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Doc ID: 017542380016 Type: GEN  
Recorded: 10/24/2005 at 09:03:55 AM  
Fee Amt: \$82.00 Page 1 of 16  
Polk County Iowa  
TIMOTHY J. BRIEN RECORDER  
File# 2006-00042296

BK **11355** PG **338-353**

**PERMANENT AIR RIGHTS EASEMENT AGREEMENT**

Preparer Information:

Robert J. Douglas, Jr., Davis, Brown Law Firm, 666 Walnut Street, Suite 2500, Des Moines, Iowa 50309, (515)-288-2500

Return Document to: **RETURN TO:**

Robert J. Douglas, Jr., Davis, Brown Law Firm, 666 Walnut Street, Suite 2500, Des Moines, Iowa 50309, (515)-288-2500

Name of Grantor Hubbell Realty Company  
Address of Grantor: 6900 Westown Parkway, West Des Moines, Iowa 50266

Name of Grantee: Equitable, L.P.  
Address of Grantee: 3535 Westown Parkway, West Des Moines, Iowa 50266

Legal Descriptions: See Exhibits A, B & C

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**PERMANENT AIR RIGHTS EASEMENT AGREEMENT**

THIS EASEMENT AGREEMENT, made this 10<sup>th</sup> October day of August, 2005, by and between Hubbell Realty Company, an Iowa corporation ("**Grantor**"), and Equitable, L.P., an Iowa limited partnership, ("**Grantee**") and Equitable Building Residential Owners Association, an Iowa non-profit corporation (the "**Owners Association**").

WITNESSETH:

WHEREAS, the Grantor is owner of the property located in Polk County, Iowa, legally described on attached Exhibit A hereto (the "**Hubbell Property**"); and

WHEREAS, the Grantee is owner the property located in Polk County, Iowa, legally described on Exhibit B hereto (the "**Benefited Property**"); and

WHEREAS, the Grantee desires to construct balconies on floors 7 through 19 of the Equitable Building which will extend into the air rights owned by the Grantor which is legally described on Exhibit C hereto (the "**Easement Area**"); and

WHEREAS, in order to induce Grantor to grant this Easement, the Owners Association agrees to be responsible for enforcing the requirements of this Agreement; and

WHEREAS, the Grantor wishes to grant and the Grantee wishes to receive an easement in the Easement Area for the construction and location of balconies pursuant to the terms of this Easement.

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following grants, agreements and covenants and restrictions are made:

1. Grant of Easement. Grantor hereby grants to Grantee, its successors and assigns, an easement for the right to construct and maintain balconies in the Easement Area subject to the following terms:

- a. The balconies shall be constructed of non-combustible materials and shall be attached to the building located on the Benefited Property as set forth in the building plans approved by the City of Des Moines, Iowa, a copy of which has been furnished by Grantee to Grantor, and no balcony shall ever be enclosed. Grantee shall maintain the balconies in good condition and repair. There shall be no modifications of the balconies or their means of attachment to the building located on the Benefited Property without the prior written consent of Grantor, which approval shall be in Grantor's sole discretion, provided, however, if such modification is necessary to preserve or protect public safety, such approval shall not be unreasonably withheld or delayed. No grills or fires or candles

may be used on any such balcony. Nothing may be erected on or suspended from the exterior of, or hang over, any railings on any of the balconies.

b. A separation of at least 30 feet shall be maintained from the bottom of the balcony located on floor 7 (the lowest floor entitled to a balcony) of the existing building located on the Benefited Property and any improvements below it in the air rights space owned by the Grantor and a separation of at least 30 feet shall be maintained from the top of the balcony located on floor 19 (the highest floor entitled to a balcony) of the existing building located on the Benefited Property and any improvements above it in the air rights space owned by the Grantor.

c. Grantee, at its expense, shall install concrete pavers on the roof of the portion of the building located on the Hubbell Property that extends over the alley between the Hubbell Property and the Benefited Property, or make other modifications to the roof of the portion of the building located on the Hubbell Property that extends over the alley between the Hubbell Property and the Benefited Property, all in a manner and in accordance with plans approved by Grantor, so as to protect said roof area from damage by objects dropped from said balconies. Grantee, at its expense, shall from time to time, upon the request of Grantor, remove any objects that have been dropped from the balconies located in the Easement Area or from the Benefited Property onto the roof of the building located on the Hubbell Property and shall repair any damage caused to such roof by any such objects.

d. A separation in compliance with the requirements of the City Building Code shall be maintained from each balcony and any improvements on the Hubbell Property.

