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Preparer Information:

Lawrence R. McDowell, Deputy City Attorney, 400 Robert D. Ray Drive, Des Moines, IA 50309 (515) 283-4543

Taxpayer Information:

N/A, not a document or instrument of conveyance

Grantor(s):

N/A

Grantee(s):

N/A

Legal Description:

Lots 5 and 6, Block C in Commissioners Addition, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

Book and Page Reference Numbers:

Book _____

Page _____

Prepared by: Lawrence R. McDowell, Deputy City Attorney, 400 Robert D. Ray Dr, Des Moines, IA 50309 515-283-4543
After Recording Return to: City Clerk, City of Des Moines, 400 Robert D. Ray Drive, Des Moines, IA 50309

SKYWALK AGREEMENT

By and Between

THE CITY OF DES MOINES, IOWA,

BISIGNANO FAMILY II LLC,

~~XXXXXXXXXXXXXXXXXXXX~~

EQUITABLE, L.P.

and

K.C. HOLDINGS VI, L.L.C.

(Block bounded by Grand Avenue
and 5th, 6th and Locust Streets)

(Non-standard language in *italics* or
in Article XIV - Special Provisions)

Recording Note:

Only Exhibits "A", ~~XXX~~ "C", and "F" and the sub-exhibits to such Exhibits are intended to be recorded with this Skywalk Agreement in the land records of the Polk County Recorder. A copy of this Skywalk Agreement with all exhibits attached shall be maintained on file in the Office of the City Clerk of the City of Des Moines, Iowa.

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Index of Exhibits to the Skywalk Agreement

Exhibits:

- A - Schematic Plans of Skywalk System to be Built
- B - Certified List of Property Owners, Lessees and Encumbrances (Not Used)
- C - Consent and Subordination of Mortgage
- D - Not Used (Grant of Limited Skywalk Easements)
- E - Not Used (formerly insurance requirements)
- F - Designation of a Vertical Access Facility
- G - Article IV of Chapter 102 of the City Code of the City of Des Moines, Iowa, 2000, as amended to the date of this Agreement ("Skywalk Ordinance")
- H. - Not Used (Contractors Performance, Maintenance and Payment Bond)

SKYWALK AGREEMENT

THIS SKYWALK AGREEMENT (hereinafter "Agreement"), made and entered into this 27th day of October, 2008 by and between the CITY OF DES MOINES, IOWA, a municipal corporation, hereinafter referred to as the "City," Bisignano Family II LLC, an Iowa limited liability company, ~~XX~~ Equitable, L.P., an Iowa limited partnership and K.C. Holdings VII, L.L.C., an Iowa limited liability company, hereinafter sometimes referred to as "K.C. Holdings".

Those parties hereto which are the owners of each property shall be generally referred to as "Owners" and those parties with a leasehold or present possessory property interest other than the ownership in a particular property, which leasehold or other present possessory property interest is traversed by Limited Skywalk Easements or Nodal Areas, as hereinafter defined, shall be generally referred to as "Lessees." "Lessees" does not reference or include any person with a leasehold or other present possessory property interest in the portion of an owner's property which is not traversed by Limited Skywalk Easements or Nodal Areas. They shall be referred to collectively as "Owners/Lessees," or, in the singular, as an "Owner/Lessee."

WITNESSETH:

WHEREAS, the City, K.C. Holdings and Equitable, L.P. have entered into an Urban Renewal Development Agreement dated April 6, 2005 (hereinafter referred to as "Urban Renewal Agreement") wherein Equitable, L.P. undertook to restore the property commonly known as the Equitable Building and K.C. Holdings undertook to restore the property commonly known as the Liberty building and undertook to construct a new garage upon the northwest quarter of the block between Grand Avenue, 5th, 6th and Locust Streets, and in conjunction with such Urban Renewal Agreement the parties have entered into this Skywalk Agreement wherein K.C. Holdings shall construct a wall opening to connect the new parking garage to the Skywalk System and K.C. Holdings shall construct a Vertical Access Facility between the adjacent street level sidewalk and the adjacent Skywalk level wall opening as set forth herein; and,

WHEREAS, the City, through the Metro Center Urban Renewal Project, has undertaken to develop a pedestrian Skywalk System within the Downtown Central Business District; and

WHEREAS, the City, pursuant to the Constitution and Laws of Iowa, is authorized to initiate, to integrate and to operate the Skywalk System; and

WHEREAS, the parties to this Agreement have property interests in the respective properties, legally described below, which are within the Skywalk District and are to be connected to the Skywalk System:

Legal Descriptions

Owned by Bisignano Family II LLC and ~~XX~~ leased with right to purchase to K.C. Holdings and portion of improvements subleased with acquisition rights to Equitable, L.P.:

Portion of Block bounded by Grand Avenue and 5th, 6th, and Locust

Lots 5 and 6, Block C, Commissioners Addition an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa,

WHEREAS, it is the desire of the parties to this Agreement that the following Skywalk Bridges, as hereinafter defined, be constructed at the approximate locations shown on the plat attached hereto as Exhibit "A":

N/A

WHEREAS, it is the desire of the parties to this Agreement that certain Skywalk Corridors, as hereinafter defined, be constructed, maintained and used as pedestrian walkways through or adjacent to buildings owned or leased by the parties to this Agreement (referred to collectively herein as the "Buildings" and individually as a "Building") in accordance with this Agreement; and

WHEREAS, such Skywalk Bridges and Skywalk Corridors are parts of the Skywalk System, as reflected on the Skywalk System Plan Map in effect on the date of this Agreement, a copy of which is on file in the Office of the City Clerk and is incorporated herein by this reference (hereinafter referred to as the "Skywalk System Plan Map").

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is hereby agreed by and between the parties as follows:

ARTICLE I - DEFINITIONS

The following definitions shall apply throughout this Agreement:

1. The "Skywalk System" shall be the planned skywalk system shown on the Skywalk System Plan Map and includes Skywalk Corridors, Nodal Areas, Skywalk Bridges and Vertical Access Facilities planned, at any given time, for inclusion in the Skywalk System, as well as those already included in the System.

2. A "Skywalk Corridor" is a skywalk-level pathway of the Skywalk System which is within, along or on top of a building or as part of a separate structure over private property and whose termini are Skywalk Bridges, other Skywalk Corridors or an opening in the building by which the Skywalk Corridor connects to the Skywalk Corridor in an adjacent building. The purpose of a Skywalk Corridor is the accommodation of public pedestrian travel from point to point at the skywalk level.

3. A "Skywalk Bridge" is a skywalk-level bridge from building or structure face to building or structure face which spans one and only one street or alley and which continues the Skywalk System pathway in a direction perpendicular or nearly perpendicular to the face of the building or structure to which it attaches. The purpose of a Skywalk Bridge is to permit public pedestrian travel at the skywalk-level across public rights-of-way.

4. A "Skywalk Bridge Project" is a project to construct and attach a Skywalk Bridge to a building or buildings and includes (a) Skywalk Bridge openings into abutting structures, (b) temporary closures, if any, of such openings, (c) finish treatment and sealing of such openings, (d) fire doors and atmospheric doors, if any, located at or near the ends of the Skywalk Bridge, (e) structural supports, if any, necessary to connect the Skywalk Bridge to the abutting structures, (f) the Skywalk Bridge, (g) related mechanical and electrical facilities located both on and off the Skywalk Bridge for heating, ventilating, air conditioning, lighting and roof drainage of the Skywalk Bridge and the connections necessary to tie such mechanical and electrical facilities into the respective systems of abutting buildings, and (h) insulated glass to the extent glass is used to enclose the Skywalk Bridge.

5. "Capital Repairs and/or Replacements" shall include capital improvements and capital expenditures, and as used herein shall be defined in the same manner as the term "capital expenditure" is defined and used in Section 263 of the Internal Revenue Code of 1986, as amended to date, and applicable Treasury Regulations, and interpretations thereof, and shall include, but shall not be limited to, major repairs to a Skywalk Bridge and to the electrical, heating, ventilating and air-conditioning equipment of such Skywalk Bridge.

6. A "Vertical Access Facility" is a pathway for pedestrians to move between the skywalk-level Skywalk Corridors and the ground-level public sidewalk and may consist of an escalator, stairs, elevator or other means of vertical transfer or a combination thereof, as well as the pathways between a Skywalk Corridor and the skywalk-level access to the means of vertical transfer and the pathway between the ground-level access to the means of vertical transfer and the public sidewalk. The primary public purpose of a Vertical Access Facility is to allow pedestrians to move between the skywalk-level and ground-level sidewalk systems. Each Vertical Access Facility shall be deemed a part of the Skywalk System to the extent provided for in this Agreement upon the acceptance of its designation as such by the City Council. However, each Vertical Access Facility shall remain under the ownership and control of those with interests in the building in which it is located.

7. A "Nodal Area" is an area in the skywalk System where a pedestrian has the choice of two or more paths of travel such as the intersection of two or more Skywalk Corridors, the intersection of one or more Skywalk Corridors and one or more Vertical Access Facilities, or the lateral connection of a Skywalk Bridge to a point along the length of a Skywalk Corridor. The primary purpose of a Nodal Area is to provide sufficient area for pedestrians from different pathways to change paths and to use and enjoy aesthetic and functional amenities that enhance the Skywalk System. Therefore, a Nodal Area should be of greater dimension than the intersecting pathways. Each Nodal Area which exceeds the area of the Skywalk Corridors included in it shall be deemed dedicated to such public purpose if an easement therefor is offered to the City and accepted by the City Council.

8. The "Skywalk Commission" is that commission described in Section 102-320 of the Municipal Code of the City of Des Moines, Iowa, 2000.

9. The "Skywalk Ordinance" consists of those ordinances of the City which are codified as Article IV of Chapter 102 of the Municipal Code of the City of Des Moines, Iowa, 2000, a copy of which is attached hereto as Exhibit "G."

ARTICLE II

Skywalk Bridge Project Construction

1. *N/A, see the provisions of paragraph 3 of Article XIV, Special Provisions. As promptly as reasonably possible after execution of this Agreement, after the City has sold essential corporate purpose general obligation bonds to be repaid with tax increment revenues to finance its obligations herein, and after the time for challenge to the validity of such bonds has expired without challenge and after hearing has been held on the expenditure of the proceeds of such bonds for purposes of this Agreement, or in the event of a legal challenge, then after its resolution in a manner upholding the validity of such bonds or of the expenditure of the bond proceeds for such purposes, the City shall contract for construction of the Skywalk Bridge Project for the Skywalk Bridges labeled XXXXXXXXXXXX on Exhibit A in substantial accordance with the plans and specifications approved by the City Council of City*

after an opportunity for the Owner, to review and comment on said plans and specifications in accordance with the procedure for future Skywalk Bridges set forth in this Article II, which plans and specifications after approval shall be on file in the office of the City Clerk of City. City will use reasonable diligence under the circumstances in administering the due performance and completion of such construction by the contractor; provided, however, that City shall not be obligated to exercise such reasonable diligence with respect to a particular Skywalk Bridge Project if for any reason a Building to which such Skywalk Bridge Project is to be connected is not ready for such connection.

2. It is anticipated by the parties hereto that Skywalk Bridge Projects may be constructed at some time in the future which future Skywalk Bridge Projects will connect with the building or buildings covered by this Agreement. Paragraph 1 of Article IV of this Agreement provides for the grant of inchoate Limited Skywalk Easements in anticipation of the construction of such future Skywalk Bridge Projects. The City shall have the right to construct such future Skywalk Bridge Projects in accordance with the terms of such Limited Skywalk Easements and this Agreement.

3. The Skywalk Bridge mechanical and electrical systems shall be located as shown by such plans. There shall be a separate feed for electrical service for each Skywalk Bridge Project, and such electrical service shall, to the extent reasonably possible, be metered separately.

4. The costs for construction of each Skywalk Bridge Project shall be borne as follows:

(a) The city shall pay: the cost and expense of equipment and materials used or furnished in connection with that portion of the Skywalk Bridge over public right-of-way, and for all fees and expenses of contractors and materialmen necessary and incidental thereto; for separate electric service; for separate heating, ventilating and air conditioning equipment, if necessary (as determined by the architects or engineers designing the Skywalk Bridge); for connections of electrical service and heating, ventilating and air conditioning equipment to each Skywalk Bridge; the cost of all insurance and bonds necessary and incidental to the construction of each Skywalk Bridge Project; and the cost, expense and fees of surveyors, engineers, architects, lawyers and similar third parties employed by City in connection with the construction thereof.

(b) Each Owner/Lessee of each Building which is to be part of the Skywalk System shall jointly and severally bear the costs of construction of the following portions of each Skywalk Bridge Project connecting a Skywalk Bridge to the Building of which they are an Owner/Lessee: Skywalk Bridge opening into such Building; temporary closure, if any, of such opening; finish treatment and sealing of such opening; fire doors and atmospheric doors, if any, located at such Owner's/Lessee's end of the Skywalk Bridge; structural supports, if any, for the Skywalk Bridge necessary to connect such Skywalk Bridge to such Owner's/Lessee's Building; and that portion of the Skywalk Bridge, if any, over such Owner's/Lessee's property, including, but not limited to, the cost and expense of equipment and materials, and the fees and expenses of the contractors and materialmen necessary and incidental to the construction of such portion of the Skywalk Bridge. The amount of such costs for each Skywalk Bridge Project for which such Owner/Lessee is responsible shall be that amount stated therefor in the bid of the lowest responsible total project bid accepted by City. Any Owner or Lessee who objects to the correctness of such amount may, within five business days of the date City notifies it of its share of the cost, request binding arbitration.

Any Owner/Lessee may pay to City its share of the costs of such Skywalk Bridge Project contract by either of the following methods:

(i) At or before the end of the time for objection or, in the event of arbitration, upon receipt of the arbitration decision, each Owner/ Lessee shall pay its share to City. The money shall be held by the City in trust in an interest bearing account in a local depository designated in writing to City by Owner/Lessee at the time of such payment, with the interest credited to such Owner/Lessee, and shall be released therefrom to City only upon final acceptance of such Skywalk Bridge Project.

(ii) An Owner/Lessee shall pay an amount to City for each progress payment City makes to its contractor for such Skywalk Bridge Project which amount equals the same percentage of the amount owed the contractor at the time of each progress payment as such Owner's/Lessee's percentage share of the total Skywalk Bridge Project contract cost. City shall furnish such Owner/Lessee written notice of the amount owed the contractor for such progress payment approved by City's architect and the date on which City Council of City will consider payment. Such Owner/Lessee shall pay its share of the amount so owed to City on or before such date. In the event that an Owner/Lessee fails to timely pay such share, then, in addition to any other remedy available to City, the remaining unpaid portion of such Owner's/Lessee's share of the total Skywalk Bridge Project contract shall be due and payable to City within ten (10) days after demand therefor. An Owner/Lessee shall pay the amounts due City pursuant to this subparagraph notwithstanding, the pendency of arbitration proceedings as to such Owner's/Lessee's share of such contract costs commenced at such Owner's/Lessee's election, such amounts to be adjusted by the losing party as necessary to conform to the Arbitrators award.

(c) Each party hereto, including City, shall pay that portion of the cost of any change order under the contract for such Skywalk Bridge Project as concerns those items of the Skywalk Bridge Project the construction of which are the responsibility of that party as set forth in subparagraphs (a) and (b) above.

5. (a) City shall construct each Skywalk Bridge Project as a public improvement in accordance with the provisions of Chapter 384, Code of Iowa.

