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INST. NO. _____
POLK COUNTY, IOWA
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AUG 1 0 1983 A.M.

AT *9:40* P.M.
KATIE SHINSTINE HOLSCHUH, Recorder
By *M. J. [Signature]* Deputy

SKYWALK AGREEMENT

By and Between

THE CITY OF DES MOINES, IOWA

and

EQUITABLE LIFE INSURANCE

COMPANY OF IOWA

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SKYWALK AGREEMENT

THIS SKYWALK AGREEMENT (hereinafter "Agreement"), made and entered into this 28th day of JULY, 1983, by and between the CITY OF DES MOINES, IOWA, a municipal corporation, hereinafter referred to as the "City", and

EQUITABLE LIFE INSURANCE COMPANY OF IOWA, an Iowa corporation (hereinafter referred to as "Equitable").

Those parties hereto which are the owners of each property shall be generally referred to as "owners" and those parties with a leasehold or other present possessory property interest 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 an owner's property which leasehold or other present possessory interest in such property is not traversed by Limited Skywalk Easements or Nodal Areas. They shall be referred to collectively as "owners/lessees".

WITNESSETH:

WHEREAS, the City, through the Capitol Center Development Area 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 listed below have property interests in the respective properties legally described below, each which property is within the skywalk district and is to be connected to the skywalk system:

Equitable Life Insurance Company of Iowa:

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

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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":

<u>Bridge</u>	<u>Buildings Connected</u>	<u>Right-of-Way Crossed</u>
27-28	Carriers Building to Equitable Building	Locust Street

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 buildings owned by or leased by the parties above (referred to collectively herein as the "Buildings" and individually as a "Building") in accordance with this Agreement; and

WHEREAS, it is the desire of the parties to provide for the possible future expansion of the Skywalk System beyond their properties; and

WHEREAS, such Skywalk Bridges and Skywalk Corridors are parts of the skywalk system as defined in the City Skywalk Ordinance, Ordinance No. 9781, adopted June 23, 1980, as amended by Ordinance No. 9854, adopted October 27, 1980, by Ordinance No. 9900, adopted February 16, 1981, by Ordinance No. 9982, adopted August 3, 1981, by Ordinance No. 10,031, adopted October 26, 1981, by Ordinance No. 10,043, adopted December 7, 1981, by Ordinance No. 10,052, adopted January 4, 1982, and by Ordinance No. 10,229, adopted November 15, 1982, all of which are presently in effect, and attach hereto as Exhibit "G" and incorporated herein by this reference (hereinafter "Skywalk Ordinance") and as reflected on the Skywalk System Plan Map as of the date of this Agreement, which is on file in the Office of the City Clerk of the City and also incorporated herein by this reference.

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

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ARTICLE I

Definitions

The following definitions shall apply throughout this Agreement:

1. The "Skywalk System" shall be that portion of the skywalk system shown on the Skywalk System Plan Map which shall be constructed and completed or otherwise provided pursuant to the provisions of this Agreement, including Skywalk Corridors, Nodal Areas, Skywalk Bridges and Vertical Access Facilities.

2. A "Skywalk Corridor" is a skywalk-level pathway of the Skywalk System which is within, along or on top of a building 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 face to building 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 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 1954 and amendments thereto 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

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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 created by Chapter 23, Subchapter 16 of the Municipal Code of Des Moines, Iowa, 1979.

9. The "Skywalk Ordinance" is Ordinance No. 9781 as enacted by the City Council of the City of Des Moines, Iowa on June 23, 1980 and published on July 3, 1980, as amended by Ordinance No. 9854, adopted October 27, 1980, and published on November 6, 1980, and as amended by Ordinance No. 9900, adopted February 16, 1981, and published on February 26, 1981, and as amended by Ordinance No. 9982, adopted August 3, 1981, and published on August 13, 1981, and as amended by Ordinance No. 10,031, adopted

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October 26, 1981, and published on November 5, 1981, and as amended by Ordinance No. 10,043, adopted December 7, 1981, and published on December 17, 1981, and as amended by Ordinance No. 10,052, adopted January 4, 1982, and published on January 14, 1982, and as amended by Ordinance No. 10,229, adopted November 15, 1982, and published on November 25, 1982, and all of which are presently in effect, and as attached hereto as Exhibit "G".

ARTICLE II

Skywalk Bridge Project Construction

1. 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 Projects for the Skywalk Bridge labelled 27-28 on Exhibit "A" in substantial accordance with the plans and specifications [previously approved in writing by the parties hereto and as] approved by the City Council of City by Roll Call _____, dated _____, which Roll Call and plans and specifications are 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 in addition to those set forth on Exhibit "A" may be constructed at some time in the future which future Skywalk Bridge Projects will connect with the Buildings covered by this Agreement. Paragraph one 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.

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(b) The 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 are 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 its share of the costs of such Skywalk Bridge Project contract to City 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

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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.

