

LICENSE AGREEMENT – SKYWALK BRIDGE

This Agreement is made as of the ____ day of _____, 2004, between the **CITY OF WEST ALLIS**, a Wisconsin municipal corporation ("Licensor") and **WHITNALL SUMMIT COMPANY LLC**, located at 6737 West Washington Street, West Allis, Wisconsin ("Licensee").

W I T N E S S E T H:

WHEREAS, the Licensor is the owner of the West Washington Street right-of-way located between South 70th Street and Carlson Way, in the City of West Allis, County of Milwaukee, State of Wisconsin; and,

WHEREAS, Licensee is the owner of certain improved property that abuts the aforesaid right-of-way; and,

WHEREAS, Licensee has requested a license and permission to install and maintain a Skywalk Bridge structure over the West Washington Street right-of-way to connect the Summit Place offices with the proposed multi story parking garage on its property; and,

WHEREAS, Licensee proposes to construct said bridge structure across City right-of-way (West Washington Street) as shown on plans marked Exhibit "1", attached hereto and made a part hereof; and,

WHEREAS, Wis. Stats. §66.0425 authorizes the Licensor to grant privileges for obstructions within the public right-of-way pursuant to certain terms and conditions set forth therein; and,

WHEREAS, Licensor is willing to grant said privileges.

NOW, THEREFORE, Licensor does hereby grant license and permission to Licensee to construct, reconstruct, use, occupy, repair, maintain, inspect and operate said Skywalk Bridge in air space upon and above West Washington Street, legally described in the map attached hereto as Exhibit "1" and made a part hereof, upon the following terms, conditions and restrictions:

1. The Skywalk Bridge shall be installed and maintained in the Street right-of-way pursuant to Plans approved by the Plan Commission of the City of West Allis under Section 12.13 of the Revised Municipal Code of the City of West Allis. Licensee shall make no additions, alterations or modifications to the Skywalk Bridge without the written consent of the Plan Commission as provided in said section.

2. The Skywalk Bridge shall be installed and maintained in accordance with all applicable laws, ordinances and regulations of the City of West Allis, State of Wisconsin and U.S. Code of Federal Regulations.

3. It is understood that during the time this license and permission is in effect, Licensee, its successor and assigns, will indemnify, save harmless and defend Licensor, its successors and assigns, from and against any and all claims, liabilities, losses, costs, damages or expenses (including reasonable attorneys fees) for injury or death to any person and/or for damage to any property caused by, arising out of, incidental to or in any manner connected with Licensee's use of the street right-of-way and the installation and maintenance of the Skywalk Bridge excepting, however, any claims or actions arising out of the negligence or willful acts on the part of Licensor, its successor and assigns, employees and agents.

4. This grant is subject to the right of Licensor, its successors and assigns, to use, occupy and enjoy its rights and privileges in the street right-of-way for such purposes and in such manner and at such times, as it shall desire, the same as if this License had not been executed by it. Licensee shall make certain that the design of the Skywalk Bridge allows for the clearance of all vehicles, including wide or oversize loads, which will need to make use of the street right-of-way. In the event at any time hereafter the City shall elect to alter, change the grade, construct or reconstruct West Washington Street or portion thereof, or if any other any such use, occupancy or enjoyment shall necessitate the removal or change in the location of said Skywalk Bridge, such removal or change in location shall be made by Licensee, at

Licensee's expense, after receiving written demand therefore from the Licensor, and Licensor shall not be liable to Licensee on account thereof, or on account of any damage growing out of any lawful use which Licensor may make of its rights.

5. The term of this license and permission are indefinite, however, it may be terminated at any time by the Licensor, in the exercise of its sole and absolute discretion, by giving ten (10) days written notice thereof to Licensee. Licensee shall, thereupon, promptly remove the Skywalk Bridge from the Street right-of-way, and in the event of failure of Licensee to so remove the Skywalk Bridge, Licensor may remove them at the expense of the Licensee, without liability therefore, and Licensee agrees to reimburse Licensor for the cost incurred upon receipt of a bill therefore. Licensee shall not be entitled to any damages for removal of the Skywalk Bridge. Licensee agrees that failure to pay said bill for removal of the Skywalk Bridge shall result in the costs of removal being assessed and collected as a special tax.