(b) The City shall have sole and final authority and responsibility for approval of final plans and specifications for all future Skywalk Bridge Projects which may be constructed pursuant to the terms of this Agreement; provided, however, that each such future Skywalk Bridge Project connecting to an Owner's/Lessee's Building shall be substantially similar in external appearance with another Skywalk Bridge Project abutting such Owner's/Lessee's Building or with any building to which such future Skywalk Bridge Project connects and shall be substantially similar or better in operating and energy efficiencies than any other Skywalk Bridge Project abutting such Owner's/Lessee's Building. Prior to the date of City's public hearing on plans and specifications, City shall serve each Owner/Lessee of a Building to be connected to such future Skywalk Bridge Project with one set of City's proposed final plans and specifications therefor, and such Owner/Lessee shall have a period of twenty-one (21) days from the date of receipt of such plans and specifications to review and

comment in writing on such plans and specifications. City shall reasonably consider revisions to the plans and specifications in light of any comments received. Any such Owner or Lessee who is dissatisfied with the final plans and specifications for future Skywalk Bridges approved by City Council shall be entitled to bring an action in court for injunction, damages or any other legal or equitable relief that may be appropriate (except relief which would declare the original or continuing effect of this Agreement or the Limited Skywalk Easements granted herewith or those portions of this Agreement and those easements connected to or related with such Skywalk Bridge Project to be null and void).

(c) City shall have sole and exclusive authority and responsibility with respect to advertisement for bids, award of contracts, supervision of construction and the provision of payments to the contractors.

(d) City shall have sole and final authority with regard to approval of change orders for any Skywalk Bridge Project. The costs for any change order approved pursuant to this subparagraph shall be borne in the manner provided in Article II, paragraph (4)(c) of this Agreement. City shall have the right to make all change orders which are necessary to perform any Skywalk Bridge Project contract in a manner not materially inconsistent with the approved plans and specifications therefor (and any prior change orders thereto) without any prior notice to or consent of the Owners/Lessees.

Prior to City approval of any change order which is materially inconsistent with the approved plans and specifications for any Skywalk Bridge Project and any prior change orders thereto, City shall serve the Owners/Lessees of all properties abutting at either end of an affected Skywalk Bridge (which Owners/Lessees are parties to this or any other skywalk agreement) with written notice of the proposed change order and the reason therefor. Each such party shall have ten (10) business days from the service of such written notice to indicate its agreement or objection to such change order. Such Owner's/Lessee's agreement shall not be unreasonably withheld, and shall be presumed if it does not object in writing to City within said ten (10) business days. Not less than ten (10) business days from service of City's written notice, the City Council of City may publish notice of hearing and upon such hearing shall decide whether or not to approve the change order. City may not approve any change order that would render the plans and specifications not substantially similar in external appearance, or not substantially similar or better in operational and energy efficiencies to the plans and specifications for any Skywalk Bridge Project and any change orders thereto as have already been approved for such Skywalk Bridge Project unless the Owners/ Lessees of all properties to which such Skywalk Bridge Project connects (which Owners/Lessees are parties to this or any other skywalk agreement) consent thereto.

Any such Owner/Lessee shall be entitled to bring an action in court as to the following issues for injunction, damages or any other legal or equitable relief that may be appropriate (except relief which would declare the original or continuing effect of this Agreement or the Limited Skywalk Easements granted herewith for those portions of this Agreement and those Easements connected to or related to such Skywalk Bridge Project to be null and void):

(1) Whether a change order is necessary to perform any Skywalk Bridge Project; or

(2) Whether a change order is materially inconsistent with the approved plans and specifications for any Skywalk Bridge Project; or

(3) Whether a change order would render the plans and specifications for any Skywalk Bridge Project not substantially similar in external appearance or not substantially similar or better in operational and energy efficiencies to the plans and specifications and any change orders thereto as have already been approved for such Skywalk Bridge Project.

Any Owner/Lessee who objects for any reason to any change order may invoke binding arbitration within ten (10) business days from the date of service of written notice by City of such Owner's/Lessee's share of the cost of such change order. If City prevails at arbitration, the non-City party shall pay its full share of the change order as determined by the arbitrator. If such Owner/Lessee prevails at arbitration, it shall pay only such amount of said change order which represents its share of any proposed alternative change order, or lack thereof, which it advocated in lieu of the change order made by the City and the City shall pay all other costs associated with the change order made by the City.

(e) City shall have sole and final authority with regard to final acceptance of the completed Skywalk Bridge Project. Prior to final acceptance of any completed Skywalk bridge Project, City shall give written notice to each Owner/ Lessee whose Building abuts on such Skywalk Bridge Project of its intended final acceptance. Each such party shall have five (5) business days from the date of receipt of such written notice to indicate its agreement or objection to such final acceptance. Such Owner's/Lessee's agreement shall not be unreasonably withheld and shall be presumed if it does not object in writing to the City within said five (5) business days. In the event City and such Owner/Lessee cannot agree on final acceptance within eight (8) days from the date of receipt of such written notice, the City Council of City shall decide whether or not to grant the final acceptance; provided, however, if such Owner/Lessee objects to the action taken by Council, it may invoke binding arbitration within two (2) days of such Council action on the question of whether City must do additional work to complete the Skywalk Bridge Project. If City prevails at arbitration, City's acceptance of the Skywalk Bridge Project shall be final. If an Owner/Lessee prevails at arbitration, City's acceptance of the Skywalk Bridge Project shall not be final as between the parties to such arbitration, and City shall cause such additional work as the arbitrator determines necessary to substantially complete the project to be done at its own expense.

6. City will include a provision in its contract for the construction of each Skywalk Bridge whereby the contractor consents to the assignment to the Owners/Lessees of the Buildings abutting each Skywalk Bridge Project of express and implied warranties relating to those items of each Skywalk Bridge Project for which such Owners/Lessees are obligated to pay, as set forth herein, and as relate to the connection of each Skywalk Bridge to such abutting Buildings. City hereby assigns such warranties to such Owners/Lessees without relinquishing its own rights under such warranties. Additionally, City hereby assigns to the Owners/Lessees of the Buildings abutting each Skywalk Bridge, without relinquishing its own rights under such warranties the express and implied warranties of the architects who designed each Skywalk Bridge Project, as relate to those items of each Skywalk Bridge Project for which the Owners/Lessees of the respective Buildings abutting each Skywalk Bridge are obligated to pay, as set

forth herein, and as relate to the connection of each Skywalk Bridge to such abutting Buildings.

7. City shall itself maintain or shall procure from the general contractor documentation evidencing that the general contractor is maintaining throughout the entire period of construction and erection of the Skywalk Bridges such insurance as is set forth in the plans and specifications described in Article II, paragraph 1 and 5 herein, naming the Owners/Lessees of buildings abutting each Skywalk Bridge as additional insureds. The insurance shall be at least as comprehensive and shall have at least the minimum coverages identified in Part 5 - Insurance, of the Urban Standard Specifications for Public Improvements Manual as adopted and amended from time to time by City.

8. Upon adoption by the City Council of a resolution awarding a contract for construction of a Skywalk Bridge Project, City shall have the right to attach such Skywalk bridge or Skywalk bridges included in such Skywalk Bridge Project to the respective Buildings at the appropriate locations as described in the respective Limited Skywalk Easements.

9. Title to the Skywalk Bridges shall be in and remain at all times in City and shall constitute property devoted to public use and not held for pecuniary profit under Section 427.1(2), Code of Iowa, and shall constitute public property acquired and held for urban renewal purposes; provided, however, ownership of such portions of a Skywalk Bridge Project the construction of which is paid for by a party to this Agreement other than the City shall be and remain in such party.

ARTICLE III - WALL OPENINGS

1. No non-City party hereto shall permit the Owner/Lessee of any adjacent property to have or maintain a wall opening or other access into such party's Building at the skywalk-level until City notifies such party that the Owner/Lessee of such adjacent property has entered into a Skywalk Agreement with City. Upon such notification, if the two buildings do not share a common wall, the Owner/Lessee of each building to be connected shall be responsible jointly and severally to provide any necessary wall opening or other access at the skywalk-level in the building of which they are the Owner/Lessee; or if the buildings share a common wall through which such connection is to be provided, both sets of Owners/Lessees shall be jointly and severally responsible to provide such wall opening or other access to the skywalk-level.

ARTICLE IV - SKYWALK CORRIDOR CONSTRUCTION

1. *N/A, see the provisions of paragraph 3 of Article XIV, Special Provisions.* (a) As consideration to City for City commitments under this Agreement, the Owner/Lessee of each property concurrently herewith grants inchoate Limited Skywalk Easements across its property in the form attached hereto as Exhibit D, including Skywalk Corridor easements, Skywalk Bridge extension easements and Skywalk construction easements, for the purpose of allowing a free flow of pedestrian traffic across the Skywalk System on its property during Skywalk System hours. Limited Skywalk Easements shall become choate and shall terminate in accordance with their own terms. In the event any such Limited Skywalk Easement, or a portion thereof, shall terminate, this Agreement shall continue in full force and effect as to any remaining untermi-nated easements or portions thereof.

(b) The Limited Skywalk Easements which the Owner/ Lessee of each property must grant concurrently herewith are those

easements necessary to develop the Skywalk System to such property and/or through such property as shown on the Skywalk System Plan Map. The parties to this Agreement shall have no obligation, now or in the future, to provide any easement through, on or over their respective properties which correspond with any Skywalk Corridor or Skywalk Bridge added to the Skywalk System Plan Map by any subsequent amendment thereto, unless the Owner/Lessee of the particular property to be burdened with such easement consents thereto.

2. The Owner/Lessee of each Building through which a Skywalk Corridor easement has been granted shall jointly and severally construct or otherwise provide at its sole expense a finished Skywalk Corridor over or on such Skywalk Corridor easement, or portion thereof, which Skywalk Corridors shall be completed as follows:

(a) the Skywalk Corridor between any two Skywalk Bridges to a Building shall be completed on or before final acceptance of the last built of such Skywalk Bridges;

(b) The Skywalk Corridor between a Skywalk Corridor on a choate Skywalk Corridor easement and a Skywalk Bridge shall be completed on or before final acceptance of such Skywalk Bridge;

(c) the Skywalk Corridor between a Skywalk Bridge and a wall opening shall be completed on or before final acceptance of such Skywalk Bridge or on or before completion of the wall opening, whichever is later;

(d) the Skywalk Corridor between a Skywalk Corridor on a choate Skywalk Corridor easement and a wall opening shall be completed on or before completion of the wall opening;

(e) the Skywalk Corridor between any two wall openings shall be completed on or before the completion of the last of such wall openings.

The Owner/Lessee of a Building upon which one or more Skywalk Corridors have been constructed shall retain sole and full control over the construction, appearance and treatment of such Skywalk Corridors, including but not limited to, wall coverings, floor coverings, lighting, entrances and exits. All Skywalk Corridors shall be constructed so as to comply with the minimum design standards set forth in Section 102-329 of the Skywalk Ordinance.

3. Title to a Skywalk Corridor and any improvements thereon shall be and remain, respectively, in the parties hereto who are the Owners/Lessees of the Building upon which such Skywalk Corridor is located.

ARTICLE V - CASUALTY LOSS AND DEMOLITION

1. In the event a Skywalk Bridge is damaged, destroyed, demolished or altered to the extent that it is no longer usable, City shall immediately create a temporary Vertical Access Facility to the ground-level and back to the skywalk-level around the damaged or destroyed Skywalk Bridge and, as soon as reasonably practicable, reconstruct the Skywalk Bridge at City's expense; provided, however, that the expense of reconstructing those items whose costs of construction were borne by the abutting Building Owners/Lessees at the time of the original construction of the Skywalk Bridge Project shall be borne by such abutting Building Owners/Lessees.

2. In the event a Skywalk Corridor in a City-owned Building is so damaged, destroyed, demolished or altered that it is no longer usable,

City shall immediately either provide a temporary route around the damaged portion or create a temporary Vertical Access Facility to the ground level and back to the skywalk-level around the area damaged and shall reconstruct or otherwise replace the Skywalk Corridor at City's expense as soon as reasonably practicable and in any event within three years, unless the City Council for good cause shown extends said three-year period.

3. In the event that a Skywalk Corridor in a non-City owned Building is so damaged, destroyed, demolished or altered that it is no longer usable, the Owner/Lessee of such Building shall immediately provide either a temporary route around the damaged portion or create a temporary Vertical Access Facility to the ground-level and back to the skywalk-level around the area damaged, and shall reconstruct or otherwise replace the damaged portion of the Skywalk Corridor as soon as reasonably practicable and in any event within three years, unless the City Council for good cause shown extends such three-year period.

ARTICLE VI - VERTICAL ACCESS FACILITIES AND NODAL AREAS

1. *Subject to the provisions of paragraph 2 of Article XIV, Special Provisions*, the Owner/Lessee of all Buildings which are subject to this agreement and the owners of the buildings on contiguous properties in the square block in which such Buildings are located and which are served by the Skywalk System (hereinafter "the responsible building owners") are jointly and severally responsible for providing at least one designated Vertical Access Facility in that square block which is accessible to and usable by handicapped persons.

A Vertical Access Facility shall permit pedestrians who use the Skywalk System a right of access between the Skywalk Corridors and the ground-level public sidewalk by means of stairs and elevators, or escalators and elevators, or elevators alone. Designated Vertical Access Facilities for each such square block are provided by the means and at the locations set forth in Exhibit F.

Once a Vertical Access Facility has been designated it shall remain a Vertical Access Facility until a replacement Vertical Access Facility has been designated in that square block and a Replacement Exhibit F, is served on all responsible building owners in such square block and filed for record in the Office of Recorder of Polk County, Iowa, by the responsible building owners in such square block, at their cost, subject to the following terms and conditions:

(a) The Owner/Lessee of a building in which is located the designated Vertical Access Facility for a square block may, in its sole discretion, designate different stairs, escalators, or elevators and pathways to and from such facilities within its building as the designated vertical Access Facility for such block.

(b) The responsible building owners may designate a Vertical Access Facility in a different building in such square block by agreement among themselves or, if they cannot agree, by arbitration as provided in (e) below.

(c) In the event the Skywalk Agreement of the Owner/Lessee in whose building a designated Vertical Access Facility is located is to terminate as to such building, then the remaining responsible building owners in that square block, by agreement or, if they cannot agree, by arbitration as provided in (e) below, shall designate a Vertical Access Facility in a different building in such square block on or before the effective date of such termination.

(d) Notwithstanding anything contained in this Article, in the event that the building in which a designated Vertical Access Facility is located is so damaged or destroyed as to be unusable, the Owner/Lessee of such building shall not be responsible to provide a Vertical Access Facility on such property for the period of time provided in Section 102-328(a)(3) of the Skywalk Ordinance.

In such event the responsible building owners in such square block shall designate a new Vertical Access Facility other than in the damaged or destroyed building. If such building is so damaged or destroyed in order to permit repair, remodeling or redevelopment, then the responsible building owners in such square block shall designate the new Vertical Access Facility, either by agreement or by arbitration, as provided in (e) below, prior to commencement of repair of such damage or destruction. If such damage or destruction is caused by casualty, the responsible building owners in such square block shall designate a new Vertical Access Facility, either by agreement within fifteen (15) days after such damage or destruction or by arbitration, as provided in (e) below, initiated within such fifteen (15) day period.

(e) If at any time the responsible building owners in a square block cannot agree on any matter related to their respective responsibilities to provide a Vertical Access Facility in such square block, and cannot agree on a method for resolving such differences then, to resolve such matter, any such responsible building owner can invoke arbitration between the responsible building owners in such block in the manner provided in paragraph 2 of Article XII of this Agreement. The arbitration decision shall be based on the physical proximity of potential Vertical Access Facilities to the Skywalk System, the expected flow and volume of Skywalk System traffic in this square block, the suitability of potential Vertical Access Facilities for their regular usage and expected usage in connection with the Skywalk System and an equitable distribution among the responsible building owners of the economic and physical responsibilities related to provision of a designated Vertical Access Facility.