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5. (a) City shall construct each Skywalk Bridge Project as a public improvement contract 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 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 it is 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

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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 such 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 of its intended final acceptance to all owners/lessees whose Building abuts on such Skywalk Bridge Project. 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

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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 of express and implied warranties, 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, to the respective owners/lessees of the respective Buildings abutting each Skywalk Bridge Project. City hereby assigns such warranties to such owners/lessees without relinquishing its own rights under such warranties. Additionally, City hereby assigns 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, to the owners/lessees of the Buildings abutting each Skywalk Bridge.

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

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of the Skywalk Bridge such insurance as is set forth in the plans and specifications described in Article II, paragraphs 1 and 5 herein, naming the abutting Building owners/lessees to the Skywalk Bridge as additional insureds as required by said plans and specifications, specifically those sections of the General Conditions and that section of the Special Conditions thereof, copies of which are attached hereto as Exhibits E-1 and E-2, respectively.

8. Upon the City Council of City adopting 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 indicated 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, 1979, 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 owners/lessees 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 owners/lessees of such adjacent property have entered a skywalk agreement with City. Upon such notification, the owner/lessee of each building to be connected shall be responsible

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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, if the two buildings do not share a common wall; or both sets of owners/lessees shall be jointly and severally responsible to provide such wall opening or other access to the skywalk-level if the buildings of which they are the owners/lessees share a common wall through which such connection is to be provided.

ARTICLE IV

Skywalk Corridor Construction

1. (a) As consideration to City for City commitments under this Agreement, the owner/lessee of each property concurrently herewith grant inchoate Limited Skywalk Easements, including Skywalk Corridor easements, Skywalk Bridge extension easements (if any) and skywalk construction easements, across its property in the form attached hereto as Exhibit D-1, 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 Easements, or a portion thereof, shall so terminate, this Agreement shall continue in full force and effect as to any remaining unexpired 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 in accordance with the Skywalk Corridors and Skywalk Bridges shown on the Skywalk System Plan Map in effect on the date of this Agreement, which is the Skywalk System Plan Map originally adopted by the City Council of City by Roll Call 3303,

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dated July 7, 1980, as amended by Ordinance No. 9880, enacted by the City Council of City on January 19, 1981, by Ordinance No. 9974, enacted by the City Council of City on July 27, 1981, by Ordinance No. 10,033, enacted by the City Council of City on October 26, 1981, by Ordinance No. 10,051, enacted by the City Council of City on January 4, 1982, by Ordinance No. 10,105, enacted by the City Council of City on March 22, 1982, and by Ordinance No. 10,155, enacted by the City Council of City on June 28, 1982. The parties to this Agreement shall have no obligation, now or in the future, to provide any easements 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 easements and attendant obligations 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 their 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;

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(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 a Skywalk Corridor or Skywalk Corridors have been constructed shall retain sole and full control over the construction, appearance and treatment of such Skywalk Corridors as have been constructed on their property, 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 23-244(6) 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 owner/lessee 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 with respect to such reconstruction.

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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 party or parties hereto upon whose Building said Skywalk Corridor is located 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 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. The owner of each Building which is the subject of this Agreement and the owners of the buildings on contiguous properties in the square block in which such Buildings are located which are served by the Skywalk System (hereinafter "the responsible building owners") are jointly and severally responsible for providing for 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

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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-1 hereto.

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-1 is served on all responsible building owners in such square block and filed for record in the Office of Recorder for Polk County, Iowa, by the responsible building owners in such square block at their costs, subject to the following terms and conditions:

(a) The owner of the building providing a Vertical Access Facility in each square block in its sole discretion may designate different stairs, escalators, or elevators and pathways to and from such facilities within its building as the Vertical Access Facility.

(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 building owner 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.

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(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 of such building shall not be responsible to provide a Vertical Access Facility on such property for the period of time provided in subsection 23-243(1)(c) 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 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 (c) below, prior to commencement 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 15 days after such damage or destruction or by arbitration, as provided in (e) below, initiated within such 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 any such responsible building owner can invoke arbitration in the manner provided in paragraph 2 of Article XII of this Agreement between the responsible building owners in such block to resolve such matter. 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

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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 of the economic and physical responsibilities related to provision of a designated Vertical Access Facility among the responsible building owners.

(E) 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 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 shall not be required to be available for access by skywalk system pedestrian traffic, the owner 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 such Vertical Access Facility shall be subject to such reasonable rules and regulations as the owner of the building in which said facility

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is located in its sole discretion may impose including, but not limited to, the conduct of any pedestrian, the specific routes 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) City shall operate and maintain an elevator in each City parking facility which is connected to the skywalk system during the operational hours of that portion of the skywalk system in which the facility is located.

(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-1, the City hereby acknowledges that the Vertical Access Facilities designated in said exhibits 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, sculpture, 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 set 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 one-half 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:

Skywalk Bridge

Remitted to

(Not applicable)

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

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(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;

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

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 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 only 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 paragraph 23-243.1 of the Skywalk Ordinance. Such

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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 of City immediately upon an easement herein granted becoming 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 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, except as otherwise provided herein.