2. Indemnification and Hold Harmless. Grantee and its successors and assigns, jointly and severally, shall protect, defend, indemnify, and hold harmless Grantor, its successors and assigns, from and against, any and all liability, demands, claims, causes of action, judgments and costs and expenses incurred in the investigation of the same (including, without limitation, court costs and reasonable attorney's fees) for injury to persons, loss of life or damage to property, including, but not limited to, the Hubbell Building, resulting from (a) any activity related to the construction, maintenance, repair, replacement or demolition of the balconies or any other improvements to the building located on the Benefited Property, (b) the use of the Easement Area, (c) any objects or other things dropped from any balconies, or (d) any mechanic's liens arising from materials supplied to or work performed in the Easement Area. As between Grantor and Grantee and its successors and assigns, Grantee and its successors and assigns shall be strictly liable to Grantor, the doctrine of res ipse locquitar shall apply to any injury, loss, liability or damage suffered by Grantor and the doctrine of assumption of risk shall not be a defense against a claim by Grantor.

Grantee, the Owners Association and its successors and assigns, shall maintain in full force and effect at all times, at its sole expense, commercial general liability insurance coverage on an occurrence basis endorsed per location with respect to the Hubbell Building, which insurance shall contain all coverages typically contained in the broad form endorsement,

including, but not limited to contractual liability, personal injury, and independent contractors coverage, with a minimum limits of liability of \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage, and \$250,000.00 per fire for fire damage, together with an aggregate for the preceding coverages of \$2,000,000.00 per policy for bodily injury and property damage. The minimum amounts of such insurance shall increase every five (5) years by multiplying the applicable minimum amount of annual insurance for the immediately prior five year period by a fraction whose numerator is the CPI that is published in the last month of such five (5) year period and whose denominator is the CPI published in the last month prior to the start of such five (5) year period, but in no event will the amount of such insurance be less than the amounts stated in the prior sentence. For example, if this Easement is executed in August 2005, then the first adjustment of insurance will occur in August 2010 and the fraction will be the CPI published in July 2010 divided by the CPI published in July 2005. The "CPI" shall mean the Consumer Price Index, all Urban Consumers, U.S. City Average All Items (1982-84 = 100) (CPI-U) published by the Bureau of Labor Statistics of the U.S. Department of Labor or its successor index. If the CPI shall no longer be published or becomes no longer recognized as an appropriate measure of changes in the cost of living, then another authoritative index shall be substituted. All policies of insurance provided for by this section shall be issued by insurance companies authorized and admitted to do business in the State of Iowa with general policy holders rating of not less than a financial rating of AAA as rated by the most current available "Best's Insurance Reports". Executed copies of such policies of insurance or certificates thereof shall be delivered to Grantor concurrently with execution of this Permanent Air Rights Easement, and thereafter within thirty (30) days prior to the expiration of the term of each such policy. All policies of such commercial general liability insurance shall contain an endorsement (a) that such policy may not be cancelled or amended except on upon thirty (30) days prior written notice from the insurance company to Grantor, and (b) that such policy shall be renewed unless the insurer shall give Grantor notice of intention not to renew at least thirty (30) days before the expiration date of the policy. All such commercial general liability policies shall be written as primary policies, not contributing with and not in excess of coverage that Grantor may carry.

With respect to the liability under this Section, the Owners Association and the owners of each of the condominium units with a balcony in the Easement Area shall be a successors or assign of Grantee.

3. Establishment of Property Line. Grantor is granting this Easement based upon the condition that the property line between the Hubbell Property and the Benefited Property in the Easement Area for purposes of determining building code issues shall remain at the common boundary line between such property notwithstanding the grant of this Easement. In the event that the City of Des Moines, Iowa, ever interprets the Building Code or any other regulations governing construction of any building on the Hubbell Property or the amount, location or nature of protection of openings that such building may have in its north wall based upon a property line between the Hubbell Building and the Benefited Property that is other than the north line of the Easement Area, then the owners of the Benefited Property collectively shall either install a curtain water wall, through a sprinkler system or otherwise, that protects each opening onto a balcony in the Easement Area in the event of a fire or they shall remove the balconies.