(f) The right of access provided by a Vertical Access Facility shall be subject to the following terms and conditions:

(i) Such access shall be for the purpose of pedestrian ingress, egress and transit only.

(ii) Such right of access shall be limited to the regular building or business hours of the building or business in which such Vertical Access Facility is located (which hours the Owner/Lessee of the building may determine in its sole discretion), or the hours the Skywalk System must remain open in such building, whichever are less; provided, however, that the right of access may be made available during hours in which the Skywalk System is open but which are greater than regular building or business hours at the option of the owner of the building in which such Vertical Access Facility is located. During the hours that any Vertical Access Facility is not required to be available for access, the Owner/Lessee of the building in which such facility is located shall have exclusive control of such facility without limit by any provision contained herein.

(iii) Any pedestrian using a Vertical Access Facility shall be subject to such reasonable rules and regulations as the Owner/Lessee of the building in which said facility is located in its sole discretion may impose including, but not limited to, the conduct of any pedestrian, the specific route of such access, reasonable precautions for security purposes, and

otherwise. Such rules and regulations may be promulgated and uniformly enforced as the occasion arises.

(iv) Nothing contained in this Article VI shall be construed to grant any rights to the public, nor shall such right of access be determined as a public right-of-way or easement.

(v) Said elevators shall be available in accordance herewith for the use of handicapped persons.

(vi) During the operational hours of that portion of the Skywalk System in which the facility is located, City shall operate and maintain an elevator in each City parking facility which is connected to the Skywalk System.

(vii) Title to each Vertical Access Facility shall be and remain in the owner of the building in which each facility is located.

(viii) By execution of this Agreement, including Exhibit F, the City hereby acknowledges that the Vertical Access Facilities designated herein satisfy all of the foregoing requirements for Vertical Access Facilities.

2. Any party hereto may, at any time, grant City a public easement for a Nodal Area for the Skywalk System which exceeds the Skywalk Corridor dimensions. Such easement shall be for the use and benefit of the public as a public way for pedestrian ingress, egress and transit in, through and over the property of the party granting the easement and providing structures thereon and for use as a location for Skywalk System amenities. If granted, such party may erect or provide only those benches, sculptures, plantings or other amenities in such easement area as permitted by the Skywalk Ordinance. Such party shall be solely responsible for the operation, maintenance and repair of the easement areas and any amenities erected or provided therein, in the same manner as for the adjacent Skywalk Corridor. Title to Nodal Areas shall be and remain in the respective parties hereto upon whose property such facilities are located.

ARTICLE VII - OPERATION, MAINTENANCE AND REPAIR

1. The non-City Owners/Lessees of Buildings at the ends of each Skywalk Bridge agree to be responsible to City to operate, maintain and repair such Skywalk Bridge, its parts and related equipment in conformance to the minimum standards for operation, maintenance and repair thereof as provided in the Skywalk Ordinance and as contained herein. The Owner/Lessee, including City, of each building connected to a Skywalk Bridge shall be jointly and severally liable for that share of the cost of operation, maintenance and repair of such Skywalk Bridge which is equal to 1/N, where N equals the number of buildings abutting such Skywalk Bridge at any given time which buildings are included in the Skywalk System by a Skywalk Agreement then in effect. City, as owner of the Buildings connected to the following Skywalk Bridges, hereby agrees to pay 1/Nth of the cost of operation, maintenance and repair of each such Skywalk Bridge, to be remitted monthly upon receipt of an itemized statement of the prior month's expense to the following non-City Owners/Lessees connected to such Skywalk Bridge who shall cause such operation, maintenance and repair to be done:

<u>Skywalk Bridge</u>	<u>Remitted to</u>
(not applicable - no Skywalk Bridges to City owned buildings)	City owned buildings)

In addition to anything else required by the Skywalk Commission, as determined pursuant to its decision making powers under the Skywalk Ordinance, such operation, maintenance and repair of the Skywalk Bridge shall include:

(a) operation, maintenance and minor repair of the electrical, heating, ventilating, air conditioning and drainage facilities in and servicing the Skywalk Bridge;

(b) keeping and maintaining the Skywalk Bridge and its parts in repair, including but not limited to, polishing, roof maintenance, repainting, light bulb replacement, light fixture cleaning and replacement of damaged glass in windows;
and

(c) keeping the Skywalk Bridge reasonably clean and free of litter and debris.

Major repairs to the Skywalk Bridges and major repairs to electrical, heating, ventilating and air conditioning equipment used in conjunction with such Skywalk Bridges shall be performed by City as needed and at the sole expense of City. City shall give at least ten (10) days prior written notice to the Owners/Lessees of Buildings abutting a Skywalk Bridge before commencing Significant Capital Repairs and Replacements (as that phrase is defined in Article IX, paragraph 2(b) herein) to a Skywalk Bridge.

The Owners/Lessees under this or any other skywalk agreement with City, or their designees, shall have the right to come onto any Skywalk Bridge for which they are responsible for operation, maintenance and repair, for purposes of providing such operation, maintenance and repair.

The obligations and responsibilities for operation, maintenance and repair of each Skywalk Bridge shall commence on the date the City Council of City enacts a resolution declaring such Skywalk Bridge dedicated to the Skywalk System and directing it be depicted on the Official Skywalk Map.

2. The Owner/Lessee of each Building shall jointly and severally bear the entire costs of operation, maintenance and repair for such Skywalk Corridors and Nodal Areas as are located on the choate Skywalk Corridor easements and Nodal Area easements in the Building of which they are the Owner/Lessee in accordance with the minimum standards for operation, maintenance and repair of skywalk Corridors as determined under the terms of the Skywalk Ordinance.

3. In addition to anything else required by the Skywalk Commission, as determined pursuant to its decision making powers under the Skywalk Ordinance, the Owner/Lessee of each Building shall jointly and severally provide surveillance of and on the Skywalk Corridors and Nodal Areas located on choate Skywalk Corridor easements and Nodal Area easements in such Building and surveillance of and on each Skywalk Bridge connected to such Building, all in conformance to the minimum standards for such surveillance as determined under the terms of the Skywalk Ordinance. If as a result of such surveillance, or otherwise, an Owner/Lessee has knowledge of a violation of law, such Owner/Lessee, in its sole discretion, either shall undertake the initial action to handle the situation or shall immediately contact the City police department. The City shall be responsible at least to provide customary City police protection to the Skywalk Bridges and Skywalk Corridors in the same manner as it provides police protection to other private and public properties within the corporate limits of the City.

4. (a) The Owner/Lessee of each Building shall jointly and severally furnish and maintain public liability insurance coverage with a duly licensed insurance company on those portions of the Skywalk System located upon choate Limited Skywalk Easements within the property of which they are the Owner/Lessee and any party granting a Nodal Area easement shall furnish and maintain such public liability insurance on such Nodal Area easements. City shall be designated as an additional insured on such policies, and said insurance shall be in conformity with the requirements of Section 102-328(a)(7) of the Skywalk Ordinance. Such insurance policies shall contain at least the following minimum coverages: (1) for personal injuries including death, \$1,000,000.00 for each occurrence, and (2) for property damage, \$500,000.00 in any single accident. Such minimum amounts shall be subject to increase in increments of up to an aggregate of 50% in any five-year period by official action of the City Council of City from time to time.

(b) The Owner/Lessee of each property shall jointly and severally furnish and maintain casualty insurance coverage with a duly licensed insurance company on all areas of the Skywalk System on the property of which they are the Owner/ Lessee. Such casualty insurance shall have an all risks of physical loss coverage in an amount sufficient to rebuild the portion of the Skywalk System on choate Skywalk Corridor easements and Skywalk Bridge extension easements on the property of which they are the Owner/Lessee.

(c) Owners/Lessees shall file proof of such insurance with the City Clerk immediately after an easement herein granted becomes choate, and thereafter annually on or before the anniversary date of this Agreement.

5. The non-City parties hereto may enter into separate written agreements among themselves or with others to provide for discharge of their responsibility for operation, maintenance and repair of the Skywalk Bridges, Skywalk Corridors and Nodal Areas herein and may agree to apportion the costs therefor as among themselves in any fashion they deem appropriate; provided, however, that such agreements shall not, except as otherwise provided herein, serve to relieve any such non-City party of the primary responsibility for timely performance of its duties under this Agreement or from the covenants pertaining thereto.

6. In the event any Skywalk Bridge, Skywalk Corridor or Nodal Areas is not adequately operated, maintained or repaired in accordance with the minimum standards provided in the Skywalk Ordinance and as contained herein and such deficiency is not remedied within thirty (30) days after written demand thereof by City served upon the Owners/ Lessees responsible therefor under paragraphs 1 or 2 of this Article or paragraph 2 of Article VI, City may provide such operation, maintenance or repair and assess the cost of performing such operation, maintenance or repair against such party upon reasonable notice and hearing before City Council. City shall have the right to collect such costs against each such party by special assessment in the manner set forth in Section 364.12 or 384.38 of the Code of Iowa, or by suit for breach of contract or in any other manner provided by law.

7. The Owners/Lessees under this Skywalk Agreement and their successors and assigns shall become members in good standing of the Des Moines Skywalk Association or any other business organization that provides Skywalk security and surveillance pursuant to a valid Iowa Code Chapter 28E Agreement with the City.

ARTICLE VIII - GENERAL SKYWALK SYSTEM RULES

1. Skywalk Corridors and Skywalk Bridges shall be open for public pedestrian travel between the hours of 6:00 A.M. and 2:00 A.M. seven

days a week; provided, however, that the Skywalk Commission may approve or disapprove a request by any person to change the hours of operation for any portion of the Skywalk System (except Vertical Access Facilities), provided such change does not reduce the hours that portion of the Skywalk System is open to less than the above minimum hours. A request to extend the hours a portion of the Skywalk System is open, signed by all parties to this or any other Skywalk Agreement with property interests abutting Skywalk Bridges or containing Skywalk Corridors on the portion of the Skywalk System proposed to be affected by the change and providing for payment of all operation, maintenance and repair costs on that portion of the Skywalk System during such extended hours, shall be deemed granted upon notice to the Skywalk Commission. Any other request to extend the hours a portion of the Skywalk System shall remain open shall be granted upon evidence that there will be substantial usage of that portion of the Skywalk System during such hours, provided those persons requesting such extension of hours present the Skywalk Commission with an executed agreement providing for payment of all operation, maintenance and repair costs on that portion of the Skywalk System during such hours. The Skywalk Commission may approve, or may approve subject to such reasonable conditions as are necessary to protect the interests of other persons along the affected portion of the Skywalk System, or may disapprove, a request to change hours of operation, but if the Skywalk Commission does not approve or disapprove a proposed change in hours within fifteen (15) days of the date such request is filed with the Skywalk Commission, the proposed change shall be deemed approved. The Skywalk Bridges, Skywalk Corridors and Vertical Access Facilities which are designated by the City Council as fire exits or paths to fire exits must be open in accordance with the applicable fire ordinances, as the same may be from time to time amended.

2. The location and format of Skywalk logos, Skywalk System Map and Route Directories, Skywalk directional signs and Skywalk building identification signs shall be in accordance with the policy therefor set as provided in the Skywalk Ordinance. The costs of purchase, installation and revision of all Skywalk System signs shall be borne by City. The costs of operating, maintaining and repairing the signs shall be borne by those responsible for operation, maintenance and repair of that portion of the Skywalk System in which each sign is located. If the location of a Skywalk Corridor easement or Nodal Area easement is changed, the signs shall be removed accordingly, and the cost of moving and re-installing signs to a new Skywalk Corridor easement area or Nodal Area easement shall be borne by the Owner/Lessee of the Building in which the signs were originally located. If the sign moving requires a change in the sign face, this shall be done at such Owner's/Lessee's expense and consistent with the graphic design system established for Skywalk signs.

3. No signs of any type shall be erected or maintained in Skywalk Corridor easement areas or Skywalk Bridges except Skywalk logos, Skywalk Map and Route Directories, Skywalk directional signs and Skywalk building identification signs as provided for in the Skywalk Ordinance, and except signs designating hours of operation and signs designating smoking and no-smoking areas as provided by law. Owners/Lessees may erect and maintain any signs they wish on private property adjacent to the Skywalk Corridor easement areas, so long as such signs are not so similar to Skywalk graphics as to cause confusion on the part of pedestrians.

ARTICLE IX - TERMINATION

1. (a) Notwithstanding any provision herein which may appear to be the contrary, each owner herein reserves unto itself the unconditional right and privilege to sell, convey, or otherwise

transfer the entirety of its interest in its Building and the real estate underlying such Building, and as a part of such transaction to assign and transfer its rights and duties under this Agreement to any such purchaser or other transferee of such Building and real estate. In the event of such sale, conveyance, or other transfer of the entirety of its interest, from and after the date of such sale, conveyance, or other transfer, an owner shall be freed and relieved, of all liability with respect to the performance of any covenants or obligations on the part of such owner contained in this Agreement thereafter to be performed; provided, however, that such purchaser or other transferee shall fully and without limitation assume in writing all duties, responsibilities and covenants of the owner under this Agreement. The owner promptly shall give City notice of such transfer, the property interest transferred, the identity of the purchaser or other transferee and the date of such transfer; shall furnish City with a copy of the document by which such purchaser or other transferee assumed the duties, responsibilities and covenants hereunder of such owner; and shall file for record in the Office of the Recorder of Polk County, Iowa, a document setting forth at least the identity of the purchaser, or other transferee, the property interest transferred, the date of such purchase or other transfer and the provisions of such purchase or other transfer whereby such purchaser or other transferee assumed the duties, responsibilities and covenants hereunder of such owner.

(b) Notwithstanding any provision herein which may appear to be to the contrary, each Lessee herein reserves unto itself the unconditional right and privilege to assign or otherwise transfer the entirety of its interests in a Building and, as applicable, in the real estate underlying such Building, and as a part of such transaction to assign and transfer its rights and duties under this Agreement to any such assignee or other transferee of such interest. In the event of such assignment or other transfer of the entirety of its interest, from and after the date of such assignment or other transfer a Lessee shall be freed and relieved of all liability with respect to the performance of any covenants or obligations on the part of such Lessee contained in this Agreement thereafter to be performed; provided, however, that such assignee or other transferee shall fully and without limitation assume in writing all duties, responsibilities and covenants of Lessee under this Agreement. The Lessee promptly shall give the City notice of such transfer, the property interest transferred, the identity of the assignee or other transferee and the date of such transfer; shall furnish the City with a copy of the document by which such assignee or other transferee assumed the duties, responsibilities and covenants hereunder of such Lessee; and shall file for record in the Office of the Recorder of Polk County, Iowa, a document setting forth at least the property interest transferred, the identity of the assignee or other transferee, the date of such transfer and the provisions of such assignment, sublease or other transfer whereby such assignee or other transferee assume the duties, responsibilities and covenants hereunder of such Lessee.

In addition, in the event that a Lessee's present possessory interest in a Building terminates in accordance with the terms of the instrument by which such interest was created, other than by assignment or other transfer of such interest, then such Lessee's duties and obligations under this Agreement shall terminate. Such termination shall not relieve the owners and, if any, other Lessees who are parties to this Agreement, who continue to have a present possessory interest in such Building, of their duties and obligations under this Agreement. Such Lessee shall give City fourteen (14) days written notice of the termination of its duties and obligations under this Agreement.

