

**AN ORDINANCE APPROVING AN AGREEMENT FOR USE OF RIGHT-OF-WAY
(Park Street Between Wright Street and Mathews Avenue)**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. That an Agreement Between the City of Urbana, Illinois and Provena Hospitals for Use of Right-of-Way, in substantially the form of said Agreement attached hereto, be and the same is hereby authorized and approved.

Section 2. That the Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver and the City Clerk of the City of Urbana, Illinois, be and the same is authorized to attest to said execution of said Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

PASSED by the City Council this 17th day of December,
2001 .

AYES: Chynoweth, Hayes, Huth, Otto, Patt, Wyman

NAYS:

ABSTAINS:

APPROVED by the Mayor this _____ day of _____, December _____,
2001 .



Phyllis D. Clark
Phyllis D. Clark, City Clerk
Robert
Deputy Clerk

Tod Satterthwaite
Tod Satterthwaite, Mayor

EXHIBIT D

(12/12/01)

AGREEMENT FOR USE OF RIGHT-OF-WAY

[Park Street Between Wright Street and Mathews Avenue]

THIS AGREEMENT, made and entered into this 17 day of December, 2001, by and between the CITY OF URBANA, a municipal corporation of the State of Illinois (hereinafter "City"), and Provena Hospitals, a not-for-profit corporation duly created and established pursuant to the State of Illinois (hereinafter "Hospital"),

WITNESSETH:

FOR AND IN CONSIDERATION of the mutual covenants and agreements herein contained, the City and the Hospital do mutually covenant and agree as follows:

A. Park Street is an 82.5 foot dedicated right-of-way between the east right-of-way of Wright Street and the west right-of-way of Mathews Avenue.

B. The Hospital is herein granted by the City a limited right to install two skywalks at least seventeen {17} feet above the existing centerline elevation of Park Street over such right-of-way. This limited right is wholly dependent upon the Hospital, its successors and assigns, fully and faithfully performing and complying with all the terms, conditions, and covenants contained within this Agreement. The Hospital expressly acknowledges and agrees that such limited right is immediately revocable at the option of the City in the event that the Hospital, its successor or assign, fails to perform or comply with any term, condition or covenant set forth within this Agreement. Further, it is expressly understood and agreed that the license herein granted is, and shall be at all times, subordinate to the City's or the Public's use of the Public Property for purposes normally associated with public right-of-way; accordingly, if necessary to accommodate repair or construction of City utilities or improvements to the right-of-way, the Hospital shall, at its sole cost, be obligated to relocate any portion of the skywalks installed in the public right-of-way, pursuant to this Agreement, if directed in writing to do so by the City Engineer, or, as otherwise agreed to by the City and the Hospital. For example, if it would be less expensive for the Hospital to pay increased incremental costs of the City to locate or relocate City utilities in a different location, the City and the Hospital shall consider such alternatives in good faith.

C. The construction and installation of said skywalks or any change thereof including extension, widening, reduction or removal of any one of the skywalks shall be subject to the issuance of a permit by the Director of Public Works of the City of Urbana (hereinafter "Director"). The skywalks shall not be built until a permit is issued by the Director. Each application for a permit shall be accompanied by prints, plans and maps showing the proposed location of the skywalks to be installed. In the event of an emergency which the Hospital believes poses a threat of immediate harm to the public or to any of the Hospital's facilities, the Hospital shall be permitted access to the public way to ameliorate the threatened harm without

AGREEMENT FOR USE OF RIGHT-OF-WAY (cont'd.)
Between the City of Urbana and Provena Hospitals
[Park Street Between Wright Street and Mathews Avenue]

the benefit of a permit, provided however the Hospital shall advise the City of the emergency at its earliest opportunity and seek a proper permit within a reasonable period of time thereafter.