4. Running of Benefits and Burdens, Amendment or Termination. All provisions of this Agreement, including the benefits and burdens, run with the land, and are binding upon and inure to the benefit of the heirs, assigns, successors, tenants and personal representatives of the parties hereto. This Easement may only be amended or terminated by the mutual agreement of the owners of the Hubbell Property and the Benefited Property, and by the City of Des Moines since the City of Des Moines has relied upon the existence and terms of this easement to approve the addition of the balconies to the Equitable Building. Notwithstanding the foregoing, this Easement shall terminate and have no further force and effect if any of the following conditions occurs, (a) no balconies are erected within the Easement Area within two (2) years after the grant of this Easement, (b) all balconies are removed from the Easement Area, (c) the existing building located on the Benefited Property is demolished, or (d) as provided in Section 5 of this Agreement.

Upon termination of this Easement, the Owners Association and/or the owners of the condominium units with balconies located within the Easement Area shall immediately remove any balconies still located within the easement area. If they fail to remove those balconies within sixty (60) days after termination of this Easement, then Grantor shall have the right to remove the balconies in the name of, and at the expense of the Owners Association and the owners of the condominium units that have balconies within the Easement Area and shall have a right of action against the Owners Association and/or the owners of the condominium units with balconies located in the Easement Area for collection of the cost thereof, plus the reasonable costs, including attorney's fees, of collecting such amount, plus interest at the lesser of (a) twelve percent (12%) per annum or (b) the maximum rate allowed by law, from the date such cost is incurred, and shall have a lien against all of the condominium units in the Benefited from the day an affidavit reciting the giving of such notice, the performance of such work and the cost thereof is filed in the Office of the Recorder for Polk County, Iowa until such amount, plus the reasonable costs, including attorney's fees of collecting such amount and costs of filing of such lien, incurred by the lienholder is paid. Grantee hereby grants Grantor an easement over, through and across the common elements of the Benefited Property and the condominium units that have balconies located in the Easement Area for the purpose of removing such balconies.

5. Enforcement, Attorneys' Fees. Either party may enforce this Agreement by appropriate action, and the prevailing party in such litigation shall have its reasonable costs of litigation, including, without limitation, attorneys' fees and expenses, expert witness fees and the costs of such litigation, reimbursed by the other party. Further, the parties acknowledge the reliance by the City of Des Moines on the terms of this easement for the issuance of building permits for the Benefited Property and Mortgagee's consent. Accordingly, the parties specifically agree that the City of Des Moines may enforce this Agreement by appropriate action, and the City shall have its reasonable costs of litigation, including, without limitation, attorney's fees reimbursed by the offending party.

Grantor shall give Grantee, the Owners Association and/or the owners of any condominium units in the Benefited Property Grantee written notice of any violation of the terms of this Agreement. If the Grantee or the Owners Association and/or the owners of any units in the Benefited Property that have balconies in the Easement Area fail to correct such violation

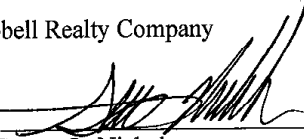
within thirty (30) days after the date of such notice, or if such violation is of a nature that it cannot reasonably be corrected within said thirty (30) day period, if the Grantee or the Owners Association and/or the owners of any units in the Benefited Property fail either to commence action to correct such violation within said thirty (30) day period or fail thereafter diligently to pursue such correction to completion, then Grantor may, but it is not obligated to, correct such violation in the name of and at the expense of Grantee, the Owners Association and/or the owners of the condominium units with balconies located in the Easement Area and shall have a right of action against the Grantee, the Owners Association and/or the owners of the condominium units with balconies located in the Easement Area for collection of the cost thereof, plus the reasonable costs, including attorney's fees, of collecting such amount, plus interest at the lesser of (a) twelve percent (12%) per annum or (b) the maximum rate allowed by law, from the date such cost is incurred, and shall have a lien against the condominium units that have balconies in the Easement Area from the day an affidavit reciting the giving of such notice, the performance of such work and the cost thereof is filed in the Office of the Recorder for Polk County, Iowa until such amount, plus the reasonable costs, including attorney's fees of collecting such amount and costs of filing of such lien, incurred by the lienholder is paid. Grantee hereby grants Grantor an easement over, through and across the common elements of the Benefited Property and the condominium units that have balconies located in the Easement Area for the purpose of correcting any default in the condition of any such balcony. In the alternative, Grantor shall have the right, as a remedy for such default, to declare this Easement to be terminated by written notice to the Owners Association and the owners of the condominium units with balconies located within the Easement Area, and upon giving of such notice the Easement granted to Grantee and its successors and assigns by this Agreement shall terminate.