After the expiration of such possessory interest, the owner of the property either: 1) shall not lease or otherwise create a present possessory interest in that portion of its property which is subject to any Skywalk Corridor easement or Skywalk Bridge extension easement, whether choate or inchoate, and shall subordinate any lease or other present possessory interest thereafter granted to the construction easements granted City by owner in its Limited Skywalk Easements; or 2) shall require the person to whom it leases a portion of its property which is subject to any Skywalk Corridor easement or Skywalk Bridge extension easement to become a party to this Skywalk Agreement, in which case such person shall be treated as if it had been a party from the original date of this Agreement, provided, however, it shall not be responsible for any duties and obligations under the terms of this Agreement for a time prior to the date it actually becomes a party hereto.

2. This Agreement shall terminate with respect to a particular Owner/Lessee upon the occurrence of any of the following events:

(a) (1) In the event that a Skywalk Bridge connecting to such Owner's/Lessee's Building is taken by the power of eminent domain or abandoned by City (pursuant to then applicable law), then such Owner's/Lessee's obligations under this Agreement shall terminate for such Skywalk Bridge and any portion of a Skywalk Corridor located on any portion of a Skywalk Corridor easement which is choate solely by reason of the inclusion of such Skywalk Bridge in the Skywalk System.

(2) In the event that a portion of an Owner's/ Lessee's Building is taken by the power of eminent domain, then such Owner's/Lessee's obligations under this Agreement shall terminate as to any Skywalk Bridge connected to that portion of the Building taken and as to so much of the Skywalk System on that property which is or could become choate solely by reason of the portion of the Skywalk System contained in that portion of the Building taken.

(b) Any time on and after thirty (30) years from the date of this Agreement, the Owner/Lessee of a non-City-owned Building may jointly terminate this Agreement as to such Building (including any Skywalk Bridge extension easements abutting such Building) upon at least two (2) years prior written notice to the other parties hereto, which notice may be given at any time after twenty-eight (28) years from the date of this Agreement; provided, however:

(1) that if City makes Significant Capital Repairs or Replacements to a Skywalk Bridge abutting such Owner's/Lessee's Building on or before fifteen (15) years from the date of this Agreement, then they cannot so terminate this Agreement until twenty-five (25) years after completion of such Significant Capital Repairs or Replacements or thirty (30) years from the date of this Agreement, whichever is later; provided that in such event the prior written notice of termination referred to above in this subparagraph may be given at any time after twenty-three (23) years from the completion of such Significant Capital Repairs and Replacements or twenty-eight (28) years from the date of this Agreement, whichever is later; and

(2) that if City makes Significant Capital Repairs or Replacements to a Skywalk Bridge abutting such Owner's/Lessee's Building after fifteen (15) years from the

date of this Agreement, then they cannot so terminate this Agreement until any time on or after forty (40) years from the date of this Agreement; provided that in such event the prior written notice of termination referred to above in this subparagraph may be given at any time after thirty-eight (38) years from the date of this Agreement.

"Significant Capital Repairs or Replacements" shall include only those Capital Repairs or Replacements for which City expends money not derived from insurance or the proceeds of a judgment awarded City in an amount which exceeds 50% of the original cost of the Skywalk Bridge to which such Capital Repairs or Replacements are to be made as such original cost is increased or decreased by the change in the index for "Building Cost" for Kansas City contained in Engineering News-Record from the date of award of the contract for original construction of the Skywalk Bridge to the last known figure for such component prior to the date of first Council action on such proposed Significant Capital Repair or Replacement.

(c) City may vacate, abandon or discontinue, in the manner then required by applicable law, the Skywalk Bridge between any two buildings at any time on or after thirty (30) years from the date of this Agreement, provided that it gives at least two (2) years written notice to the Owners/Lessees of such building and to the other parties hereto (which notice may be given at any time after twenty-eight (28) years from the date of this Agreement); provided, further, that if such Skywalk Bridge needs Significant Capital Repairs or Replacements after fifteen (15) years from the date of this Agreement or from the date when such Capital Repairs or Replacements were last made, City may, after written notice to Owners/Lessees of such Buildings, elect to so vacate, abandon or discontinue such Skywalk Bridge in the manner then required or permitted by applicable law, instead of making such Significant Capital Repairs or Replacements. City may not otherwise vacate, abandon or discontinue any Skywalk Bridge.

(d) An Owner or Lessee may at any time terminate any easement granted for a Nodal Area and its obligations hereunder for such Nodal Area upon three (3) weeks written notice to the City.

(e) Notwithstanding the above, after termination of the obligations of this Agreement as to a specific Skywalk Bridge, City shall have the right to leave such Skywalk Bridge in place, unless all Owners/Lessees (which Owners/ Lessees are parties to this or any other Skywalk Agreement) of abutting buildings by written notice to City demand its removal, in which case City shall remove the Skywalk Bridge at City expense. In the event City initiated such termination (which shall include vacation, abandonment or discontinuance pursuant to subparagraph (c) above), City shall provide at City expense appropriate interim closures of the Skywalk Bridge openings into such abutting buildings for as long as such Skywalk Bridge remains in place and shall restore the Skywalk Bridge openings to match the buildings to which it attaches upon its removal. In the event any non-City party initiated such termination, the Owner/Lessee (which Owner/Lessee is a party to this or any other Skywalk Agreement) of each abutting building which no longer has access to such Skywalk Bridge as a result of such termination jointly and severally shall provide at their expense an appropriate interim closure of the Skywalk Bridge opening to the building of which they are the Owner/Lessee for as long as such Skywalk Bridge remains in place, and in the event such Skywalk Bridge is removed upon demand of a non-City party, the Owner/Lessee (which Owner/Lessee is a party to this or any other Skywalk Agreement) of each abutting building shall jointly and

severally provide at their expense a permanent closure of the Skywalk Bridge opening to the building of which they are the Owner/Lessee.

(f) Upon the termination of any easement or portion of an easement under the terms of a Limited Skywalk Easement granted herewith, the terms and provisions of this Agreement terminate with respect to such easement area.

3. Any termination pursuant to the provisions of this Article IX of all or part of a party's responsibilities and obligations under this Agreement shall refer wholly to future responsibilities and obligations of such party and shall not relieve such party of liability for any responsibilities and obligations which have accrued as of the effective date of such termination or as to which there is or may be a pending claim or claims.

4. Insolvency or bankruptcy of a party shall not terminate this Skywalk Agreement as to that party.

5. The parties agree that they shall have no cause of action against any party to this Agreement or to any other Skywalk Agreement with City who exercises that party's right to terminate such agreement and the Limited Skywalk Easements granted therewith arising from the exercise of such right of termination.

The parties further agree that if any of them, by any action or omission, except a valid exercise of a right of termination contained in this Agreement or in any Limited Skywalk Easements to which they are a party, fails to comply with the terms and conditions of this Agreement or cause diminution or loss of access to the Skywalk System to any other party to this Agreement or to any other Skywalk Agreement, such failure shall constitute a breach hereunder and any such other party shall have a cause of action against the party so acting or failing to act for specific performance of this Agreement. Each party to this Agreement hereby waives any claim to money damages, except court costs and except to the extent that the breach is of a term or condition of this Agreement requiring payment of money, as remedy for such breach of contract.

ARTICLE X - COVENANTS RUNNING WITH THE LAND

1. Except as otherwise provided in Article IX, 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 and their successors and assigns as if they and each of them had personally made such Agreement; and shall be deemed covenants which run with the land, as follows:

(a) those covenants by City with respect to any Skywalk Bridge shall run to any party who is a party to this or any other Skywalk Agreement with City;

(b) those covenants by City with respect to its obligations to provide Skywalk Corridors, Nodal Areas and Vertical Access Facilities under this or any other Skywalk Agreement shall run to any party who is a party to this or any other Skywalk Agreement with City; and

(c) those covenants by the Owners/Lessees who are parties to this Agreement shall run to City and to any other party who is a party to this or any other Skywalk Agreement with City;

and shall continue in force until such time as this Agreement or the Limited Skywalk Easements are terminated pursuant to their respective terms.

2. City shall include paragraph 1 of this Article in all its Skywalk Agreements.

3. This Agreement shall be filed of record in the Office of the Recorder for Polk County, Iowa, as shall all amendments hereto, and this Agreement and any amendment hereto shall be valid notice to and binding upon future purchasers, lessees and other transferees of property subject to this Agreement and other parties acquiring an interest in such property subsequent to the date of recording of this Agreement, but only to the extent that this Agreement and any amendments hereto are duly filed of record in the Office of the Recorder for Polk County, Iowa, prior to the date upon which any such sale, conveyance, lease or other transfer is made. In no event shall any purchaser, lessee or other transferee of property subject to this Agreement or subject to any amended version of this Agreement or any other party acquiring an interest in such property be considered to have had notice of any provision of this Agreement or amendment hereto unless such provision or amendment was duly filed or recorded in the Office of the Recorder of Polk County, Iowa, prior to the date upon which such purchase, lease or other transfer was made.

ARTICLE XI - TAXATION

1. During the duration of this Agreement, the property dedicated by City for the Skywalk System, the area of Owner's/Lessee's property included within the Limited Skywalk Easements and Nodal Area Easements and the improvements thereon shall be exempt from all taxes of the municipality, the county, the State, or any political subdivision thereof within the meaning of subsection 2 of Section 403.11 and subsection 2 of Section 427.1 of the Code of Iowa.

2. City shall join with any of the individual parties hereto, or their successors or assigns, in any request to any governmental body that such Limited Skywalk Easement areas, Skywalk Corridors, Nodal Areas, and portions of Skywalk Bridges or Skywalk Bridge Projects paid for or provided by such parties, and the improvements thereon, be free from taxation.

3. Nothing in this Agreement shall be construed to hold the City liable, in whole or in part, for any taxes levied or assessed against the area of Owner's/Lessee's property included within the Limited Skywalk Easements or Nodal Area Easements or the improvements thereon.

ARTICLE XII - ARBITRATION

1. Any party hereto aggrieved by a decision of the Skywalk Commission made under a decision-making power granted it by the Skywalk Ordinance may request arbitration as provided in Section 102-325 of the Skywalk Ordinance.

2. Whenever this Agreement expressly permits arbitration of a specific disagreement under the terms of this Agreement, arbitration shall be conducted by a single arbitrator as follows:

2. Whenever this Agreement expressly permits arbitration of a specific disagreement under the terms of this Agreement, arbitration shall be conducted by a single arbitrator as follows:

The party seeking such arbitration shall give written notice of invocation of arbitration to all other parties whose property abuts the Skywalk Bridge Project which is the subject of such arbitration and which parties are parties to this Agreement or to another Skywalk Agreement and to the American Arbitration Association (AAA). All parties who elect to participate in such arbitration shall notify the other potential parties and the AAA of their election within seven (7) days of the service of notice of invocation of arbitration. The AAA shall supply a list of potential arbitrators containing one name more than the number of parties who elect to participate in the arbitration. If the parties to the arbitration cannot agree on an arbitrator, they, in an order determined by lot, shall each strike one name from the list. The person whose name remains shall be the arbitrator and shall conduct the arbitration in accordance with the rules of the AAA, except that he or she shall render a decision within fifteen (15) days of the last submission of evidence or argument on the matter. The arbitration decision shall be consistent with the terms and provisions of this Agreement, the Limited Skywalk Easements and the Skywalk Ordinance. The party or parties who do not prevail shall bear the costs of arbitration, but if in the opinion of the arbitrator no party prevailed or failed to prevail on any issue, then the arbitrator shall apportion the costs of arbitration as appears just. The decision of the arbitrator shall be final and binding upon the parties to the arbitration; provided, however, that any party to such arbitration may appeal the decision of the arbitrator for any ground on which binding arbitration may be appealed to a court pursuant to common law by filing its appeal within ten (10) days from the date of such arbitration decision in the District Court for Polk County, Iowa.

3. Except as expressly allowed by this Agreement, no dispute arising from this Agreement may be resolved by arbitration without the express consent of all parties to said dispute.

ARTICLE XIII - GENERAL PROVISIONS

1. This Agreement and the Limited Skywalk Easements granted concurrently herewith are subject to the terms and conditions of the Skywalk Ordinance as amended to the date hereof. Except as hereinafter provided, in the event of any conflict between this Agreement or any Limited Skywalk Easements granted concurrently herewith and said Skywalk Ordinance, the provisions of said Skywalk Ordinance shall control; in the event of any conflict between this Agreement and any Limited Skywalk Easements granted herewith, such Limited Skywalk Easements shall control. No amendment of said Skywalk Ordinance by the City shall affect the rights, duties and obligations of the parties hereto unless the terms of this Agreement shall conform to and be consistent with such amendment or this Agreement shall be duly amended pursuant to paragraph 3 of this Article XIII to render the terms of this Agreement in conformance and consistent with any such amendment to said Skywalk Ordinance. This Agreement may assign duties and responsibilities in addition to those contained in the Skywalk Ordinance as long as not in mutually exclusive direct conflict with the terms of said Skywalk Ordinance.

2. (a) In the event one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such

invalid, illegal or unenforceable provision had never been contained herein.

(b) In the event one or more of the terms or provisions contained in the Limited Skywalk Easements granted concurrently herewith or the Skywalk Ordinance shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any provision of this Agreement not also held to be invalid, illegal or unenforceable, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained therein.

3. This Agreement may be amended only by the mutual written consent of all parties hereto. No such amendment shall be interpreted as amending the date of this original Agreement for purposes of Article IX on termination, unless such amendment expressly so provides.

4. City 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 Owners's/Lessee's properties by condemnation or under the threat of condemnation. Said waiver applies to the areas of Owner's/Lessee's property included within the Limited Skywalk Easements and improvements thereon, Vertical Access Facilities on or through the respective Buildings or properties and any interest of Owners/Lessee's in the Skywalk Bridges, but not to that portion of Skywalk Bridges owned by City itself.

5. The Owners/Lessee's of each property tender herewith to City, respectively as to each property, certified lists of property owners, lessees and encumbrances, which lists are attached hereto as Exhibit B and by this reference incorporated herein, and subordinations of mortgages, or other property interests, attached hereto as Exhibit C-1 and C-2, if applicable, and by this reference incorporated herein. The Owners/Lessee's of each property each represent to City that they have the authority to convey to City, without further consideration, the Limited Skywalk Easements for the Skywalk System described herein. The owners of each property warrant their respective certifications, agree to take any action necessary to perfect City's interest in the Owner's/Lessee's respective Limited Skywalk Easements at their sole cost and shall defend and hold City harmless from any defects therein and from any claim or cause of action alleged or declared by a lessee, tenant, or other holder of a property right in the property by reason of the execution of this Agreement. In particular, the parties hereto, as to their respective properties, agree to pay, or to reimburse City for the amount City must pay, for condemnation or settlement in lieu of condemnation, and the reasonable expenses incident thereto, of any property interest City must acquire to perfect its interest in said Limited Skywalk Easements; provided, however, that such parties shall not be liable for any settlement in lieu of condemnation unless they consent thereto.

6. This Agreement does not purport to assign ultimate responsibility between signatory Owners/Lessee's to this Agreement as between themselves for obligations which are by this Agreement made joint and several as to such Owners/Lessee's and such Owners/Lessee's may separately contract as between themselves as to such ultimate responsibility; provided, however, that any such contract shall not operate to defeat the rights of City as set forth in this Agreement, and acceptance by City of such performance or series of performances by such Owners/Lessee's, jointly or severally shall not constitute a waiver or an estoppel of City's right to continuity of joint and several responsibility. There shall be no joint and several liability among the parties to this or this and another skywalk agreement for any costs, expenses, obligations or liabilities purported to be assigned by this

Agreement, except for: (1) those costs, expenses, obligations and liabilities which are the responsibility of the Owners/Lessees within a single property; (2) the cost, expense, obligation and liability to provide a wall opening in a common wall which is the responsibility of Owners/Lessees of adjacent property who are parties to this or another skywalk agreement; and (3) the obligation of Owners/Lessees of all property within such block to provide at least one handicapped accessible Vertical Access Facility in each square block.