6. In the event any Skywalk Bridge, Skywalk Corridor or Nodal Area is not adequately operated, maintained or repaired in accordance

with the minimum standards set as 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 the 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.

ARTICLE VIII

General Skywalk System Rules

1. Skywalk Corridors and Skywalk Bridges shall be open for public pedestrian travel from no later than 7:00 A.M. to no earlier than 6:00 P.M. Monday through Friday of each week, except legal holidays; 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

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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 15 days of the date such request is filed with the Skywalk Commission, the proposed change shall be deemed approved. Such Skywalk Bridges, Skywalk Corridors and Vertical Access Facilities which are designated by the City Council of City as fire exits or paths to fire exits (as set forth in the Special Provisions, Article XIV) 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 on which the signs were originally located.

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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. 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 to 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, an owner shall be freed and relieved, from and after the date of such sale, conveyance, or other transfer, 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

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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 for 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, a lessee shall be freed and relieved, from and after the date of such assignment or other transfer, 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 for 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 assumed 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 terminate. Such termination shall not relieve the owners and other lessees to this Agreement, if any, 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

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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 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-

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eight (28) years from the date of this Agreement; provided, however:

(i) that if City makes Significant Capital Repairs or Replacements to a Skywalk Bridge abutting on 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

(ii) that if City makes Significant Capital Repairs or Replacements to a Skywalk Bridge abutting on 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

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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 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 after written notice to owners/lessees of such Buildings. 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 Council of 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

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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

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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 causes 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:

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(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 of 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

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unless such provision or amendment was duly filed of record 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 owners'/lessees' 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 owners'/lessees' 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 power granted it by the Skywalk Ordinance may request arbitration as provided in subsection 23-240(3)(b) of the Skywalk Ordinance.

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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.

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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 it was originally enacted. 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.

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(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'/lessees' properties by condemnation or under the threat of condemnation. Said waiver applies to the areas of owners'/lessees' 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'/lessees in the Skywalk Bridges, but not to that portion of Skywalk Bridges owned by City itself.

5. The owners'/lessees 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-1 and by this reference incorporated herein, and subordinations of mortgages, or other property interests, attached hereto (not applicable) and by this reference incorporated herein. The owners'/lessees of each property each represent to City that they have the authority to convey to City, without further consideration, the

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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 owners'/lessees' 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 to 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/lessees to this Agreement as between themselves for obligations which are by this Agreement made joint and several as to such owners/lessees and such owners/lessees 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/lessees joint or several 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)

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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 to provide at least one Vertical Access Facility in each square block which is the responsibility of owners/lessees of all property within such block who are parties to this or another skywalk agreement.

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:

CITY OF DES MOINES, IOWA:

Mr. James Thompson
Director of Traffic and Transportation
City Hall
East First & Locust Streets
Des Moines, Iowa 50307

EQUITABLE LIFE INSURANCE COMPANY OF IOWA:

with a copy to:

Mr. James W. Hubbell, Jr.
18th Floor Equitable Bldg.
604 Locust Street
Des Moines, Iowa 50309

Mr. Russell Schrage
1001 Equitable Bldg.
Des Moines, Iowa 50309

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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. Notwithstanding anything to the contrary in this Agreement, Equitable may construct Skywalk Bridge 27-28 in accordance with City Specifications for Skywalk Bridges, provided that the plans and specifications therefor shall be approved by the City Manager and City, in writing, prior to commencement of construction. From and after the commencement of the construction, title to all portions of said Skywalk Bridge 27-28 erected over Locust Street between Sixth Avenue and Seventh Street and over the north-south alley in the block bounded by Locust Street, Sixth Avenue, Walnut Street and Seventh Street shall be in the City. Upon receipt of lien waivers satisfactory to the City, City shall pay costs of mechanics and materialmen contributing services or labor to Skywalk Bridge 27-28; provided, however, in no case shall design costs for Skywalk Bridge 27-28 exceed Thirty Thousand Dollars (\$30,000.00), inspection costs of construction exceed Six Thousand Dollars (\$6,000.00) and One Hundred Percent (100%) of the costs for construction of the span of said Skywalk Bridge 27-28 (exclusive of the costs for the openings into the Skywalk Corridors at either end of said Skywalk Bridge, for temporary closure, if any, of such openings, for finish treatment and sealing of such opening, for fire doors and atmospheric doors and for structural supports, in any, necessary to connect said Skywalk Bridge to the Buildings at either end), but in any case not to exceed Two Hundred Thirty-Seven Thousand Twenty-three Dollars (\$237,023.00). The costs of construction shall be those costs

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contained in the contract between Equitable and others and the contractor it selects to construct said Skywalk Bridge. Such construction contract shall separately state the total costs for construction of said Skywalk Bridge and the costs for such openings, temporary opening closures, if any, doors and supports. Equitable and others shall furnish the City a copy of its contracts with the architectural firm and the contractor, a copy of any modifications or amendments to such contracts, and a copy of bills submitted to or payments made by Equitable or others for such architectural services or construction, and shall give the City and the City's auditors access, during normal business hours, to all its books and records regarding these architectural and construction contracts. In the event the City Manager of City objects to the amount attributed to the City's share of any of these expenses, said City Manager may, within five (5) business days of the date Equitable gives it an itemized, written statement of its share of such costs, request binding arbitration as to such expenses.