6. Construction. This Agreement shall be construed in accordance with the laws of the State of Iowa. Words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

7. Warranties of Title. Grantor warrants that it has good and fee simple title to the Burdened Property, free and clear of all liens and encumbrances, except (i) general real estate taxes not yet delinquent, and (ii) mortgage to the City of Des Moines, which has been subordinated to this Easement.

IN WITNESS WHEREOF, the parties have duly executed this Easement Agreement on the date first above written.

GRANTOR:

Hubbell Realty Company  
By:   
Steven L. Niebuhr  
Senior Vice President

By: R. Michael Hayes  
R. Michael Hayes  
Secretary

STATE OF IOWA, DALLAS COUNTY, ss:

On this 21<sup>th</sup> day of September, 2005, before me, a notary public in and for the State of Iowa, personally appeared Steven L. Niebuhr and R. Michael Hayes, to me personally known, who being by me duly sworn did say that the persons are the Senior Vice President and the Secretary, respectively, of Hubbell Realty Company; that no seal has been procured by the said corporation; that said instrument was signed on behalf of the said corporation by authority of its board of directors; and the said Steven L. Niebuhr and R. Michael Hayes, as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.



Tina M. Newbury  
Notary Public in the State of Iowa  
My commission expires: 1-10-08

GRANTEE:

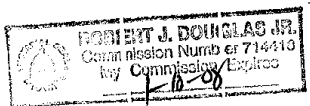
Equitable, L.P.  
By: Equitable GP, L.L.C., General Partner  
By: Bob J. Knapp  
Bob J. Knapp, Sole Member

OWNERS ASSOCIATION:

Equitable Building Residential Owners Association  
By: Bob J. Knapp  
Bob J. Knapp, President

STATE OF IOWA, POLK COUNTY, ss:

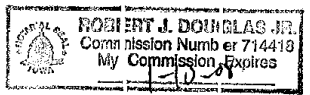
On this 28<sup>th</sup> day of September, 2005, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared Bob J. Knapp, to me personally known, and who, being by me duly sworn did state that he is the sole member of Equitable GP, L.L.C., an Iowa limited liability company, which is the General Partner of **Equitable L.P.**, an Iowa limited liability partnership; that the foregoing instrument was signed on behalf of the partnership by authority of its partners and on behalf of said general partner by authority of its members; and that he, as the sole member of the limited liability company, acknowledged the execution of the instrument to be the voluntary act and deed of said partnership and limited liability company, by him and by the partnership and limited liability company voluntarily executed.



Robert J. Douglas Jr.  
Notary Public in the State of Iowa

STATE OF IOWA, POLK COUNTY, ss:

On this 28<sup>th</sup> day of September, 2005, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared Bob J. Knapp, to me personally known, and who, being by me duly sworn did state that he is the president of **Equitable Building Residential Owners Association**, an Iowa non-profit corporation; that said corporation has no seal; that the foregoing instrument was signed on behalf of the corporation by authority of its Board of Directors; and that he, as such officer, acknowledged the execution of the instrument to be the voluntary act and deed of corporation, by it and by him voluntarily executed.



Robert J. Douglas Jr.  
Notary Public in the State of Iowa



CONSENT AND SUBORDINATION OF MORTGAGEE

Comes Now, the City of Des Moines, Iowa as the Mortgagee under a Mortgage filed in Book 5320, Page 253 of the Polk County Recorder's Office as amended by a First Amendment filed in Book 7138, Page 015 of the Polk County Recorder's Office from Hubbell Realty Company, as Mortgagor, and hereby consent to the execution and delivery of this Easement, and that the interest of the City of Des Moines in the Easement Area under such Mortgage is hereby subordinated to the rights granted to Equitable, L.P. in this Easement.