7. Obligations of the City as provided by this Agreement to Owners/Lessees as defined by this Agreement shall be to such Owners/Lessees as their interests may appear and are not intended to define rights of ownership, possession or other incidents of relationship between such parties.

8. Each Owner/Lessee and City shall designate a person to receive notices on its behalf under this Skywalk Agreement. Each such person designated will be a resident of the City of Des Moines, or its contiguous suburbs. If at any time it is necessary or permissible to give any notice, service or other communication under the terms of this Agreement to any of the parties hereto, such notice, service or other communication shall be deemed to have been given or served with respect to such party when presented in writing personally or deposited in the United States mail, registered or certified, postage prepaid, addressed as follows:

THE CITY OF DES MOINES, IOWA

Mr. Gary Fox, City Traffic Engineer
Argonne Armory Building
602 East First Street
Des Moines Iowa 50309-1881

K.C. HOLDINGS VI, L.L.C.

K.C. Holdings VI, L.L.C.
4183 N.W. Urbandale Drive
Urbandale, IA 50322

Each party hereto shall promptly give notice to all other parties of any change in address or the person to whom notice or service should be addressed.

ARTICLE XIV - SPECIAL PROVISIONS

In addition to the above provisions, this Skywalk Agreement is subject to the following special conditions:

1. Wall Opening. In accordance with the parking garage construction plans approved by the City, K.C. Holdings shall construct a wall opening connecting the new parking garage to the existing east/west Skywalk Corridor adjacent to the new parking garage. K.C. Holdings shall be responsible for the costs of construction and maintenance to the wall opening.

2. Vertical Access Facility. In fulfillment of the requirements under Article VI, K.C. Holdings shall provide a vertical access facility as set forth in Exhibit F which shall provide a right of handicap pedestrian access between the ground level public sidewalk and the existing east/west Skywalk Corridor adjacent to the new parking garage.

3. No Additional Skywalk Corridor or Future Skywalk Bridge. The parties acknowledge that the Skywalk System Plan Map in effect on the

date of this Skywalk Agreement shows only the existing adjacent east/west and north/south Skywalk Corridors over alley right-of-way within the block bounded by 5th, 6th and Locust Streets and the existing Skywalk Bridges 4E-5E, 5D-5E, 5E-5F and 5E-6E connecting to such block and shows no further extension of the Skywalk System by Skywalk Corridor through such block or other Skywalk Bridge connecting to such block. Accordingly, pursuant to Article IV of this Skywalk Agreement, K.C. Holdings shall have no obligation, now or in the future, to provide any easements or to construct new Skywalk Corridor through, on or over such block and the parties shall have no obligation to construct a future Skywalk Bridge connecting to such block.

4. Maintenance Agreement. Pursuant to Article VII, Section 5, K.C. Holdings shall enter into a separate written agreement with the owners of the property commonly referred to as the Des Moines Building for the discharge of responsibilities and the apportionment of costs for the operation, maintenance and repair required under Article VII for the existing east/west Skywalk Corridor and the existing Skywalk Bridge 5E-6E.

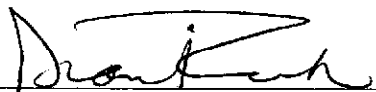
5. Replacement Agreement. This Skywalk Agreement is intended to replace the Skywalk Agreement between the City and Better Foods, Inc. concerning the property north of and adjacent to the existing east/west Skywalk Corridor dated December 21, 1985 and filed in the Office of the Polk County Recorder commencing at Book 5143, Page 601. Accordingly, the provisions of such prior Skywalk Agreement, including the Limited Skywalk Easements attached as Exhibit D-1 thereto, are hereby terminated.

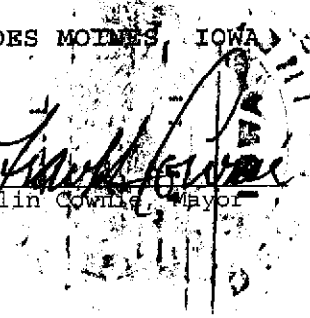
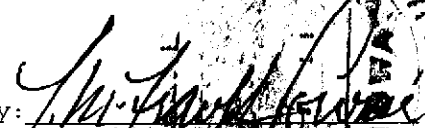
ARTICLE XV - EFFECT OF OTHER AGREEMENTS

In recognition of City's intent to extend the Skywalk System throughout the Skywalk District, City agrees that if it negotiates terms with other parties to other skywalk agreements more favorable than those contained in this Agreement it will grant such terms to the parties hereto, provided, however, that: (a) this requirement shall not apply to any agreement between City and any party to this or another skywalk agreement which involves the purchase, lease, sale or other acquisition of property rights within an urban renewal area; and (b) this requirement shall not apply to any differences in termination dates provided in the different skywalk agreements and the Limited Skywalk Easements granted thereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Skywalk Agreement to be duly executed, attested and sealed in their respective names, in two counterparts, each of which shall constitute one and this same instrument.

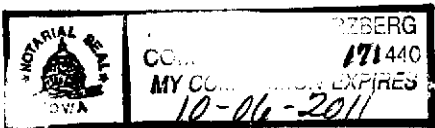
ATTEST:


Diane Rauh, City Clerk

CITY OF DES MOINES, IOWA

BY: 
T.M. Franklin Cowling, Mayor

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 27th day of October, 2008, before me, the undersigned, a Notary Public, personally appeared T.M. FRANKLIN COWNIE and DIANE RAUH, to me personally known, who, being by me duly sworn, did state that they are the Mayor and City Clerk, respectively, of the City of Des Moines, Iowa; that the seal affixed to the foregoing instrument is the seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in the Reslution adopted by the City Council under Roll Call No. 05-814 on the 6th day of April, 2005, and that T.M. Franklin Cownie and Diane Rauh acknowledged the execution of the instrument to be the voluntary act and deed of the municipal corporation, by it voluntarily executed.



Rebecca Zeberg
Notary Public in the State of Iowa

K.C. Holdings VI, L.L.C.,
an Iowa limited liability company

By: [Signature]
(Name)

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 8 day of October, 2008, before me, a Notary Public in and for the State of Iowa, personally appeared Take Christensen and by me personally known, who, being by me duly sworn, did say that that person is the CO-Manager of K.C. Holdings VIII, L.L.C., executing the within and foregoing instrument, that said instrument was signed on behalf of said K.C. Holdings VIII, L.L.C. by authority of its managers; and that Take Christensen acknowledged the execution of said instrument to be the voluntary act and deed of said K.C. Holdings VIII, L.L.C. by it and by him voluntarily executed.



Tracy Nemitz
Notary Public in the State of Iowa

Bisignano Family II LLC
an Iowa limited liability company

By: Joseph Bisignano
(Name)

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 8 day of October, 2008, before me, a Notary Public in and for the State of Iowa, personally appeared Joseph Bisignano and by me personally known, who, being by me duly sworn, did say that that person is the Treasurer of Bisignano Family II LLC, executing the within and foregoing instrument, that said instrument was signed on behalf of said Bisignano Family II LLC by authority of its managers; and that Joseph Bisignano acknowledged the execution of said instrument to be the voluntary act and deed of said Bisignano Family II LLC by it and by him voluntarily executed.

Lori Keech
Notary Public in the State of Iowa



Equitable, L.P.
By: Equitable GP, L.L.C.,
general partner

By: [Signature]
Bob J. Knapp, Sole member

STATE OF IOWA)
) SS:
COUNTY OF POLK)

On this 9th day of October, 2009, before me, a Notary Public in and for the State of Iowa, personally appeared Bob J. Knapp to me personally known, who being by me duly sworn, did say that that person is the Sole member of Equitable GP, L.L.C., the General Partner of Equitable, L.P., an Iowa limited partnership, executing the foregoing instrument, that the instrument was signed on behalf of said Equitable GP, L.L.C. as General Partner of Equitable, L.P., an Iowa limited partnership, by authority of the Company's managers; and that said Bob J. Knapp acknowledged the execution of said instrument to be the voluntary act and deed of said Equitable GP, L.L.C. and the limited partnership by it and by him voluntarily executed.

DIANE FREEMAN
Notarial Seal - IOWA
Commission No. 182446
Commission Expires 12/12/2010

[Signature]
Notary Public in the State of Iowa

\\cdf22\0-VOLUME\users\rdlampki\LARRY\AGR\EQUITABLE-LIBERTY BUILDINGS\RC HOLDINGS\Skywalk Agreement - Blaignano.doc

Exhibit A

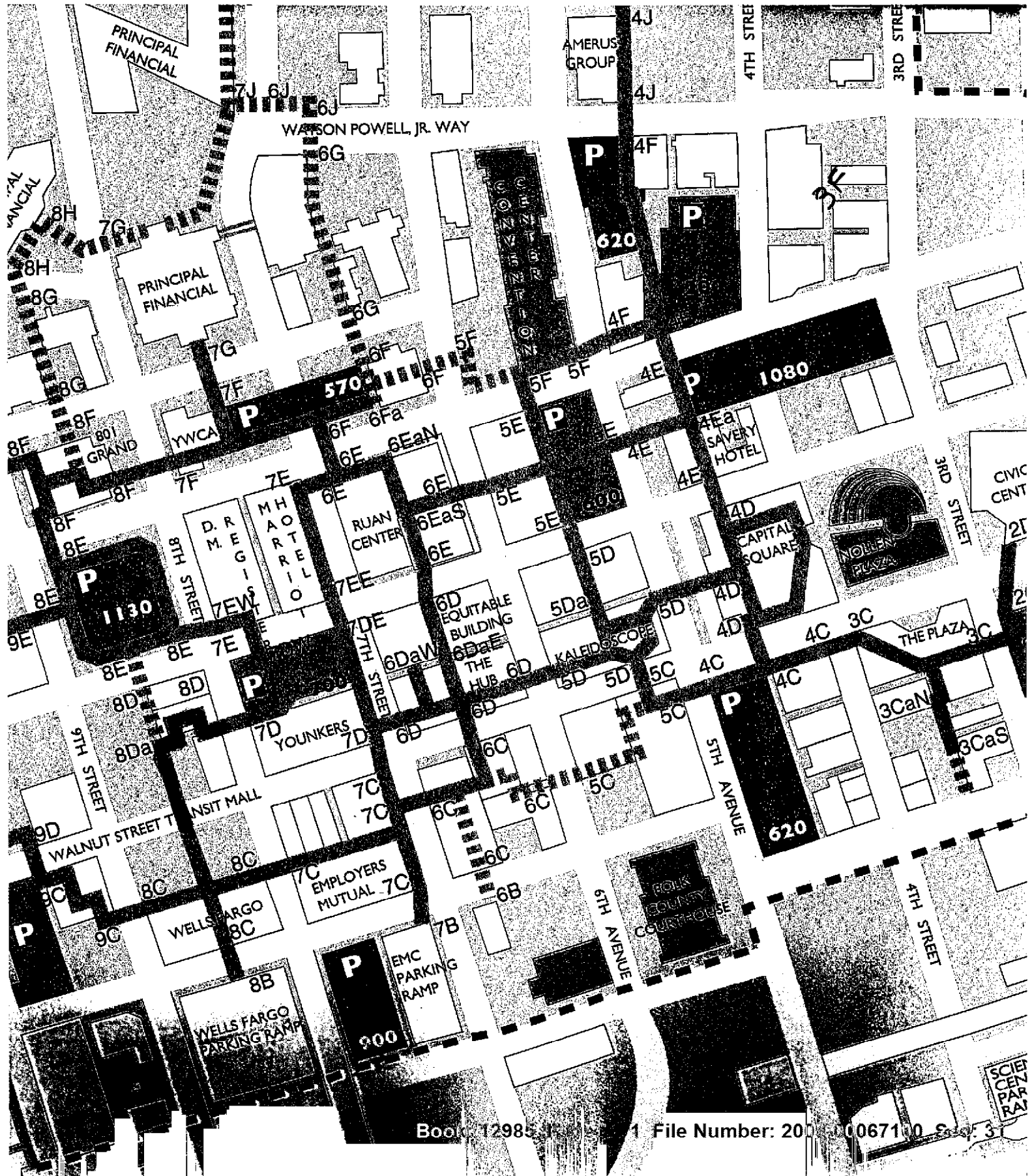


EXHIBIT "C-1"

CONSENT AND SUBORDINATION
(SKYWALK AGREEMENT)

FOR VALUE RECEIVED, the undersigned Mortgagee of the leasehold interest and improvements in the following described real estate situated in Polk County, Iowa, to wit:

Lots 5 and 6, Block C, Commissioner's Addition, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

does hereby consent to the Skywalk Agreement between the City of Des Moines, Bisignano Family II LLC, Bisignano Family III LLC, Equitable, L.P. and K.C. Holdings VI, L.L.C., with respect to the above-described real estate, and to which this is hereby attached, and does further hereby agree that the lien of its existing mortgage shall be, now and at all times hereafter, subordinate to the Skywalk Agreement and the rights and interests of the City of Des Moines therein.

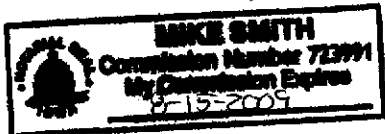
Executed on this 2 day of April, 2008.

FIRST FEDERAL BANK
n/k/a VANTUS BANK

By: 

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 2nd day of APRIL, 2008, before me, a Notary Public, personally appeared DAVID BINGOLUBER to me personally known, who, being by me duly sworn, did say that that person is SENIOR U.P. of said corporation, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and that said DAVID BINGOLUBER acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.



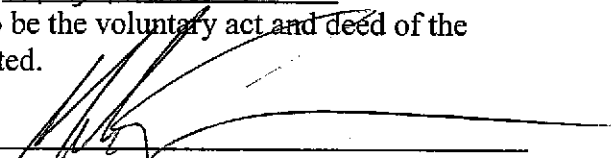

Notary Public in the State of Iowa

EXHIBIT "C-4"

**CONSENT AND SUBORDINATION
(SKYWALK AGREEMENT)**

FOR VALUE RECEIVED, the undersigned Mortgagee of the leasehold interest and improvements in the following described real estate situated in Polk County, Iowa, to wit:

Lots 5 and 6, Block C, Commissioner's Addition, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

does hereby consent to the Skywalk Agreement between the City of Des Moines, Bisignano Family II LLC, Bisignano Family III LLC, Equitable, L.P. and K.C. Holdings VI, L.L.C., with respect to the above-described real estate, and to which this is hereby attached, and does further hereby agree that the lien of its existing mortgage shall be, now and at all times hereafter, subordinate to the Skywalk Agreement and the rights and interests of the City of Des Moines therein.

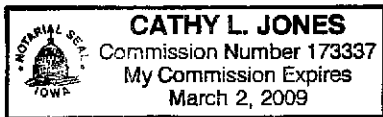
Executed on this 20 day of February, 2008.

FIRST AMERICAN BANK

By: [Signature]

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 29th day of February, 2008 before me, a Notary Public, personally appeared Derek Stocking to me personally known, who, being by me duly sworn, did say that that person is Assistant V.P. of said corporation, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and that said Assistant V.P. acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.