From the date of this Agreement and until the City Council of City accepts the completion of Skywalk Bridge 27-28, Equitable shall maintain at all times, in full force and effect, such broad form comprehensive general liability insurance as will protect City, Equitable and their agents, officers, and employees, from any and all claims and damages arising out of or in connection with Equitable's construction of said Skywalk Bridge. This insurance shall be in the amount of at least \$1,000,000 for personal injury and the City shall be included as a named insured. Equitable shall submit to City evidence of this insurance on or before any renewal date for such insurance. The insurance policy shall provide that it cannot be cancelled or terminated until at least thirty (30) days prior written notice of such event has been received by the City.

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From the date of this Agreement and until the City Council of City accepts the completion of Skywalk Bridge 27-28, Equitable shall hold harmless, indemnify and defend City from any tort claims, mechanics liens and claims from contractors and architects arising out of construction of said Skywalk Bridge by Equitable and others in excess of the above enumerated design, inspection and construction amounts.

For the purposes of this Article XIV(1), Skywalk Bridge 27-28 includes the portion of the Skywalk Bridge to be constructed over the north-south alley adjacent to the Equitable Building and more particularly described as follows:

Beginning at a point on the northwest corner of Lot 8, Block 12, Original Town of Fort Des Moines, an Official Plat, now included in and forming a part of the City of Des Moines, Iowa; thence southerly 16.5 feet along the west boundary line of said Lot 8, thence westerly 16.5 feet perpendicular to said Lot 8 to the east boundary line of Lot 1, Block 12, Original Town of Fort Des Moines; thence northerly 16.5 feet along the east boundary line of said Lot 1 to the northeast corner of said Lot 1; thence easterly 16.5 feet perpendicular to said Lot 1 to the point of beginning, all now included in and forming a part of the City of Des Moines, Iowa.

2. The City, by Lease Agreement of even date herewith attached hereto as Exhibit H-1, has leased to Equitable that vacated Air Spaces over the east-west alley adjacent to the Equitable Building and over the north-south alley adjacent to the Equitable Building (plus areas in the east-west alley and north-south alley necessary for Skywalk Corridor structural supports), necessary to enable Equitable to construct the Skywalk Corridor enclosing Easement 1 on its Limited Skywalk Easements, Exhibit D-1 hereto and Skywalk Corridor enclosing Easement 2 on its Limited Skywalk Easements, Exhibit D-1 hereto, which Skywalk Corridors are to be constructed in accordance with said Lease Agreement, Limited Skywalk Easements and this Agreement.

3. (a) City shall construct the equivalent of a Skywalk Bridge over part or all of the east seventeen feet of the east-west

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alley in Block 12, Original Town of Fort Des Moines, an Official Plat, now included in and forming a part of the City of Des Moines, Iowa, as part of its construction of Skywalk Bridge 37-38 across Sixth Avenue between Locust and Walnut Streets. It is the intent of the parties that the City shall construct at its cost such equivalent alley Skywalk Corridor into the alley to a natural break for construction, such as a cross support beam, located between fifteen and seventeen feet west of the east line of said alley; provided, however, if there is no such natural break for construction located within the easternmost seventeen feet of said east-west alley, the City shall construct such equivalent Skywalk Bridge and adjacent Skywalk Corridor to the first such natural break greater than said seventeen feet west of the east line of said east-west alley and the City shall own and pay for the construction of the easternmost seventeen feet of said construction over said east-west alley and Equitable shall own and pay for any remaining portion on the same basis as costs for Skywalk Bridges are allocated in Article II hereof.

(b) In the event City has not previously constructed a Skywalk Bridge over the intersection of the east-west alley and the north-south alley in Block 12, Original Town of Fort Des Moines, an Official Plat, now included in and forming a part of the City of Des Moines, Iowa, by the time Equitable is required to construct either the Skywalk Corridor enclosing Easement 2 of its Limited Skywalk Easements, Exhibit D-1 hereto, in accordance with the terms of said Limited Skywalk Easements, its Lease Agreement and this Agreement, then Equitable may also construct such Skywalk Bridge in accordance with City specifications for Skywalk Bridges, provided that the plans and specifications therefor shall be approved by the City Manager of City, in