D. The purpose of the herein permitted right to construct upon such right-of-way shall be limited solely to the installation and maintenance of two skywalks in said right-of-way, which is shown on Exhibit A, and use thereof, and for incidental uses directly related thereto. Upon cessation of such use as determined by the Director, this Agreement shall immediately lapse and terminate. Any additional use other than that specifically named, without the further express written consent of the City, shall be construed as a violation of this Agreement.

E. When so instructed by the Director, the Hospital will cause any one or both of the skywalks to be removed as nearly as possible in conformance with the Director's request, within thirty {30} days after receipt of written notice to the Hospital's corporate officer from the Director or his/her designee. The Hospital is solely and entirely responsible for any and all costs directly or indirectly related to such removal and restoration in-kind of the right-of-way.

F. In the event of an emergency, defined as imminent peril to person or property, or when the Hospital has inadequately complied with an order of the Director pursuant to Paragraph {E} above, or at any other time the Director or other responsible City official in good faith deems the procedures of Paragraph {E} impracticable under the circumstances present, the Hospital consents and agrees that the City or its duly authorized agent may remove any one or both of the skywalks, or any portion thereof, and charge all costs and expenses incurred in such removal, disposal, and restoration to the Hospital. Should the Hospital fail in any way to make timely payment to the City for such costs and expenses, the Hospital agrees to pay, in addition to any amount so owed, reasonable attorneys' fees and court costs incurred in the collection of such amount.

G. The Hospital shall, at the Hospital's expense, appear, defend, and pay all charges of attorneys and all costs and other expenses arising from any and all lawsuits or claims of any nature which may in any way be made against the City or any of its officers, employees or agents in connection with this Agreement or in any way relating to the construction or occupancy of the skywalks which is the subject of this Agreement. To the fullest extent allowed by law, the Hospital shall also indemnify, keep and save harmless the City, its officials, employees and agents, against any and all loss, damages, claims, lawsuits, liabilities, judgments, settlements and costs and expenses including attorney's fees and court costs which may in any way accrue against the City or any of its officials, employees, or agents as a result of this Agreement whether or not it shall be alleged or determined that the act was caused through negligence or omission of the Hospital or the employees of the Hospital or agents of the Hospital, or the City or its employees or any combination of the foregoing, excepting only that clause by the sole negligence or willful and wanton misconduct of the City, its officers, or its employees.

H. The Hospital acknowledges that it shall be fully responsible and bear all costs associated with any and all maintenance or repair of the skywalks.

AGREEMENT FOR USE OF RIGHT-OF-WAY (cont'd.)
Between the *City of Urbana* and *Provena Hospitals*
[Park Street Between Wright Street and Mathews Avenue]

I. The license granted pursuant to this article may not be transferred without the express written consent of the City.

J. No license granted under this authority shall convey any right, title, or interest in rights-of-way but shall be deemed a license only to use and occupy the right-of-way for the limited purposes and term stated on the grant. No license granted under this authority shall be construed as any warranty of title.

K. This Agreement shall be expressly binding upon both parties, their successors and assigns. This Agreement shall be valid only upon being duly recorded by the Recorder of Deeds for Champaign County, Illinois.

* * *

AGREEMENT FOR USE OF RIGHT-OF-WAY (cont'd.)
Between the City of Urbana and Provena Hospitals
[Park Street Between Wright Street and Mathews Avenue]

IN WITNESS WHEREOF, the City and the Developer have caused this Agreement to be executed by their duly authorized officers as of the date set forth below.

CITY OF URBANA, CHAMPAIGN COUNTY,
ILLINOIS



By: Tal Sattelmeyer
Mayor

ATTEST:
D. Clark
City Clerk
Date: _____

PROVENA HOSPITALS
~~PROVENA PROPERTIES, INC.~~, an Illinois not-for-profit
corporation

{SEAL}

By: [Signature]
Its: System One President

ATTEST:
Judith Resnik
Assistant Secretary
Date: 5-17-02

Prepared by and please return recorded copy to:

Jack Waaler, City Attorney
City of Urbana, Illinois
400 South Vine Street
Urbana, Illinois 61801