[Signature]
Notary Public in the State of Iowa

G:\J to LJudas, Greg\K.C. Holdings VI, L.L.C.-Liberty Bldg.-City of Des Moines\EXHIBIT C-4 - Consent & Subordination - Skywalk Agrmt - First American Bk.doc

EXHIBIT "D"
to the
Skywalk Agreement

Not Used (Grant of Limited Skywalk Easements)

D-1

EXHIBIT "E"
to the
Skywalk Agreement

Not Used (formerly insurance requirements)

DESIGNATION OF VERTICAL ACCESS FACILITIES
(Exhibit F to Skywalk Agreement)

Bisignano Family II LLC, Equitable, L.P. and K.C. Holdings VI, L.L.C., hereby designate as the Vertical Access Facility to be provided by K.C. Holdings VI, L.L.C. pursuant to the Skywalk Agreement, the following facilities within its new parking garage within the block bounded by Grand Avenue, 5th, 6th and Locust Streets:

The use of the elevators and the stairwell located within the southwest corner of the new parking garage, as shown on Exhibit 1 to this Exhibit F of this Skywalk Agreement, for pedestrian travel between the adjacent existing east/west Skywalk Corridor and the adjacent public sidewalk on the Sixth Avenue right-of-way. The access from the Skywalk Corridor to the elevator and from the elevator to the street right-of-way shall be so constructed as to be usable by handicapped persons.

K.C. Holdings VI, L.L.C.
an Iowa limited liability company

By: *[Signature]*

STATE OF IOWA)
) ss:
COUNTY OF POLK)



On this 8 day of October, 2008, before me, a Notary Public in and for the State of Iowa, personally appeared Jake Christensen and by me personally known, who, being by me duly sworn, did say that that person is the _____ of K.C. Holdings VI, L.L.C., executing the within and foregoing instrument, that said instrument was signed on behalf of said K.C. Holdings VI, L.L.C. by authority of its managers; and that _____ acknowledged the execution of said instrument to be the voluntary act and deed of said K.C. Holdings VI, L.L.C. by it and by him voluntarily executed.

Tracy Nemitz
Notary Public in the State of Iowa

Bisignano Family II LLC
an Iowa limited liability company

By: Joseph Bisignano
(Name)

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 8 day of October, 2008, before me, a Notary Public in and for the State of Iowa, personally appeared Joseph Bisignano and by me personally known, who, being by me duly sworn, did say that that person is the treasurer of Bisignano Family II LLC, executing the within and foregoing instrument, that said instrument was signed on behalf of said Bisignano Family II LLC by authority of its managers; and that Joseph Bisignano acknowledged the execution of said instrument to be the voluntary act and deed of said Bisignano Family II LLC by it and by him voluntarily executed.

Lori Keech
Notary Public in the State of Iowa

LORI KEECH
NOTARIAL SEAL - STATE OF IOWA
COMMISSION NUMBER 167401
MY COMMISSION EXPIRES 11-16-2010

Equitable, L.P.
an Iowa limited partnership

By: _____
(Name)

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this _____ day of _____, 20____, before me, a Notary Public in and for the State of Iowa, personally appeared _____ and by me personally known, who, being by me duly sworn, did say that that person is the _____ of Equitable, L.P., executing the within and foregoing instrument, that said instrument was signed on behalf of said Equitable, L.P. by authority of its partners; and that _____ acknowledged the execution of said instrument to be the voluntary act and deed of said Equitable, L.P. by it and by him voluntarily executed.

Notary Public in the State of Iowa

Bisignano Family II LLC
an Iowa limited liability company

By: _____
(Name)

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 9th day of October, 20 08, before me, a Notary Public in and for the State of Iowa, personally appeared ~~_____~~ and by me personally known, who, being by me duly sworn, did say that that person is the Sole member of Bisignano Family II LLC, executing the within and foregoing instrument, that said instrument was signed on behalf of said Bisignano Family II LLC by authority of its managers; and that _____ acknowledged the execution of said instrument to be the voluntary act and deed of said Bisignano Family II LLC by it and by him voluntarily executed.

Notary Public in the State of Iowa

Equitable, L.P.
an Iowa limited partnership
By: Equitable G.P. L.P.C., Manager
By: Bob J. Krupp
(Name) Bob J. Krupp, Sole member

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 9th day of October, 20 08, before me, a Notary Public in and for the State of Iowa, personally appeared Bob J. Krupp and by me personally known, who, being by me duly sworn, did say that that person is the Sole member of Equitable G.P. L.P.C. of Equitable, L.P., executing the within and foregoing instrument, that said instrument was signed on behalf of said Equitable, L.P. by authority of its partners; and that Bob J. Krupp acknowledged the execution of said instrument to be the voluntary act and deed of said Equitable, L.P. by it and by him voluntarily executed.

Diane Freeman
Notary Public in the State of Iowa

DIANE FREEMAN
Notarial Seal - IOWA
Commission No. 182446
My Commission Expires _____

DIANE FREEMAN
Notarial Seal - IOWA
Commission No. 182446
My Commission Expires 12/2/2010

Exhibit 1 to Exhibit F

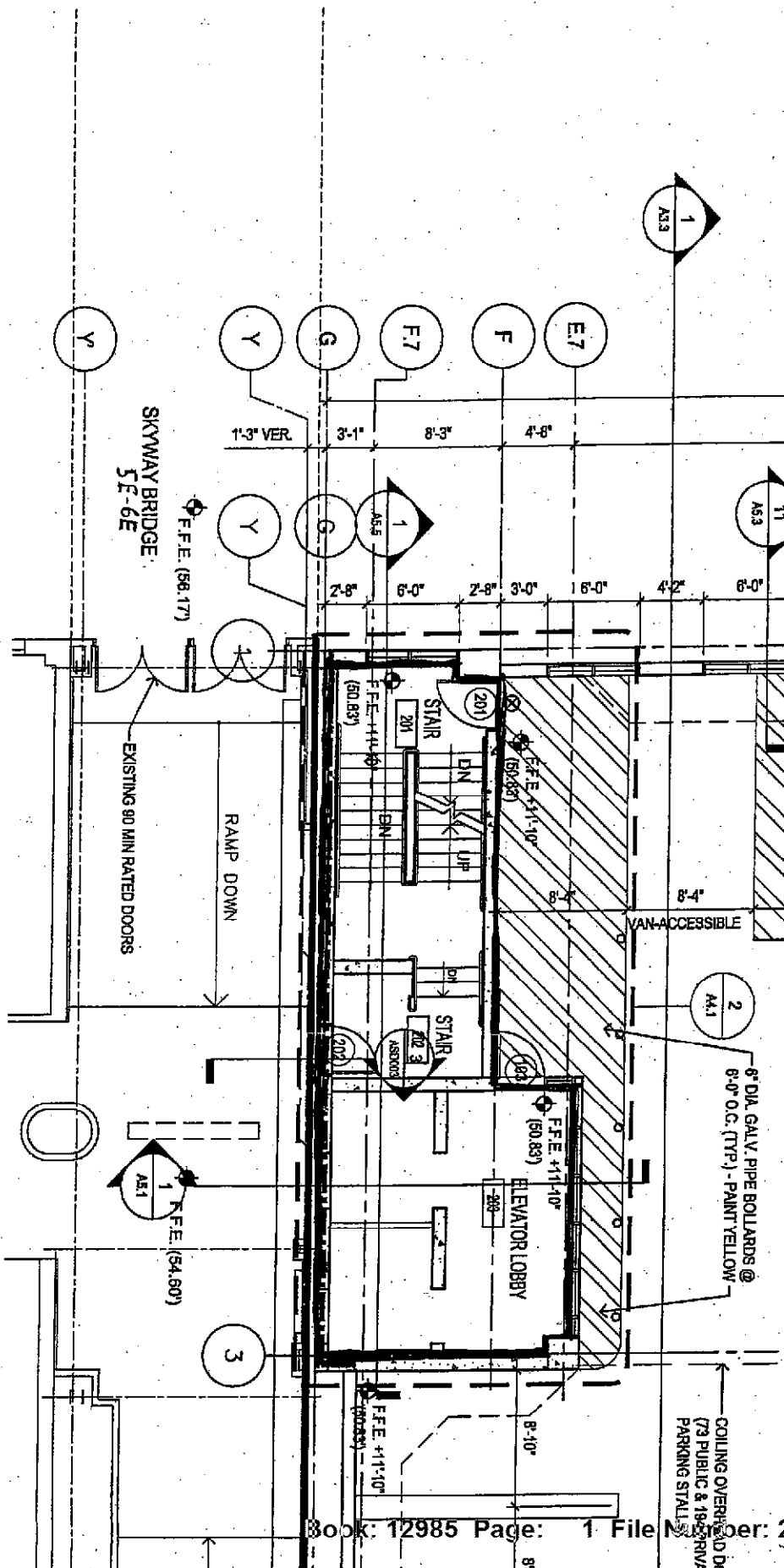


EXHIBIT "G"**Sec. 102-319. Skywalk district and skywalk map.**

- (a) The skywalk district is the area enclosed by the following described boundary:

The west bank of the Des Moines River from the north line of Grand Avenue to the south line of Court Avenue; the south line of Court Avenue from the west bank of the Des Moines River to the west line of Fifth Avenue; the west line of Fifth Avenue from the south line of Court Avenue to the north line of Cherry Street; the north line of Cherry Street from the west line of Fifth Avenue to the west line of Thirteenth Street; the west line of Thirteenth Street from the north line of Cherry Street to the north line of Walnut Street; the north line of Walnut Street from the west line of Thirteenth Street to the west line of Sixteenth Street; the west line of Sixteenth Street from the north line of Walnut Street to the south line of Locust Street; the south line of Locust Street from the west line of Sixteenth Street to the east line of Eleventh Street; the east line of Eleventh Street from the south line of Locust Street to the north line of High Street; the north line of High Street from the east line of Eleventh Street to the west line of Tenth Street; the west line of Tenth Street from the north line of High Street to the south line of Pleasant Street; the south line of Pleasant Street from the west line of Tenth Street to an extension of the west line of lot 12 Methodist Plat No. 1; the extension of the west line of lot 12 Methodist Plat No. 1 from the south line of Pleasant Street to the south line of Chestnut Street; the south line of Chestnut Street from the west line of lot 12 Methodist Plat No. 1 to the west line of Ninth Street; the west line of Ninth Street from the south line of Chestnut Street to the north line of Center Street; the north line of Center Street from the west line of Ninth Street to the west line of Fifth Street; the west line of Fifth Street from the north line of Center Street to the north line of Crocker Street; the north line of Crocker Street from the west line of Fifth Street to the east line of Third Street; the east line of Third Street from the north line of Crocker Street to the north line of Watson Powell, Jr. Way; the north line of Watson Powell, Jr. Way from the east line of Third Street to the east line of Second Avenue; the east line of Second Avenue from the north line of Watson Powell, Jr. Way to the north line of

Grand Avenue; and the north line of Grand Avenue from the east line of Second Avenue to the west bank of the Des Moines River.

- (b) The planned skywalk system shall be shown on the skywalk system plan map. The skywalk system plan map shows the general location of each part of and appurtenance to the entire planned skywalk system to within a distance of one-quarter of the length of the block on either side of its indicated location. Where a planned skywalk corridor is shown on the map over the length of an alley, it indicates that the skywalk corridor will be located within a building on property on either side of the alley or, if the city vacates or leases the air rights over the alley, it may be located within a building extending into such air space. Wherever it is located, and unless otherwise agreed by all property interests affected, property interests on both sides of the alley shall have the right to connect to a skywalk corridor:

- (1) By paying the cost of connection; and
- (2) If the skywalk corridor is in or over an alley,
 - a. Either by obtaining waivers from all affected property interests abutting such alley skywalk corridor of any claims against the city for loss of access, air, light or view occasioned by construction of such skywalk corridors, or by agreeing to indemnify, defend and hold harmless the city from any claims against the city for loss of access, air, light or view to result from such construction;
 - b. By paying a pro rata share of the costs for support of such skywalk corridor on the side of the alley on which such property interest is located, which pro rata share is two times the pro rata share fraction set forth in subsection (b)(2)c of this section; and
 - c. By paying a pro rata share of the cost of construction and operation, maintenance and repair of that skywalk corridor. The pro rata share for each property abutting such alley skywalk corridor and connected to the skywalk system shall be a fraction whose numerator is the lineal frontage of such property adjacent to such alley skywalk corridor and whose denominator is the product of two multiplied by the total lineal frontage of all property having access to the skywalk system and abutting such alley skywalk corridor on the same side of such alley as the

property whose pro rata share is being calculated. However, if a property interest on either side of such skywalk corridor agrees in an approved skywalk agreement to provide an equivalent skywalk corridor within its building by the same deadline for which such skywalk corridor otherwise must be constructed over the alley before (i) the city enters a skywalk agreement which requires present construction of such alley skywalk corridor and (ii) a property interest has entered a construction contract for such skywalk corridor, then any obligation to construct such portion of alley skywalk corridor shall terminate, and such property interest providing the equivalent skywalk corridor shall not be obligated for any costs for any skywalk corridor actually constructed over such alley, and those constructing such alley corridor shall bear the entire costs thereof.

- (c) The skywalk system plan map shall not be amended to relocate any such skywalk corridor or skywalk bridge a distance of more than one-quarter of the length of the block from the location shown thereon, unless all property interests who would have had the right of connection as a consequence of the prior location consent to such relocation and to an acceptable alternative plan for providing such property interests access to the relocated portion of the skywalk system without any additional cost to the city.
- (d) The exact location of existing portions of the skywalk system shall be shown on the official skywalk map.
- (e) All the notations, references and other matters shown on the skywalk system plan map and on the official skywalk map at the time each is adopted by the city council are incorporated in and made a part of that map.
- (f) The skywalk system plan map and the official skywalk map shall each be on file in the office of the city clerk and shall bear the signature of the mayor, attested by the city clerk, under the certification that the document is the map referred to in this section.
- (g) The city council may from time to time adopt and place on file a new skywalk system plan map or a new official skywalk map which shall supersede the prior version of such map.
- (h) If, in accordance with this article, changes are made in the skywalk system or other matters portrayed on the skywalk system plan map or on the official skywalk map, the

respective map shall be appropriately changed and the ordinance or resolution number and date of the change shall be recorded by the city clerk on the affected map.

- (i) The skywalk system plan map shall only be amended by ordinance. The official skywalk map shall be deemed amended by each resolution accepting an easement for a skywalk corridor or accepting completed construction of a skywalk bridge and may be amended otherwise by resolution.

(C79, § 23-238; O.9781, 10,043, 10,438; C91, § 23-238; C00, 102-319; O.13,970, 14,564)

Sec. 102-320. Skywalk Committee/Urban Development Board.

- (a) The powers and duties formerly held by the skywalk commission under this code have been transferred to the urban design review board created by section 82-336 and to the skywalk committee created below.
- (b) The urban design review board and the skywalk committee are hereby designated as the successors to the skywalk commission. The urban design review board shall have all those advisory duties and responsibilities not constituting the exercise of some portion of the power of the city, formerly held by the skywalk commission under the various Skywalk Agreements between the city and the owners, tenants and occupants of property within the skywalk system. The skywalk committee shall have all those powers and duties constituting the exercise of some portion of the power of the city, formerly held by the skywalk commission under the various Skywalk Agreements between the city and the owners, tenants and occupants of property within the skywalk system.
- (c) A five member skywalk committee is hereby created. The membership of the skywalk committee shall consist of two members of the urban design review board, one member who is a member of the Des Moines Skywalk Association, one ownership representative and one tenant representative. The ownership representative shall be an owner of an interest in property containing a skywalk corridor, or an officer of a business which owns such property. The tenant representative shall be an owner of an interest in a business which leases property containing a skywalk corridor, or an officer of such a business. The mayor shall recommend candidates to fill one position on the committee. The at large council members shall each recommend candidates to fill two positions on the committee.