writing, prior to commencement of construction. From and after the commencement of this construction, title to all portions of said alley Skywalk Bridge shall be in the City. Upon receipt of lien waivers satisfactory to the City, City shall pay costs of mechanics and materialmen contributing services or labor to such Skywalk Bridge; provided, however, in no case shall architectural design costs for said Skywalk Bridge exceed ten percent (10%) of the maximum allowable cost for the construction as calculated below, and for inspection of the construction but in any case not to exceed three percent (3%) of the maximum allowable cost for construction as calculated below, and One Hundred Percent (100%) of the costs for construction of the span of said Skywalk Bridge (exclusive of the costs for the openings of all Skywalk Corridors which connect into said Skywalk Bridge for temporary closure, if any, of such openings, for finish treatment and sealing of such opening, for fire doors and atmospheric doors and for structural supports, if any, necessary to connect said Skywalk Bridge to the buildings at either end), but in any case not to exceed Forty-Seven Thousand Four Hundred Four Dollars (\$47,404.00) multiplied by a fraction where numerator is the last known figure for "Latest Month: Building Cost" for Kansas City contained in Market Trends in Engineering News-Record prior to the date Equitable enters a contract for construction of said Skywalk Bridge and whose denominator is 2,202.56 (the figure for "Latest Month: Building Cost" for Kansas City contained in Market Trend in Engineering News-Record of December 10, 1981). The costs of construction shall be those costs contained in the contract between Equitable and the contractor it selects to construct said Skywalk Bridge. Such construction contract shall separately state the total costs for construction of said Skywalk Bridge and

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the costs for such openings, temporary opening closures, if any, doors and supports. Equitable shall furnish the City a copy of its contracts with the architectural firm and the contractor, a copy of any modifications or amendments to such contracts, and a copy of bills submitted to or payments made by Equitable for such architectural services or construction, and shall give the City and the City's auditors access, during normal business hours, to all of its books and records regarding these architectural and construction contracts. In the event the City Manager or City objects to the amount attributed to the City's share of any of these expenses, said City Manager may, within five (5) business days of the date Equitable gives it an itemized, written statement of its share of such costs, request binding arbitration as to such expenses.

Prior to the date Equitable commences such construction and until the City Council of City accepts the completion of said alley Skywalk Bridge, Equitable shall maintain at all times, in full force and effect, such broad form comprehensive general liability insurance as will protect City, Equitable and the abutting property owners and lessees to the south of said east-west alley, their agents, officers, and employees, from any and all claims and damages arising out of or in connection with Equitable, construction of said Skywalk Bridge. This insurance shall be in the amount of at least \$1,000,000 for personal injury and the City shall be included as a named insured. Equitable shall submit to City evidence of this insurance on or before any renewal date for such insurance. The insurance policy shall provide that it cannot be cancelled or terminated until at least thirty (30) days prior written notice of such event has been received by the City.

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During this same period of time, Equitable shall hold harmless, indemnify and defend City from any tort claims, mechanics liens and claims from contractors and architects arising out of construction of said Skywalk Bridge by Equitable.

4. Nothing in this Agreement or in the Limited Skywalk Easements granted by Equitable herewith, attached hereto as Exhibit D-1, shall be interpreted to modify, amend or otherwise affect any other Skywalk Agreement or Limited Skywalk Easements existing by and between City and Equitable.

5. Equitable and the City recognize that F. M. Hubbell, Son & Company, Incorporated has entered into a Real Estate Option Agreement dated January 17, 1983 (the "Option") which Option grants to F. M. Hubbell, Son & Company, Incorporated the right to acquire, amongst other real property interests, all air rights above 14.5 feet in the east/west alley adjacent to Lot 7, Block 12, Original Town of Fort Des Moines, an Official Plat, now included in and forming a part of the City of Des Moines, Iowa. As described in the Options, the Option may be exercised only in the event that an Urban Development Action Grant has been approved by the Department of Housing and Urban Development for the proposed Walnut Mall project. The Walnut Mall project anticipates the east/west Skywalk Corridor in the blocks bounded by Locust Street, Fifth Avenue, Walnut Street and Seventh Street being moved south approximately one-quarter (1/4) block. Until it has been reasonably concluded by the City that the Walnut Mall project is not going to be constructed, neither Equitable nor the City will construct an east/west Skywalk Corridor or Skywalk Bridge providing for the extension of the Skywalk System across Sixth Avenue in the block bounded by Locust Street, Sixth Avenue, Walnut Street and Seventh Street. Notwithstanding anything to the contrary in this Agreement, the Limited Skywalk Easements, Exhibit D-1 hereto, or the Lease

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Agreement, Exhibit E-1 hereto, Equitable and the City agree that the east/west Limited Skywalk Easement granted by Equitable to the City, Exhibit D-1 hereto, shall be of no further force and effect and shall be considered null and void ab initio in the event an east/west Skywalk Corridor is developed as above described in the proposed Walnut Mall project. In the event an east/west Skywalk Corridor is developed as above described in the proposed Walnut Mall project, Equitable and the City shall enter into a recordable agreement which shall provide for the termination of the obligation of Equitable to construct an east/west Skywalk Corridor as above described and as further described in the Limited Skywalk Easements, Exhibit D-1 hereto, and Air Space 2 as further described in the Lease Agreement, Exhibit E-1 hereto and which shall also provide for termination of the obligation of the City to construct or pay for the construction of that portion of a Skywalk Bridge or skywalk bridge equivalent over part or all of the east seventeen feet of the east-west alley in Block 12, Original Town of Fort Des Moines, an Official Plat, now included in and forming a part of the City of Des Moines, Iowa.