City of Des Moines, Iowa

By: T.M. Franklin Cownie  
Mayor

Attest: Diane Rauh  
City Clerk

STATE OF IOWA )  
                          ) ss:  
COUNTY OF POLK )

On this 10<sup>th</sup> day of October, 2005, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared T.M. FRANKLIN COWNIE and DIANE RAUH, to me personally known, and who, being by me duly sworn did state that they are the Mayor and City Clerk, respectively, of City of Des Moines, Iowa, a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; that the instrument was signed on behalf of City of Des Moines, Iowa, by authority of its City Council, as contained in the Resolution adopted by City Council under Roll Call No. 05-2510 of City Council on the 10<sup>th</sup> day of October, 2005, and that T.M. FRANKLIN COWNIE and DIANE RAUH acknowledged the execution of the instrument to be the voluntary act and deed of City of Des Moines, Iowa, by it and by them voluntarily executed.



Karen Marie Herzberg  
Notary Public in the State of Iowa

Exhibit A  
Hubbell Realty, Inc.  
Kaleidoscope Legal Description

Parcel 1

All of the following described real estate in the City of Des Moines, Polk County, Iowa, that lies above Elevation 36.20, City Datum (First Floor Level):

All of Lots 3, 4, 5, and 6, and the Vacated 16.5 foot wide North-South Alley lying west of and adjoining said Lots 5 and 6, all in block 12, in the ORIGINAL TOWN OF FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa,

AND a triangular portion of vacated Sixth Avenue Right-of-Way described as follows:

Beginning at the Southeast corner of Lot 5 in Block 12 in the ORIGINAL TOWN OF FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa; thence Northerly, along the East line of said Lot 5, a distance of 57.82 feet; thence Southerly, a distance of 57.82 feet, to a point that is 0.3533 feet East of the Southeast corner of said Lot 5; thence Westerly, a distance of 0.3533 feet to the Point of Beginning.

AND EXCEPTING THEREFROM the following described triangular shaped portion of the above real estate:

Commencing at the Southeast corner of Lot 5 in Block 12, in the ORIGINAL TOWN OF FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa; thence Northerly along the East line of said Lot 5, a distance of 57.82 feet to the Point of Beginning; thence Northerly 75.29 feet to the Northeast corner of Lot 6, Block 12, in the ORIGINAL TOWN OF FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa; thence Westerly along the North line of said Lot 6 a distance of 0.46 feet; thence Southerly a distance of 75.29 feet to the Point of Beginning.

AND FURTHER EXCEPTING THEREFROM the following three air rights parcels:

The West 179.0 feet thereof (excepting from said West 179.0 feet the North 39.0 feet of the East 25.0 feet and the South 20.0 feet of the East 25.0 feet thereof) that lies above Elevation 69.82 feet, City Datum (Third Floor Level).

AND

All that part of the following described real estate that lies above Elevation 36.20, City Datum (First Floor Level) and below Elevation 54.82, City Datum (Second Floor Level): Commencing at the S.W. Corner of Lot 4, Block 12, in the ORIGINAL TOWN OF FORT DES MOINES, an

Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, thence Easterly, along the Southerly Line of said Lot 4, 62.67 feet to the Center Line of Column No. 4, and to the Point of Beginning; thence Northerly, at Right Angles to the Southerly Line of said Lot 4, and along the Center Line of said Column Line No. 4, 41.75 feet; thence Westerly, at Right Angles to the preceding course, 1.08 feet; thence northerly, at Right Angles to the preceding course, 28.83 feet; thence Easterly, at Right Angles to the preceding course, 32.17 feet; thence Southerly, at Right Angles to the preceding course, 28.83 feet; thence Westerly, at Right Angles to the preceding course, 3.08 feet; thence Southerly, at Right Angles to the preceding course and along the Center Line of Column No. 5, 41.75 feet, to a point that is on the Southerly Line of said Lot 4, thence Westerly, at Right Angles to the preceding course, 28.0 feet, to the Point of Beginning.

AND

All that part of the following described real estate that lies above Elevation 54.82, City Datum (Second Floor Level) and below Elevation 69.82, City Datum (Third Floor Level): Commencing at the S.W. Corner of Lot 4, Block 12, in the ORIGINAL TOWN OF FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa; thence Easterly, along the Southerly Line of said Lot 4, 62.67 feet, to the Center Line of Column No. 4; thence Northerly, at Right Angles to the Southerly Line of said Lot 4, and along the Center Line of said Column Line No. 4, 41.75 feet; thence Westerly, at Right Angles to the preceding course, 1.08 feet, to the Point of Beginning; thence Northerly, at Right Angles to the preceding course, 28.83 feet; thence Easterly, at Right Angles to the preceding course, 32.17 feet; thence Southerly, at Right Angles to the preceding course, 28.83 feet; thence Westerly, at Right Angles to the preceding course, 32.17 feet, to the Point of Beginning.