(d) The term of the two members of the skywalk committee who are members of the urban design review board shall terminate concurrent with the termination of their term on the board. The term of all other members shall be three years.

(C79, § 23-240; 0.9781, 10,031, 10,229, 10,589; C85, § 23-240; 0.11,169, 11,385, 11,546; C91, § 23-240; C00, § 102-320; 0.13,910, 14,045, 14,147, 14,308)

Sec. 102-321. Advisory powers of urban design review board.

The urban design review board shall review and advise the city council on the following:

- (1) Any proposed amendment to this article;
- (2) Any proposed amendment to any other ordinance that may affect the skywalk system;
- (3) Any proposed amendment to the skywalk system plan map or the official skywalk map;
- (4) Any proposed location or change in location of a skywalk corridor or vertical access facility;
- (5) The policy and design standards for skywalk bridges;
- (6) Any request to extend the three-year period for reconstruction of a destroyed skywalk corridor; and
- (7) Such other matters as it determines should be brought to the city council's attention.

(C85, § 23-240.01; 0.11,385; C91, § 23-240.01; C00, § 102-321; 0.13,910, 14,045, 14,147)

Sec. 102-322. Decision powers of skywalk committee.

For the purpose of this article, the skywalk committee shall:

- (1) Establish minimum standards for operation, maintenance and repair of the skywalk system. The term "operation" shall include heating, cooling, lighting, cleaning and providing surveillance for the skywalk system.
- (2) Establish the policy and approve the design for the skywalk logo, skywalk maps and route directories, skywalk directional signs and store and building name signs and building directories.
- (3) Approve erection of sculpture, plantings, or supports for public announcements or artwork or other amenities in any part of a nodal area on a public easement, the dimensions of which exceed the minimum skywalk corridor dimensions.

- (4) Approve or disapprove a request by any person to change the hours of operation for any portion of the skywalk system, except vertical access facilities, provided such change does not reduce the hours that portion of the skywalk system is open below the minimum hours provided in this article. A request to so change the hours a portion of the skywalk system is open signed by all private property interests on the portion of the skywalk system affected by the change shall be deemed granted upon notice to the skywalk committee. A request to extend the hours a portion of the skywalk system shall remain open shall be granted upon evidence that there will be substantial usage of that portion of the system during such hours, provided those persons requesting such extension of hours present the committee with an executed agreement providing for payment of all operation and repair costs on that portion of skywalk system during such hours. The skywalk committee may approve or may disapprove subject to such reasonable conditions as are necessary to protect the interests of other persons along the affected portion of the skywalk system or may disapprove a request to change hours of operation, but if the skywalk committee does not approve subject to condition or disapproves a proposed change in hours within 15 days of the date such request is filed with the skywalk committee, the proposed change shall be deemed approved.
- (5) Upon its own notice or upon the complaint of any person, determine whether or not a skywalk corridor constructed or otherwise provided by a private property interest conforms to the minimum design standards for skywalk corridors contained in this article. Any private property interest may submit plans for the construction or other provision of a skywalk corridor to the skywalk committee for determination as to whether or not such plans conform to such minimum design standards.

(C85, § 23-240.02; O.11,385; C91, § 23-240.02; C00, § 102-322; O.13,910, 14,045)

Sec. 102-323. Variances.

- (a) The skywalk committee shall approve or disapprove with such reasonable conditions as the committee may determine or disapprove a request for a variance from the requirement for minimum clearance of a skywalk corridor or a skywalk

bridge over an alley, provided that the board may grant such variance only when it is satisfied under the evidence before it that:

- (1) Because of exceptional topographical conditions or other extraordinary or exceptional circumstances, the strict application of the terms of this article actually prohibits connection of a property to the skywalk system in a manner reasonably similar to that of other property in the skywalk district;
 - (2) The plight in question is due to unique circumstances shown by the evidence and is not of the making of any person with a property interest in any property abutting on such skywalk corridor or skywalk bridge; and
 - (3) The requested variation shall be in harmony with the intended spirit and purpose of this article, provided, further, that no variance shall be granted which provides for a minimum clearance of a skywalk corridor or skywalk bridge over an alley of less than 13 feet eight inches over the highest point of the surface of such alley.
- (b) The applicant for such variance shall have the burden to present evidence and to prove that the conditions for granting a variance have been satisfied.
- (c) The decision on an application for variance shall be made after a public hearing. Notice of such public hearing shall be given at least ten days prior to the date of the public hearing by publication once in a newspaper of general circulation in the city and by registered or certified mail addressed to the last known address of all persons with a property interest in each property abutting on such alley. The applicant shall pay the city an application fee of \$5.00 and the actual costs of notice of the public hearing.
- (d) Within ten days after the date the skywalk committee renders its decision, any person aggrieved by such decision may appeal to the city council by written notice of such appeal directed to the city clerk, the skywalk committee and all persons with a property interest in each property abutting on such alley. The city council shall consider such appeal at a public hearing held after at least ten days' notice given in the same manner as for the original hearing before the skywalk committee. The appellant shall pay the city a fee of \$5.00 and the actual costs of notice of the public hearing. The city council may grant or deny a variance on the same basis as the skywalk committee.

(C85, § 23-240.03; O.11,385; C91, § 23-240.03; C00, § 102-323; O.13,910, 14,045)

Sec. 102-324. Changes of hours, conditions.

When any portion of the skywalk system extends to serve only a single building or business, and no further, and when the building or business served is not regularly open to the public throughout the minimum hours of operation for the skywalk system provided in this article, the skywalk committee, with the written consent of all private property interests associated with the building or business, may approve a reduction in the hours of operation of that portion of the skywalk system serving only that single building or business, so that portion of the skywalk system shall be closed for public pedestrian travel during all or a portion of the hours in which the building or business is not regularly open to the public. However, in no event shall the skywalk committee approve such a reduction in the minimum hours of operation so as to close the affected portion of the skywalk system during any of the hours in which the building or business is regularly open. Any associated private property interest at any time may revoke its consent to such a reduction in hours by filing a written notice of revocation with the skywalk committee. Upon receipt by the skywalk committee of such notice from any associated private property interest, the prior approval granted by the board to the reduction in hours shall be deemed revoked, and the affected portion of the skywalk system shall be required to remain open in accordance with the minimum hours of operation for the skywalk system provided in this article.

(C85, § 23-240.04; O.11,385; C91, § 23-240.04; C00, § 102-324; O.13,910, 14,045)

Sec. 102-325. Arbitration.

- (a) Any person aggrieved by a decision of the skywalk committee made under a decision power granted it in section 102-322 of this article may request binding arbitration by a written request filed with the secretary of the committee within ten days after receipt of the decision. Thereafter, within five days, the skywalk committee and the party requesting arbitration shall each appoint one arbitrator. Within five days of their mutual appointment, those two arbitrators shall select a third arbitrator who shall chair the arbitration panel. The arbitration panel shall schedule a public hearing within ten days of such final selection,

and the city clerk shall publish notice of the hearing and shall notify affected property owners and tenants by mail. Any interested person may present evidence or argument at the hearing. The arbitration panel shall have the power to reach the same decisions pursuant to the same standards as the skywalk committee. If the majority of the arbitration panel does not render its written decision and reasons within ten days of its hearing, the decision of the skywalk committee shall prevail. Each party shall pay for the costs of the arbitrator it appoints, and the arbitration panel shall apportion all additional costs of arbitration as justice warrants.

- (b) For purposes of this section, the city manager, on behalf of the city, shall be a person who may request arbitration or appeal of a decision of the skywalk committee to the same extent that any other person can.

(C85, § 23-240.05; 0.11,385; C91, § 23-240.05; 0.11,793; C00, § 102-325; 0.13,910, 14,045)

Sec. 102-326. Application to be included in skywalk system.

- (a) No person may construct a portion of or connection from a property interest granted the right of connection by section 102-319 or by subsection 102-329(1) of this article to the skywalk system without approval of the city.
- (b) The city council shall receive and consider an application for the development of a portion of or connection to the skywalk system from an applicant who effectively represents all properties, except those owned by the city and those already traversed by a portion of the skywalk system, to be traversed by the proposed portion of or connection to the skywalk system with the power of attorney to commit such properties to the skywalk usages and restrictions provided by this article. The city council shall receive the advice of the urban design review board before acting on the application.
- (c) In determining the priority of construction and location of skywalk bridges, the city council shall give favorable consideration to construction of such bridges to blocks in which all necessary property interests grant the city the right to all easements necessary to complete or extend the skywalk system to all faces of the block and necessary to permit connection to the skywalk system by those property interests within the block that are granted such right of connection by this article, which easements shall come into

being at such time as the city council determines they are necessary for such purposes.

- (d) The city council shall grant the application to construct a portion of the skywalk system and shall construct any necessary bridges over public rights-of-way at public expense according to specifications on file in the city clerk's office and shall grant the application to construct a connection to the skywalk system if:

(1) The applicant:

- a. Demonstrates that the proposed portion of the skywalk system or connection thereto is part of the skywalk system as shown on the skywalk system plan map or as included on the map by amendment or is a connection thereto allowed by section 102-319 or by subsection 102-329(1) of this article;
- b. Grants the city at no cost an easement for public pedestrian travel through and over all skywalk corridors across such private property and, further, grants the city the right to an easement for public pedestrian travel through and over any future skywalk corridor across such property that is or may become necessary to extend the skywalk system beyond such property to an adjacent property, which easement shall come into being at such time as the city council determines it is necessary for such extension of the skywalk system. Such easements shall be deemed dedicated to public pedestrian travel only during the hours that such skywalk corridors are open according to the terms of this article. Each such easement for a skywalk corridor shall provide as direct a pathway across such property to the skywalk system connections to other property as is reasonable and practical. The location of each such easement shall be the location approved by the city council. Such private property interests shall have the right to change the location of a skywalk corridor easement upon notification to and approval by city council upon the advice of the urban design review board, which approval shall not be unreasonably withheld, and upon completion of construction of such relocated portions of the skywalk system;
- c. Signs a skywalk agreement with the city to construct all portions of or connections to the skywalk system to be built at private expense

according to minimum design standards for the skywalk system and to abide by all terms and conditions of the skywalk agreement and all terms and conditions of this article as are in effect on the date such skywalk agreement is made; and

- (2) The city council determines that the city can finance its obligations or, in the alternative, if the applicant agrees that the city can perform its obligations or any part of them as soon as the city council determines it can finance them.

(C79, § 23-241; O.9781; C91, § 23-241; C00, § 102-327; O.13,910, 14,045, 14,147)

Sec. 102-327. City's responsibilities.

- (a) In the approved portions of the skywalk system, the city shall construct the skywalk bridges over public rights-of-way according to specifications on file in the city clerk's office and shall assume the cost of construction of that portion of the skywalk bridges which is over the public right-of-way.
- (b) If any city-owned skywalk bridge is so damaged or destroyed that it is not usable, the city shall immediately create a temporary vertical access facility to the ground level and back up to the skywalk level around such damage, and the city shall rebuild the skywalk bridge at city expense as soon as practicable.
- (c) The city shall construct any skywalk corridors, nodes, or vertical access facilities in city-owned buildings.
- (d) If any skywalk corridor or vertical access facility in a city-owned building is so damaged or destroyed that it is no longer usable, the city shall immediately either provide a temporary route around the damaged portion or create a temporary vertical access facility to the ground level and back up to the skywalk level around such damage, and the city shall rebuild the skywalk corridor or vertical access facility at public expense as soon as possible and in any event within three years, unless the city council for good cause shown extends the three-year period.
- (e) The city shall pay for the maintenance, repair and operational expenses for that portion of the skywalk system which traverses a city-owned building and shall pay the same share of such expenses for all skywalk bridges connecting to such city-owned building as if the city were a private property interest.

(C79, § 23-242; O.9781, 9854; C91, § 23-242)

Sec. 102-328. Obligations of private property interests.

- (a) In addition to granting the easements required by section 102-326 of this article, the owners of any private property interest traversed by the skywalk system and the skywalk-level tenants of such property (referred to in this section as "the private property interests") and their successors or assigns:
- (1) May grant the city at no cost an easement for skywalk purposes for so much of a nodal area as exceeds the skywalk corridor easement. The location of these easements shall be as approved by the city council and shall be shown on the official skywalk map. The private property interests shall have the right to change the location of such nodal area easements upon notification to and approval by the city council upon the advice of the urban design review board, which approval shall not be unreasonably withheld, and upon construction of the relocated portions of the skywalk system. The private property interests shall have the right to terminate any such nodal area easement upon three weeks' written notice to the city council.
 - (2) Shall construct or otherwise provide at their own expense all portions of the skywalk system traversing their property and shall construct or provide such skywalk system according to the minimum design standards and criteria of this article.
 - (3) If the portion of the skywalk system traversing private property is so damaged or destroyed as to be unusable, shall be responsible for providing either an immediate temporary route around the damaged portion or construction of a temporary route to the ground level and a temporary route back to the skywalk system at the other end of the damaged portion and shall rebuild or otherwise replace the damaged portion of the skywalk system as soon as is reasonable, but in any event within three years, unless the city council for good cause shown extends the three-year period, subject to such reasonable conditions as it may impose, for such reasonable period of time as is necessary to complete the repairs or replacement. Any person aggrieved by the decision of the city council may request binding arbitration by the same procedure as provided in subsection 102-325 of this article.

- (4) Shall be responsible for the costs of operation, maintenance and repair of that portion of the skywalk system traversing their private property and shall be responsible for that share of such costs for each skywalk bridge connected to their private property as is determined by the following ratio: $1/N$, where N equals the number of private properties connected to such skywalk bridge at any given time which are subject to a skywalk agreement then in existence, all in conformance to the operation, maintenance and repair standards set by the skywalk committee. If a particular private property interest fails to fulfill its responsibilities for operation, maintenance or repair after notice to do so from the city, the city shall secure such operation, maintenance or repair and assess the cost of performing such operation, maintenance or repair against the private property upon reasonable notice and hearing before the city council.
- (5) Shall be responsible for providing surveillance of and on that portion of the skywalk system traversing their private property and for providing surveillance of and on each skywalk bridge connected to their private property, all in conformance to or exceeding the standards for such surveillance set by the skywalk committee. If, as a result of such surveillance or otherwise, a private property interest has knowledge of a violation of law, such private property interest, in its sole discretion, either shall undertake the initial action to handle the situation itself or shall immediately contact the city police department. The city shall be responsible at least to provide customary city police protection to the skywalk bridges and skywalk corridors in the same manner as it provides police protection to other private and public properties within the city limits. If a particular private property interest fails to fulfill its responsibilities for surveillance after notice to do so from the city, the city shall secure such surveillance and assess the cost of performing such surveillance against the private property upon reasonable notice and hearing before the city council.
- (6) May enhance, to the extent they choose, a nodal area dedicated to the city by erection of sculpture, artwork, plantings or other amenities as approved by the skywalk committee.

