

## **BRIDGE MAINTENANCE AGREEMENT**

This Bridge Maintenance Agreement (the "Agreement") made this 7<sup>th</sup> day of February, 2017, is by and between the **CITY OF ROCHESTER**, a municipal corporation with offices at 30 Church Street, Rochester, New York 14614 (the "City"), and **SIBLEY REDEVELOPMENT LIMITED PARTNERSHIP**, a New York limited partnership, with offices at at Six Faneuil Hall Market Place, Boston, MA 02109 ("Sibley's");

WHEREAS, the City owns and operates the Mortimer Street Garage ("Garage") as part of its downtown economic development program; and

WHEREAS, as part of this development program, a second level pedestrian bridge ("Bridge") over Clinton Avenue has been constructed connecting the Garage to Sibley's facility located at 250 E. Main Street to accommodate residents, tenants and patrons of Sibley's and the general public; and

WHEREAS, the City and Sibley's have entered into a Parking Agreement, dated as of the date hereof, whereby the City has granted to Sibley's and its affiliates certain occupancy and use rights relating to the Garage; and

WHEREAS, the City has consented to Sibley's use of the Bridge, for the benefit of Sibley's residents and tenants, without charge so long as Sibley's contributes to the costs of maintaining the Bridge.

NOW, THEREFORE, in consideration of the mutual promises made herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Sibley's agree as follows:

### **I. Rights and Responsibilities of City**

- a) The City agrees to be responsible for the structural repairs to the Bridge. Structural repairs are deemed to mean all exterior surfaces of the bridge including, but not limited to the roof, exterior floor and cell support systems.
- b) The City will grant and/or obtain all necessary legal and permit approvals for the use and operation of the Bridge.
- c) The City provides required and appropriate utilities for the Bridge through a separate meter being installed in the Garage. Sibley's shall reimburse the City 50% of all utility invoices together with 50% of all HVAC maintenance, repair and replacement costs. Such portion shall be payable to the City within thirty (30) days of Sibley's receipt of the City's invoice (accompanied by a copy of the utility invoice or maintenance, repair or replacement invoice).

d) The City and Sibley's each agree to keep the Bridge open and accessible during their respective customary hours of operation. At all times that the Bridge is open, it shall be accessible to the general public.

e) City agrees to pay within thirty (30) days of submission, fifty percent (50%) of the costs for performance of preventative maintenance, repair and replacement of all HVAC equipment, upon presentation of bills submitted to the City from Sibley's; provided however, that any cost over \$1,000 will be incurred by Sibley's only after the prior written consent of the City, unless an emergency exists and written consent is not practical.

## **II. Rights and Responsibilities of Sibley's**

a) Sibley's will grant any legal approvals and convey any easements and/or other interests reasonably required by the City to own and maintain the Bridge and connect it to Sibley's facility. Any recordable documents shall make reference to this Agreement for maintenance responsibilities.

b) Sibley's will at its own expense, (a) provide all janitorial and interior maintenance and painting to keep the Bridge interior an attractive walkway, and (b) provide security services needed to keep the Bridge in secure condition when the Bridge is open to the public, and (c) wash and keep clean all interior windows on the Bridge, and (d) maintain liability, fire and casualty insurance in the amount of One Million Dollars (\$1,000,000), insuring Sibley's and the City against any and all failure of Sibley's to properly maintain, repair, and service the Bridge under this paragraph.

c) Sibley's agrees to be solely responsible for any improvements within the Sibley building itself undertaken by Sibley's to accommodate the access to the Bridge.

d) Sibley's will promptly use its best efforts to secure all approvals, easements and interests from all applicable property owners, if any, and secured lenders as required to carry out its responsibilities.

e) Sibley's will open and close the Bridge according to the times set forth in Section I. d. and agrees to have the Bridge under security guard protection during its hours of operation.

f) Sibley's agrees to additional maintenance/repair responsibilities as follows:

1. Dust, wipe, polish, vacuum and wash interior surfaces including windows, doors, frames, failings, floors, baseboards, ledges, and fixtures to remove all smudges, fingerprints, dust, soil, markings, litter and graffiti.
2. Provide, empty and remove accumulations from all trash receptacles and waste containers.
3. Remove all unauthorized items affixed to interior surfaces.
4. Remove and replace burned out or damaged interior incandescent light bulbs or florescent tubes.
5. Vacuum and spot clean carpeting.

6. Shampoo carpeting.

7. Maintain the exterior of the bridge including window washing and snow and ice removal.

8. All interior and exterior glazed or panels which are broken shall promptly be replaced by Sibley's using material equal to the originally specified material.