ARTICLE XV

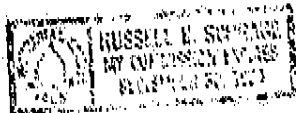
Effect of Other Agreements

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 the Capital-Center Development Urban Renewal Area; and (b) this requirement shall not apply to any differences in termination dates provided in the different

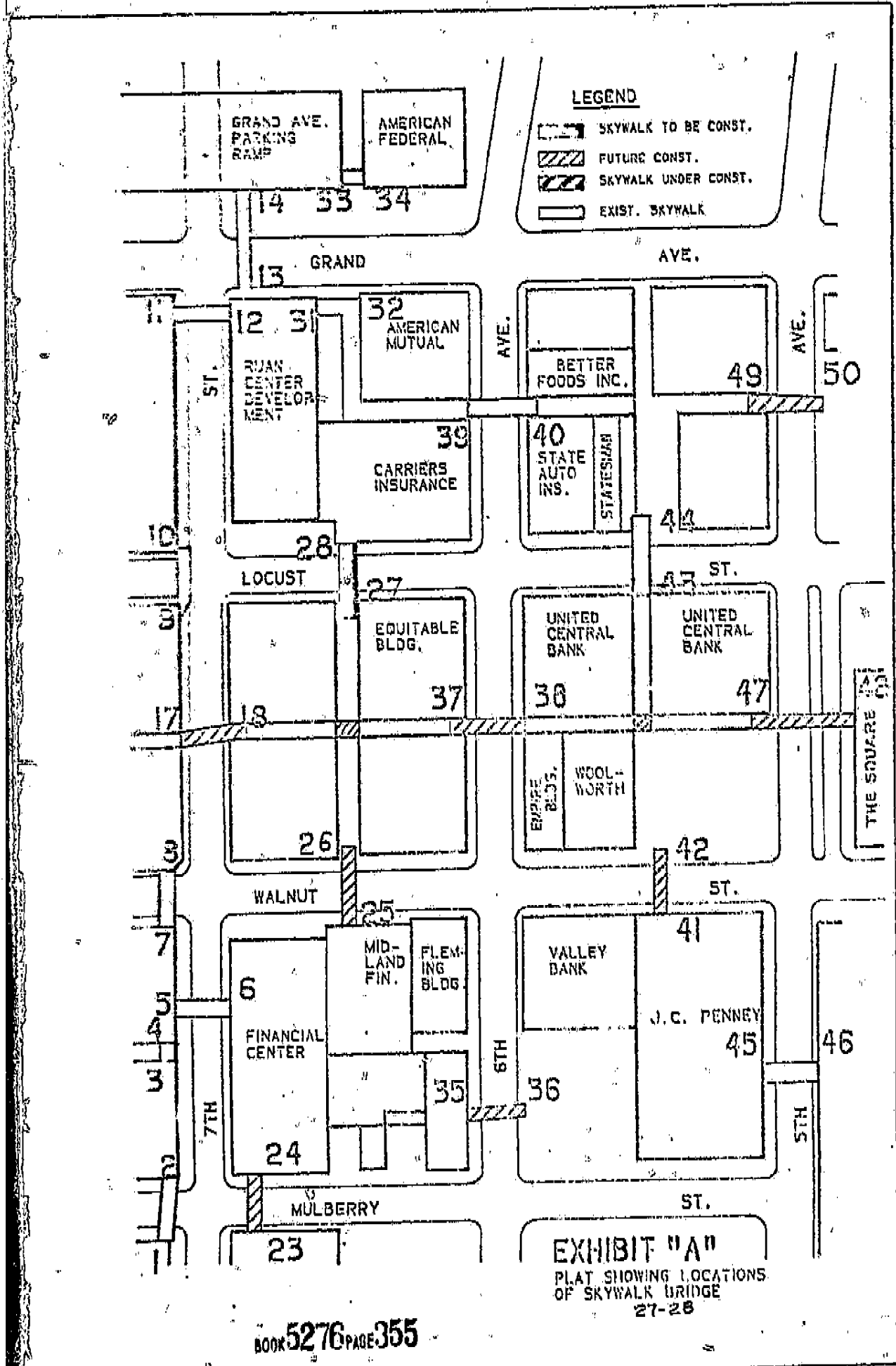
STATE OF IOWA)
) SS:
COUNTY OF POLK)

On this 27th day of July, 1983, before me, the under-
signed, a Notary Public in and for the State of Iowa, personally
appeared JAMES W. HUBBELL, JR., and LUTHER L. HILL, JR., to me per-
sonally known, who being by me duly sworn, did state that they are the
Chairman of the Board and Executive Vice President, respectively, of
the EQUITABLE LIFE INSURANCE COMPANY OF IOWA, executing the within and
foregoing instrument; that the seal affixed thereto is the seal of
said corporation; that said instrument was signed and sealed on behalf
of said corporation by authority of its Board of Directors; and that
JAMES W. HUBBELL, JR., and LUTHER L. HILL, JR., as said officers,
acknowledged the execution of said instrument to be the voluntary act
and deed of said corporation, by it and by them voluntarily executed.