- (7) Shall provide liability insurance for the portion of the skywalk system traversing their property in an appropriate amount, naming the private parties and the city as insureds, and shall carry casualty insurance in an amount sufficient to rebuild the skywalk system that traverses their private property.
 - (8) Shall be entirely responsible for any additional construction or costs necessary to provide security or separation between the skywalk system and the private property.
- (b) Private property interests that are party to a skywalk agreement entered into after April 1, 1992 and their successors and assigns shall become members in good standing of a business organization that provides skywalk security and surveillance pursuant to a valid I.C. ch. 28E agreement with the city. The obligation set forth in this subsection shall not apply to the federal government.
- (c) The obligation of a private property interest shall cease if it transfers its interest to another who assumes its obligation under this article. The obligations of the private property interests and their successors and assigns shall cease if the private property is taken by an exercise of the power of eminent domain or if the portion of the skywalk system traversing their property is formally abandoned by the city as part of the skywalk system. In addition, any time after 30 years from the date they entered a skywalk agreement, all private property interests in a property or their successors or assigns may jointly terminate their obligations upon two years' written notice to the city council, which notice may be given at any time after 28 years from the date of such skywalk agreement; provided, however:
- (1) If the city makes significant capital repairs or replacements to a skywalk bridge abutting on such private property interests' property on or before 15 years from the date of their skywalk agreement, they cannot so terminate their skywalk agreement until 25 years after completion of such significant capital repairs and replacements or 30 years from the date of their skywalk agreement, whichever is later; provided that in such event the prior written notice referred to in this subsection may be given at any time after 23 years from the completion of such significant capital repairs and replacements or 28 years from the date of their skywalk agreement, whichever is later; and

- (2) If the city makes significant capital repairs or replacements to a skywalk bridge abutting on such private property interests' property after 15 years from the date of their skywalk agreement, they cannot so terminate their skywalk agreement until any time on or after 40 years from the date of their skywalk agreement; provided that in such event the prior notice referred to in this subsection may be given at any time after 38 years from the date of their skywalk agreement.

Significant capital repairs or replacements shall include only those capital repairs or replacements for which the city expends money not derived from insurance or the proceeds of a judgment awarded the city in an amount which exceeds 50 percent of the original cost of the skywalk bridge to which such capital repairs or replacements are to be made as such original cost is increased or decreased by the change in the index for "Building Cost" for Kansas City contained in Engineering News-Record from the date of award of the contract for original construction of the skywalk bridge to the last known figure for such component prior to the date of first action by the city council on such proposed significant capital repairs or replacements.

(C79, § 23-243; 0.9781, 9854, 10,229; C85, § 23-243; 0.10,883; C91, § 23-243; 0.11,793; C00, § 102-328; 0.14,045, 14,147)

Sec. 102-329. Development criteria.

- (a) There shall be at most one skywalk bridge per block face; provided, however, that a second skywalk bridge may be constructed in a block face if:
 - (1) At least one of the blocks to be connected by such skywalk bridge has at least 1,500 persons regularly employed or residing within such block;
 - (2) A property in such block to be connected to such skywalk bridge has at least 500 persons regularly employed or residing and does not have any other connection to the skywalk system shown on the skywalk system plan map;
 - (3) Such skywalk bridge shall be connected to a skywalk corridor which is shown on the skywalk system plan map; and
 - (4) There shall be a vertical access facility accessible from such skywalk bridge in each block connected by such skywalk bridge.
- (b) There shall be at least one vertical access facility in each block accessible to and usable by the handicapped.

However, in the event two adjoining blocks are consolidated by the vacation of the intervening street and are occupied by single building, one vertical access facility may be used to serve the two consolidated blocks if two or more other vertical access facilities are also maintained in adjoining blocks at locations immediately accessible from a skywalk bridge connecting to the two consolidated blocks. A vertical access facility may utilize an existing vertical transfer system in a private property traversed by the skywalk system.

- (c) All doors in the public skywalk system shall be built entirely at private expense, except that doors at the end of a skywalk bridge connecting to city property or within city property shall be built at city expense.
- (d) The method of transfer between skywalk corridors in different buildings of different heights shall be accessible to and usable by handicapped persons.
- (e) The skywalk system shall be maintained free of all obstructions, except that sculpture, plantings, supports for public announcements or artworks or other amenities, as approved by the skywalk committee, may be erected in those portions of the nodal areas, skywalk corridors or skywalk bridges which exceed 14 feet in width and which have been dedicated for public skywalk purposes. Where a public utility contracts to provide public communication equipment and service in one or more such locations, the owner or lessee of such location shall be entitled to the proceeds from such contract.
- (f) Skywalk corridors shall conform to the following minimum design standards:
 - (1) *Width.* Skywalk corridors shall have a minimum width of 14 feet free and clear of any obstructions or intrusions. However, in the following circumstances, the lesser widths specified may be allowed:
 - a. Where a column, pipe or other integral structural feature or member of an existing building will intrude into a skywalk corridor, such corridor and the easement therefor shall be for that narrower width for the minimum distance which is necessary to prevent such intrusion.
 - b. Where a skywalk corridor is constructed over an alley or vacated alley between existing buildings, and where a column, pipe or other integral structural feature or member of an existing building or buildings restrict the available width for construction of the skywalk corridor, such corridor and the easement therefor

shall be of the maximum width that can reasonably be constructed, such reduced width shall be for the minimum distance possible, and no portion of the corridor shall be less than 13 feet free and clear of any obstructions or intrusions.

- c. Where the easement for a skywalk corridor is in a building corridor already constructed as of July 3, 1980, such skywalk corridor shall have a minimum width of 12 feet free and clear of any obstructions or intrusions.
- d. The city council in its discretion may accept a right to an easement for a skywalk corridor 14 feet in width and may restrict the actual width of the easement for a skywalk corridor to no less than 12 feet in those situations where on one side of the skywalk corridor any barricade wall or other physical barrier or obstruction, including but not limited to chainlink mesh, clear glass or other material, which stands or is erected or placed between such corridor and the abutting private property interest, meets all of the following criteria during the regular hours the building or business in which the skywalk corridor is located is open:
 - 1. Such physical barrier or obstruction comprises no more than 40 percent of the area of the vertical plane between floor and ceiling running parallel to and at the edge of such corridor through such property interest.
 - 2. In those open portions of such areas where such barrier does not extend from floor to ceiling, the private property interest may place or stand temporary obstructions within the 14-foot right to an easement area but without the 12-foot easement on the open side, so long as no such obstruction shall be placed or stood within the 14-foot right to an easement width which exceeds 36 inches in height measured from the floor and/or the ceiling; provided, however, that any such temporary obstruction affixed to the ceiling must not extend lower than seven feet above the floor. Where such open spaces exist on both sides of such corridor, such intrusion shall be limited to a total of two feet divided between the two sides of the

corridor at the private property interest's discretion; provided, however, that the amount of intrusion on each side of the corridor shall be uniform for the length of such corridor through the private property.

Doors which are normally closed but which open into a skywalk corridor shall not be deemed barriers, obstructions, or intrusions as referred to in this subsection. Doors that are provided for fire protection or for atmospheric pressure control with a total opening width of ten feet eight inches or more shall not be deemed barriers, obstructions or intrusions as referred to in this subsection.

- (2) *Height.* Skywalk corridors shall have a minimum height of nine feet or the existing ceiling height of the space through which the corridor is to pass, whichever is lower, free and clear of any obstructions or intrusions except at those points of the corridor where a beam, pipe or other similar structural feature of the existing building requires a lower height for that minimum distance necessary to pass such beam, pipe or other similar structural feature.
- (3) *Delineation.* Skywalk corridors shall be readily identifiable and distinguishable from the surrounding parts of the buildings through which they pass. The skywalk corridor may be delineated by different floor coverings, by walls or by physical barriers.
- (4) *Lighting.* There shall be artificial lighting capable of providing a minimum intensity of 30 footcandles at every point along the skywalk corridor floor. Lighting fixtures shall be recessed in or attached in immediate proximity to the ceiling, except that hanging or pendant fixtures will be permitted which do not invade the minimum skywalk corridor height. If additional lighting fixtures must be provided, they shall be supplied with electricity in such a manner that the interruption of service in any circuit inside the building will not result in total interruption of the required lighting.
- (5) *Heating and cooling.* The skywalk corridor must be serviced by heating and cooling equipment capable of sustaining skywalk corridor temperatures between 65 degrees and 85 degrees Fahrenheit at all times.
- (6) *Minimum clearance over alleys.* Any skywalk corridor constructed over an alley shall have a minimum clearance over the surface of the alley of 14 feet six inches, unless a variance is granted in accordance

with section 102-323 of this article which permits a lower minimum clearance over an alley.

- (g) The only signs that will be allowed in skywalk corridors and skywalk bridges are skywalk logos, skywalk map and route directories, skywalk directional signs and skywalk building identification signs as approved by the skywalk committee. The private property interests shall be allowed to erect store or building name signs and building directories on the sidewalls of skywalk corridors with approval by the skywalk committee and shall be allowed to erect any signs they wish on the private property adjacent to the skywalk corridors, so long as these signs are not so similar to skywalk graphics as to cause confusion.
- (h) Skywalk corridors shall conform to such minimum design standards for skywalk corridors as exist at the time the easement for the corridor comes into being.
- (i) Skywalk bridges shall have a minimum width of 14 feet and a minimum height of nine feet, both free and clear of any obstructions or intrusions; shall have a minimum clearance over the traveled portion of streets of 16 feet six inches and over the surface of alleys of 14 feet six inches, unless a variance is granted in accordance with subsection 102-323 of this article which permits a lower minimum clearance over an alley; and shall conform to such other minimum design standards as are adopted from time to time by the city council and kept on file in the city clerk's office. However, if the city council determines to incorporate into the skywalk system any skywalk bridges existing as of the effective date of the ordinance from which this article derives, such bridges need not meet the minimum standards of this subsection. Doors that are provided for fire protection or for atmospheric pressure control with a total opening width of ten feet eight inches or more shall not be deemed as obstructions or intrusions as referred to in this subsection. Such doors shall be located at the building face or within the building. One set of intermediate structural supports may be located not less than every 100 feet where necessary to avoid bridge spans exceeding 100 feet, and a clear opening width of at least 12 feet shall be provided at each support location, provided that the clear open width may be less than 14 feet for only that minimum distance necessary to provide such support, which minimum distance shall not exceed two feet measured parallel to the length of the bridge.
- (j) Structural foundations and supports for skywalk bridges shall be built outside the public right-of-way lines wherever possible. They shall be built at private expense,

except for those structural foundations and supports on that end of a skywalk bridge which connects to a city-owned building.

- (k) Those skywalk bridges, skywalk corridors and vertical access facilities which are designated by the city council as fire exits or paths to fire exits must be open in accordance with the applicable city fire ordinances, as may be from time to time amended, and all fire prevention code requirements as to the construction of skywalk corridors to a point of access to the outside must be observed. Private property interests may not use skywalk bridges or skywalk corridors as fire exits without specific permission from the city council.
- (l) If there is no plan for a person's property to be traversed by the skywalk system, as shown by the skywalk system plan map, and if such person's property touches a property which is traversed by an existing portion of the skywalk system, such person may apply for connection to the skywalk system under section 102-326 of this article.

(C79, § 23-244; O.9781, 9854, 9900, 9982, 10,031, 10,052, 10,589, 10,666; C91, § 23-244; O.11,793; C00, § 102-329; O.13,910, 13,996, 14,045, 14,564)

Sec. 102-330. Standards of usage.

- (a) The skywalk corridors and skywalk bridges shall be open for public pedestrian travel between the hours of 6:00 a.m. and 2:00 a.m. seven days a week, except that the skywalk corridors and skywalk bridges or portions thereof shall be open for such additional hours as the skywalk committee may approve in accordance with subsection 102-322(4) of this article and except that portions of the skywalk corridors and skywalk bridges shall be open for such reduced hours as the skywalk committee may approve in accordance with subsection 102-324 of this article. The vertical access facilities shall be open during the regular building or business hours of the building or business in which they are located, but not in excess of the hours the skywalk corridors they serve are open.
- (b) During the hours when a portion of the skywalk system is open, it shall be available for use by the general public without restriction as to age, sex, religion, race, national origin or physical disability. During the hours when a portion of the skywalk system is open, no private property interest whose property is traversed by that

- portion of the skywalk system shall block or close that portion of the skywalk system designated as open.
- (c) It shall be unlawful for persons to collect, assemble or group together and after being so collected, assembled or grouped together to stand or loiter on any portion of the skywalk system to the hindrance or obstruction of free passage of any person passing on or along such skywalk system.
 - (d) It shall be unlawful for persons to congregate, stand, loaf or loiter in or in front of any doorway, passage or entrance to any portion of the skywalk system so as to obstruct the doorway, passage or entrance or to hinder or prevent persons walking along or into or out of the skywalk system or attempting or desiring to do so.
 - (e) Groups of three or more persons who do not immediately leave the vicinity or disperse when asked to do so by any member of the public or by a police officer shall be presumed to have congregated, stood, loafed or loitered in violation of subsection (c) or (d) of this section, but it shall not be necessary to request such people to move, leave the vicinity or disperse in order to prove a violation of subsection (c) or (d) of this section.
 - (f) No more than two persons at any one time shall use a skywalk bridge as a locus for peaceful picketing, public speaking, leafleting, or other lawful expressions of opinion not in contravention of other laws, and no person shall conduct such activities in any portion of the skywalk system except on a skywalk bridge. It shall be unlawful to conduct such activities in such a manner as to block, obstruct or hinder any use of the skywalk system or normal activities in the adjacent buildings or properties.
 - (g) No person shall bring, allow or permit an animal to be in the skywalk system, except that, as provided by I.C. § 216C.11, a person with a disability or a person training an assistive animal has the right to be accompanied by a service dog or an assistive animal, under control.
 - (h) Other than wheelchairs, motorized wheelchairs or electric scooters used by handicapped persons and vehicles used in operating, maintaining and repairing the skywalk system, no person shall use or operate a motor vehicle, moped, bicycle, skateboard or roller skates in the skywalk system.
 - (i) No person shall play a radio, tape recorder, or other sound-amplifying device in the skywalk system so as to permit the sound from the radio, tape player or other sound-amplifying device to be audible to another person, except that peace officers and security personnel may play radios tuned to official police or security frequencies and

- except that persons in those businesses along the skywalk system may continue to play radios, tape recorders or other sound-amplifying devices as is usual in the course of business.
- (j) No person shall stand or sit on any radiator or other fixture in the skywalk system, except on a bench or seat provided in that portion of a nodal area outside the skywalk corridor.
 - (k) No person shall erect any advertising or signs, other than official skywalk system signs approved by the skywalk committee, in any skywalk corridor or skywalk bridge, except that store or building name signs or building directories may be permitted by the skywalk committee on the sidewalls of skywalk corridors, and except that temporary street banner signs announcing a public event or service attached to the exterior of skywalk bridges may be permitted providing that specific approval is granted under regulations established by the city council. No person shall erect any sign on property adjacent to the skywalk system that is so similar to an official skywalk sign or graphics as to cause confusion.
 - (l) No person shall be upon or remain upon any skywalk corridor or skywalk bridge roof without the authorization of the skywalk committee unless use of such roof is for a bona fide maintenance activity or emergency.
 - (m) No person shall use or consume alcoholic liquor, wine or beer in any skywalk corridor or skywalk bridge during the hours when such skywalk corridor or skywalk bridge is open for public pedestrian travel.
 - (n) No person shall enter upon any portion of the skywalk system, its skywalk bridges or corridors and conduct activities thereon in disregard of signs or posted notices as promulgated or authorized by the skywalk committee.
 - (o) No person shall willfully fail or refuse to comply with any lawful order or direction of a peace officer invested by law with authority to patrol the skywalk system and its skywalk bridges and corridors.
 - (p) Violation of this section shall be punishable as a simple misdemeanor.

(C79, § 23-245; O.9781, 10,589; C85, § 23-245; O.11,169, 11,174, 11,430, 11,532; C91, § 23-245; O.11,793, 13,551; C00, § 102-330; O.13,910, 14,045)

EXHIBIT "H"
to the
Skywalk Agreement

Not Used (Contractors Performance, Maintenance and Payment Bond)

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