9. Carpeting shall be removed and new carpeting of at least the same quality shall be provided and installed once in each seven-year period or more frequently as required.

g) City hereby grants Sibley's, its residents, tenants and employees and other invitees an easement and right of way over and across the bridge for the purpose of entering upon and exiting from the Sibley's facility. This easement shall be in effect for the term of this Agreement.

h) In the event that the Bridge is structurally damaged in any way, it shall be the City's sole determination whether or not to rebuild the Bridge.

### 8. Term

The services required of Sibley's pursuant to this Agreement shall commence upon execution of this Agreement and shall terminate when the Parking Agreement expires or is terminated.

### 9. Authorized Agent

The parties hereby designate the following as their respective Authorized Agents:

CITY: Director of Finance  
City of Rochester  
City Hall, Room 108A  
30 Church Street  
Rochester, NY 14614

SIBLEY: Sibley Redevelopment Limited Partnership  
Attention: Gilbert Winn  
Six Faneuil Hall Market Place  
Boston, MA 02109  
617 742 4500 office  
617 742 0725 fax  
E-mail: [gwinn@winncoco.com](mailto:gwinn@winncoco.com)

or their authorized representative in case of absence, for the receipt of all notices, demands, vouchers, orders, permissions, directions, and other communications pursuant to this Agreement, if dispatched by registered or certified mail, postage prepaid, or delivered personally to the authorized agents designated herein. The parties reserve the right to designate other or additional agents upon written notice to the other.

## **10. Parties Liability**

(1) Sibley's shall indemnify, defend and hold harmless the City from all claims, demands, actions, costs and expenses, including reasonable attorney's fees resulting from injury, death or damage to property, occurring or resulting directly or indirectly from the carrying out of any of Sibley's ongoing maintenance responsibilities under this contract, wholly upon or within the Sibley's property and the Bridge, which is caused by the negligence or wilful misconduct of Sibley's, its residents, tenants, agents or employees.

(2) The City shall indemnify and hold harmless Sibley's from all claims, demands, actions and costs and expenses, including reasonable attorney's fees, resulting from injury, death or damage to property, caused by the negligence or wilful misconduct of the City, its agents or employees.

Sibley's and the City hereby waive any rights each may have against the other arising out of any loss or damage arising from any occurrence related to the Bridge to the extent such loss or damage is actually compensated by a third-party insurer under a policy of insurance covering fire and extended coverage perils.

## **11. Compliance with All Laws**

Sibley's agrees to comply with all local, state, or federal laws, ordinances, rules or regulations controlling or limiting in any way its performance under this Agreement.

## **12. Extent of Agreement**

This Agreement constitutes the entire and integrated Agreement between and among the parties hereto and supersedes any and all prior negotiations, agreements and conditions, whether written or oral. Any modification or amendment to this Agreement shall be void unless it is in writing and subscribed by the party to be charged or by the party's authorized agent.

## **13. Law**

This Agreement shall be governed by and under the laws of the State of New York.

## **14. No-Waiver**

In the event that the terms and conditions of this Agreement are not strictly enforced by a party, such non-enforcement shall not act as or be deemed to act as a waiver or modification of this Agreement, nor shall such non-enforcement prevent a party from enforcing each and every term of this Agreement thereafter.

## **15. Severability**


If any provision of this Agreement is held invalid by a court of law, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the laws of the State of New York.

**16. Real Estate Taxes**

The City warrants that the bridge shall be free from real property taxes.

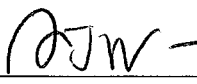
**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first above written.

**CITY OF ROCHESTER**

By:   
Name: Brian F. Curran  
Title: Corporation Counsel

**SIBLEY REDEVELOPMENT  
LIMITED PARTNERSHIP**

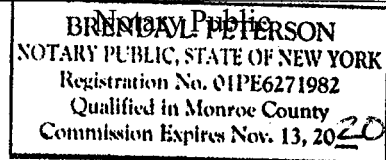
By: Sibley Redevelopment GP LLC, its General Partner  
By: WDP Manager Corp., its Manager

By:   
Name: Gilbert J. Winn  
Title: President

STATE OF NEW YORK )  
COUNTY OF MONROE ) ss:

On the 7<sup>th</sup> day of February, 2017 before me, the undersigned, a Notary Public in and for said State, personally appeared **Brian F. Curran**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

*Brenda L. Peterson*



COMMONWEALTH OF MASSACHUSETTS)  
COUNTY OF SUFFOLK) ss.:

On the 4 day of February, 2017 before me, the undersigned, a Notary Public in and for said State, personally appeared **Gilbert J. Winn**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within Instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

*Kelly Noel*  
Notary Public



KELLY NOE  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
December 14, 2018

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