Parcel 2

All of the vacated air rights above an elevation of 14.5 feet above ground level over the East-West alley lying North of and adjoining Lot 6, in Block 12, in the ORIGINAL TOWN OF FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, (vacated by Ordinance No. 10,228, enacted November 1, 1982).

Parcel 3

All air space above a plane 16.5 feet above the highest point of the portion of Sixth Avenue right-of-way described as follows:

Commencing at a point 33.9 feet North along the West lot line from the Southwest corner of Lot 4, Block 13, in the ORIGINAL TOWN OF FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines; thence Westerly in a straight line to a point 33.9 feet North along the East lot line from the Southeast corner of Lot 5 in Block 12, in the ORIGINAL TOWN OF FORT DES MOINES, an Official Plat; thence Northerly along the East lot lines of Lots 5 and 6 of said Block 12 a distance of 46 feet; thence Easterly in a straight line to a point 79.9 feet North, along the West lot lines of Lots 4 and 3 of said Block 13 from the

Southwest corner of said Lot 4 of said Block 13; thence Southerly along the West lot lines of said Lots 3 and 4 of said Block 13 a distance of 46 feet to the Point of Beginning; all now included in and forming a part of the City of Des Moines, Polk County, Iowa, (vacated by Ordinance No. 10,390, enacted November 21, 1983),

subject to the easement for the equivalent of Skywalk Bridge 37-38 through the structure built in these air rights and the written Skywalk Agreement, by and between the City of Des Moines, Iowa and Walnut Mall Limited Partnership, dated December 19, 1983 and filed for record in the Office of the Recorder for Polk County, Iowa in Book 5313 commencing at Page 722.

Parcel 4

Lots 3 and 4, the West one-half (W ½) and the East one-third (E 1/3) of the East one-half (E ½) of Lots 5 and 6, and the vacated North-South alley lying West of and adjoining said Lots 5 and 6, all in Block 13 in the ORIGINAL TOWN OF FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa;

AND EXCEPTING THEREFROM the following described triangular shaped portion of the above real estate:

Commencing at the Southeast corner of Lot 5, Block 13, in the ORIGINAL TOWN OF FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa; thence Northerly along the East line of said Lot 5, a distance of 74.30 feet to the Point of Beginning; thence Northerly a distance of 58.82 feet to the Northeast corner of Lot 6, Block 13, in the ORIGINAL TOWN OF FORT DES MOINES, an Official Plat; thence Westerly along the North line of said Lot 6, a distance of 0.38 feet; thence Southerly a distance of 58.82 feet to the Point of Beginning;

AND

INCLUDING a triangular portion of Fifth Avenue Right-of-Way described as follows:

Beginning at the Southeast corner of Lot 5, Block 13 in the ORIGINAL TOWN OF FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa; thence Northerly, along the East line of said Block 13, a distance of 74.30 feet; thence Southerly a distance of 74.30 feet, to a point which is 0.48 feet East of the Southeast corner of said Block 13; thence Westerly a distance of 0.48 feet to the Point of Beginning;

AND

An undivided four-sixths (4/6ths) interest in the following described real estate situated in Polk County, Iowa:

The West two-thirds (W 2/3) of the East one-half (E ½) of Lots 5 and 6, in Block 13, in the ORIGINAL TOWN OF FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa,

AND

As to the remaining two-sixths (2/6ths) interest in the below-described property, the lessee's interest in the leasehold estate created by that certain written Lease, dated March 14, 1905, by and between Charles H. Good, as Lessor, and Simon Casady, as Lessee, covering the following described real estate situated in Polk County, Iowa:

The West two-thirds (W 2/3) of the East one-half (E ½) of Lots 5 and 6, in Block 13, in the ORIGINAL TOWN OF FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa,

for a term ending on the 31<sup>st</sup> day of March, 2004, which Lease was duly filed for record in the Office of the Recorder for Polk County, Iowa on March 16, 1905, in Book 476, commencing at Page 357, and which Lease granted lessee an option to purchase the property, which option was exercised by that Notice of Exercise of Option to Purchase, executed by Walnut Mall Limited Partnership on January 18, 1984, and filed for record in the Office of the Recorder for Polk County, Iowa on March 30, 1984 in Book 5339 at Pages 103-104, 107-108, 109-110, 111-112, 113-114 and 115-116.