Notary Public in and for the
State of Iowa



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LEGEND

-  SKYWALK TO BE CONST.
-  FUTURE CONST.
-  SKYWALK UNDER CONST.
-  EXIST. SKYWALK

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EXHIBIT "A"
 PLAT SHOWING LOCATIONS
 OF SKYWALK BRIDGE
 27-28

AFFIDAVIT RE TITLE

STATE OF IOWA)
) SS:
COUNTY OF POLK)

The undersigned, Luther L. Hill, Jr., Executive Vice President of Equitable Life Insurance Company of Iowa, being duly sworn upon oath hereby deposes and states as follows:

1. That Equitable Life Insurance Company of Iowa, an Iowa corporation, is the owner of the undivided fee simple title to real property located in Polk County, Iowa, and more particularly described as follows:

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

2. That said premises are now unencumbered and free of all liens of every kind and description except for current taxes.

3. That there have been no repairs or fixtures added to the property within the past six months for which complete and final payment has not been arranged.

4. That except for any rights and interests resulting from a Real Estate Option Agreement dated January 17, 1983, between the City of Des Moines, Iowa, and F. M. Hubbell, Son & Company, Incorporated and the rights and interests in occupancy leases within the premises (none of which touch upon Limited Skywalk Easements area), there are no other persons, firms or corporations having any right of possession to said premises under any lease, option, deed or other written instrument of any kind or character or any right to possession of said premises of any kind or nature whatsoever.

5. This Affidavit is made with the knowledge and intent that Messrs. Mumford, Schrage, Merriman & Zurek P.C., Attorneys at Law, will rely upon the representations herein contained in certifying title to the premises to the City of Des Moines, Iowa,

EXHIBIT "B-1"

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THE SQUARE

in connection with the execution of certain documents relating to the Des Moines Skywalk System, including the Skywalk Agreement and Limited Skywalk Easements.

Further Affiant sayeth not.

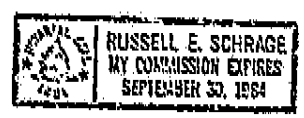
Luther L. Hill, Jr.

Luther L. Hill, Jr.
Executive Vice President of
Equitable Life Insurance Company of Iowa

Subscribed and sworn to before me by Luther L. Hill, Jr. on this 28th day of July, 1983.

Russell E. Schrage

Notary Public in and for the State
of Iowa



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Exhibit D-1

LIMITED SKYWALK EASEMENTS

THESE Limited Skywalk Easements made this 23rd day of July, 1983, by and between EQUITABLE LIFE INSURANCE COMPANY OF IOWA, an Iowa corporation, (hereinafter referred to as "Grantor"), and the CITY OF DES MOINES, IOWA, a municipal corporation organized and existing under the laws and Constitution of the State of Iowa, (hereinafter referred to as "Grantee");

WHEREAS:

WHEREAS, Grantor is the owner of certain improved real estate located in Polk County, Iowa, (hereinafter referred to as the "Property") and more particularly described as follows:

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

and Grantor Equitable Life Insurance Company of Iowa is lessee of the following described Air Spaces:

Air Space 1

Air Space 1 is all of the Air Space which is located above the portion of north-south alley lying west of and adjacent to Lots 7 and 8, Block 12, Original Town of Fort Des Moines, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa, and which is located between a plane with an elevation of 13.75 feet above the existing alley surface and a plane 40 feet above such existing alley surface.

Air Space 2

Air Space 2 is all of the Air Space which is located above the portion of east-west alley lying south of and adjacent to Lot 7, Block 12, Original Town of Fort Des Moines, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa, and which is located between a plane with an elevation of 14.5 feet above the existing alley surface and a plane 41 feet above such existing alley surface.

WHEREAS, Grantor agreed in a Skywalk Agreement of even date by and between Grantor and Grantee, amongst others, (hereinafter referred to as the "Skywalk Agreement", filed of record in the Office of the Recorder for Polk County, Iowa, in Book 5276, at Page 298, the defined terms of which are incorporated herein by this reference) to grant to the Grantee certain inchoate limited public easements across the Property for use in developing a skywalk-level public sidewalk system consisting of Skywalk Corridors and Skywalk Bridges, and more specifically, for allowing a free flow of pedestrian traffic through such Skywalk Corridors during Skywalk System hours.

