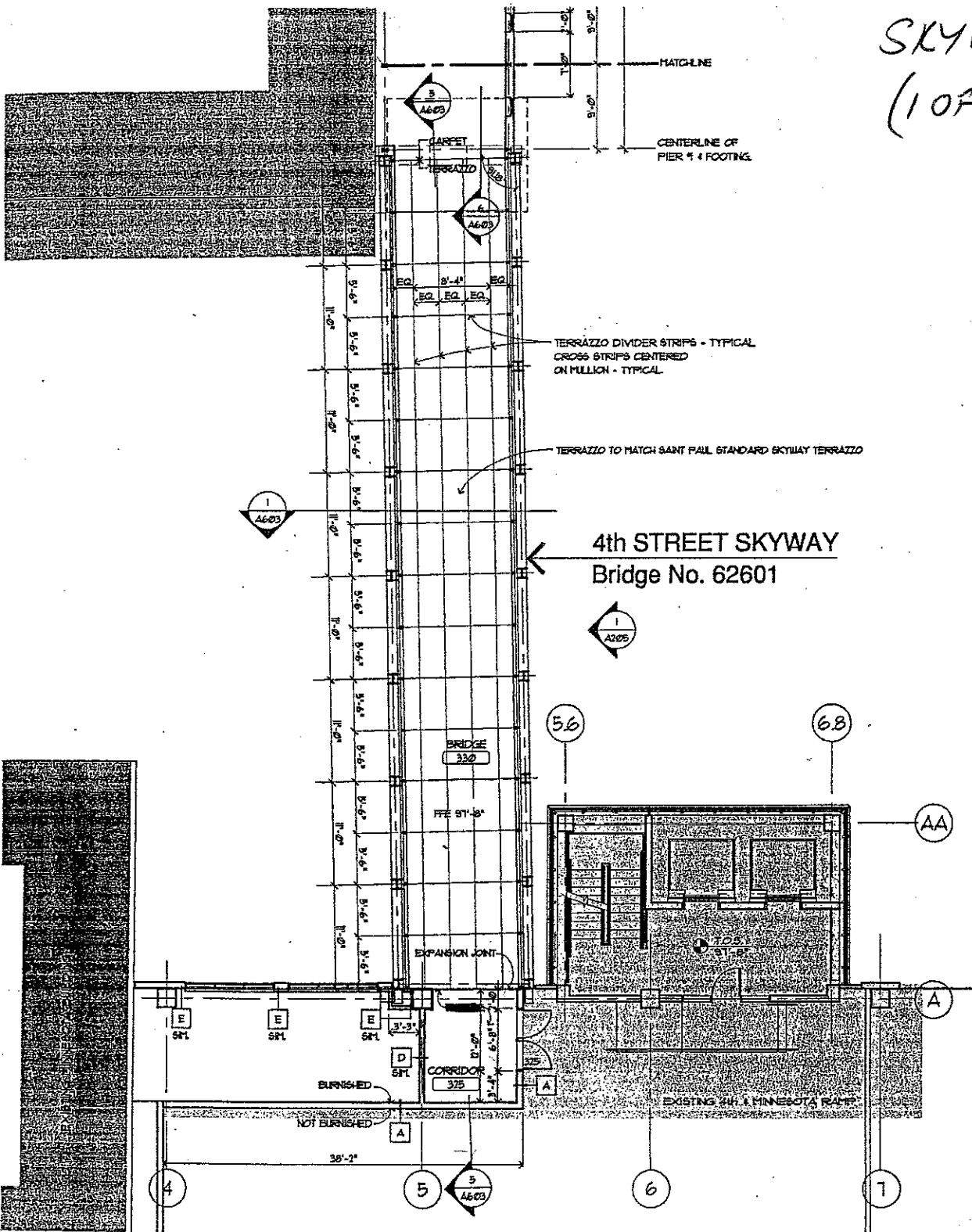
### **CONSTRUCTION SCHEDULE**

CAPITOL  
SKYWAY  
(4th & Cedar)

4TH STREET  
SKYWAY



4TH STREET  
SKYWAY  
(1 OF 2)



1 FLOOR PLAN  
1/8" = 1'-0"

4TH STREET  
SKYWAY  
(20#2)