6. As further consideration for this license and permission, Licensee, during the term of this License, agrees to inspect and maintain the Skywalk Bridge in good condition and repair and agrees to do all things necessary toward that end, including, but not limited to, the biennial inspection of the Skywalk Bridge as recommended by the State of Wisconsin Department of Transportation. The Licensee shall inventory and inspect the Skywalk Bridge in accordance with the procedures outlined in the U.S. Code of Federal Regulations, Title 23; Chapter 1; Part 650; Subpart C – National Bridge Inspection Standards; and the procedures outlined in Wisconsin Statutes Section 84.17; as well as the procedures outlined in Wisconsin Administrative Code Trans. 212 – Standards for the Inspection of Bridges in Wisconsin. It is the intent of the City of West Allis and the recommendation of the State of Wisconsin Department of Transportation to apply the above referenced rules and regulations to the Skywalk Bridge even though Wisconsin Administrative Code Trans. 212.03 states that bridges

only used by pedestrians are excluded from the application of the chapter. The Licensee shall have the responsibility to retain the services of qualified bridge inspectors to prepare inspection reports upon the forms provided by the State of Wisconsin Department of Transportation beginning with an initial inventory inspection and thereafter at regular intervals not to exceed 2 years. These forms shall be provided to the City of West Allis for submission to the State of Wisconsin Department of Transportation.

7. Prior to the use of the Skywalk Bridge, Licensee shall furnish to Licensor a copy of a certificate of liability insurance, in a form acceptable to the City Attorney, showing the minimum coverages set forth in Exhibit "2" attached hereto and made a part hereof. The certificate shall state that in the event the insurance shall be changed or cancelled, such change or cancellation shall not be effective until thirty (30) days after the Licensor has received written notice from the insurance company. Required insurance shall be maintained during the term of this license and permission.

8. Licensee hereby accepts this license and permission upon the terms, conditions and restrictions hereinabove set forth, and in consideration of the benefits to be derived therefrom, does covenant to keep and observe each and every one of said terms, conditions and restrictions.

9. Licensee hereby waives any right to contest in any manner the validity of this license and permission as well as section 66.0425 of the Wisconsin Statutes.

10. Prior to the use of the aforesaid Skywalk Bridge, Licensee shall file and maintain during the term of this license and permission with Licensor a surety bond in the amount of Ten Thousand Dollars (\$10,000.00) to secure the performance of the terms, conditions and restrictions set forth herein. The bond shall be in a form approved by the City Attorney.

11. Any notice or demand required or permitted to be given to the Licensee pursuant to this license and permission shall be in writing and sent by United States Certified or Registered Mail, postage prepaid, addressed as follows:

Licensee: Richard G. Carlson
President
Whitnall Summit Company
6737 West Washington Street
#2220
West Allis, WI 53214

Copy to: Anthony G. Henika
Attorney at Law
9114 West Puetz Road
Franklin, WI 53132

Licensor: Department of Development
Attn: John F. Stibal, Director
City of West Allis
7525 West Greenfield Avenue
West Allis, WI 53214

Copy to: Scott E. Post
City Attorney
City of West Allis
7525 West Greenfield Avenue
West Allis, WI 53214

Any such notice if mailed as provided herein shall be deemed to have been given on the date mailed and shall be deemed to have been received on the expiration of three (3) business days after mailing. Any party may, by written notice to the other party, designate a change of address for the purposes set forth herein.

12. This license and permission shall run with the land and be binding upon the respective parties hereto, and upon their respective successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement, under seal, to be effective the day and year first written above.

Milwaukee County) ss
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Personally came before this ____ day of _____, 2004, the above-named _____ and _____, to me known to be the President and Secretary, respectively, of Whitnall Summit Company LLC and the persons who executed the foregoing instrument and acknowledged the same on behalf of said company.

Notary Public, State of Wisconsin
My Commission Expires: _____

H/Scott/License Agrmnt-Summit Place Bridge