Parcel 5

The air space which is located above the portion of the East-West alley lying North of and adjacent to Lot 6 (except the East 18.5 feet thereof and except the East 16.0 feet of the West 19.34 feet thereof) in Block 13 in the ORIGINAL TOWN OF FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa; and which is located below a plane with an elevation of 75.40 feet City Datum at the Western Boundary of said East-West alley; thence sloping uniformly eastward and downward to an elevation of 74.15 feet, City Datum at the Eastern boundary of said East-West alley, and which is located above a plane with an elevation of 50.40 feet, City Datum at the Western Boundary of said East-West alley; thence sloping uniformly Eastward and downward to an elevation of 48.65 feet, City Datum at the Eastern boundary of said East-West alley.

The terms "north," "east," "west," and "south" used in this Exhibit shall be construed to mean "northerly," "easterly," "westerly," and "southerly," and vice versa, where the context so requires, by reason of the platting of downtown Des Moines on a southwest to northeast axis.

Exhibit B  
Equitable, L.P. Legal Description

Lots 7 and 8, Block 12, Fort Des Moines, an Official Plat, now included in and forming a part of  
the City of Des Moines, Polk County, Iowa

Exhibit C  
Easement Area

Air Rights Legal Description for Proposed Balconies on Floors 7 through 19

All that part of the East-West 16.5 foot wide alley lying South of and abutting Lot 7, Block 12, Fort Des Moines, an Official Plat, Des Moines Polk County, Iowa, being more particularly described as follows:

Commencing at the Southeast Corner of said Lot 7; thence South  $74^{\circ}39'10''$  West along the South Line of said Lot 7 a distance of 21.51 feet to the Point of Beginning; thence South  $15^{\circ}23'30''$  East a distance of 8.00 feet; thence South  $74^{\circ}36'40''$  West a distance of 19.00 feet; thence North  $15^{\circ}23'30''$  West a distance of 8.00 feet to a point on the South Line of said Lot 7; thence North  $74^{\circ}39'10''$  East along the South Line of said Lot 7 a distance of 19.00 feet to the Point of Beginning, said easement being from Elevation of 114.26 to Elevation of 263.23 (City of Des Moines Datum).

★ Roll Call Number

05-2510

66

Date October 10, 2005

Exhibit D

RESOLUTION CONSENTING TO EASEMENT FOR BALCONIES EXTENDING FROM THE EQUITABLE BUILDING OVER A PORTION OF THE KALEIDOSCOPE BUILDING UPON WHICH THE CITY HOLDS A MORTGAGE

WHEREAS, the City holds a mortgage in the Kaleidoscope Building owned by Hubbell Realty, Inc., to secure potential payments under a UDAG City/Developer Loan Agreement originally with Walnut Mall Limited Partnership; and,

WHEREAS, Equitable, L.P., represented by Bob J. Knapp (officer) has requested that Hubbell Realty, Inc., grant it an easement for the construction of balconies on the Equitable Building which extend into the air space over the Kaleidoscope Building, with such easement to be in the form of the Permanent Air Rights Easement Agreement which is on file and available for public inspection in the office of the City Clerk; and,

WHEREAS, Equitable, L.P., has requested that the City as lienholder, consent to the easement and subordinate its mortgage to the easement; NOW THEREFORE,

BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

- 1. The Mayor is hereby authorized and directed to sign the Consent And Subordination Of Mortgagee contained in the above mentioned Permanent Air Rights Easement Agreement, and the City Clerk is hereby authorized and directed to attest to the Mayor's signature on such document.
2. The City Clerk is further authorized to forward the signed Agreement to the Legal Department for release to Equitable, L.P.

(Council Communication No. 05-554 )

MOVED by Hensley to adopt

FORM APPROVED:

Roger K. Brown, Assistant City Attorney

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Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BROOKS, COLEMAN, HENSLEY, MAHAFFEY, KIERNAN, VLASSIS, and TOTAL.

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

MOTION CARRIED

APPROVED

Y. M. Franklin Coursey Mayor

Diane Rauh City Clerk