NOW, THEREFORE, in furtherance of said Skywalk Agreement, and in order to induce Grantee to construct Skywalk Bridges, Grantor, for itself, its successors and assigns, does hereby grant to Grantee the following easements and attendant rights, subject to such terms, restrictions and provisions as are contained herein:

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NOW, THEREFORE, in furtherance of said Skywalk Agreement, and in order to induce Grantee to construct Skywalk Bridges, Grantor, for itself, its successors and assigns, does hereby grant to Grantee the following easements and attendant rights subject to such terms, restrictions and provisions as are contained herein:

(1) Inchoate Skywalk Corridor easements for the attachment of a Skywalk Bridge[s] and/or a Skywalk Corridor[s] of the Skywalk System, more particularly described on Exhibit 1, attached hereto and incorporated herein by this reference. Such easements are for the sole use and benefit of the public at large as a public way for pedestrian ingress, egress and transit in, through and over such Skywalk Corridors located upon such easements during the hours said Skywalk Corridors or portions thereof must remain open as a Skywalk Corridor, as determined in accordance with Skywalk Ordinance No. 9781 as originally adopted by the City Council of Grantee on June 23, 1980 and as amended by Ordinance No. 9854, adopted by the City Council of Grantee on October 27, 1980, by Ordinance No. 9900, adopted by the City Council of Grantee on February 16, 1981, by Ordinance No. 9982, adopted by the City Council of Grantee on August 3, 1981, by Ordinance No. 10,031, adopted by the City Council of Grantee on October 26, 1981, by Ordinance No. 10,043, adopted by the City Council of Grantee on December 7, 1981, by Ordinance No. 10,052, adopted by the City Council of Grantee on January 4, 1982 and by Ordinance No. 10,229, adopted by the City Council of Grantee on November 15, 1982, (hereinafter referred to as the "Skywalk Ordinance") and the Skywalk Agreement. During the hours that such Skywalk Corridor[s] or portions thereof are not required to be open under the provisions of the Skywalk Ordinance and Skywalk Agreement, the public shall have no rights in the easements granted hereby, and the areas included in such easements shall be under the exclusive and sole control of Grantor.

(2) (a) During the time a Skywalk Corridor easement remains inchoate, Grantor shall have sole and exclusive control over the use of such easement area, subject only to Grantor's obligations to timely construct or otherwise provide a Skywalk Corridor on such Skywalk Corridor easement.

(b) Grantor shall retain control over the construction, appearance and treatment of each Skywalk Corridor, including, but not limited to, wall coverings, floor coverings, lighting, entrances and exits.

(c) During the hours that the easement areas described herein or any portion thereof is required to be open under the provisions of the Skywalk Ordinance and Skywalk Agreement, Grantor and Grantor's tenants shall have the same rights as shall the general public to the benefits and use of such easement areas, and Grantor shall have such further rights of access and control of such easement areas as is necessary to carry out its duties and responsibilities assigned by the Skywalk Ordinance, Skywalk Agreement and this grant of Limited Skywalk Easements; provided, however, that Grantor cannot totally obstruct any easement area during its operational hours unless Grantor provides a temporary pathway around such obstruction during such hours.

(d) [if applicable] Grantor reserves the right to use the easement areas described herein for those purposes incidental and necessary to the observation and performance by Grantor, and its agents or representatives, of any obligations under occupancy leases, including, without limiting the generality of the foregoing, such remodeling, alteration and modification of said easement areas; provided that Grantor cannot totally obstruct the Skywalk Corridor during its

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operational hours by such work, unless Grantor provides a temporary pathway around such work during such hours.

(3) (a) The inchoate easement identified on Exhibit 1 as "1" (hereinafter "Easement 1") shall become choate (1) upon the completion of the Skywalk Bridge Project 27-28 across Locust Street abutting on the Property, which will connect with Easement 1 at its north end, and (2) upon Grantor constructing or otherwise providing a finished Skywalk Corridor which complies with the minimum design standards set forth in Section 23-244(6) of the Skywalk Ordinance, and (3) upon adoption by the City Council of Grantee of a resolution declaring Easement 1 choate and directing that it be depicted upon the Official Skywalk Map.

(b) The inchoate easement identified on Exhibit 1 as "2" (hereinafter "Easement 2") shall become choate (1) upon the completion of the Skywalk Bridge Project 37-38 across Sixth Avenue abutting on the Property which will connect with Easement 2 at its east end and the completion of Skywalk Bridge Project shown on Exhibit 1 at the intersection of the east-west and north-south alleys located under Easements 1 and 2 on said Exhibit, and (2) upon Grantor constructing or otherwise providing a finished Skywalk Corridor which complies with the minimum design standards set forth in Section 23-244(6) of the Skywalk Ordinance, and (3) upon adoption by the City Council of Grantee of a resolution declaring Easement 2 choate and directing that it be depicted upon the Official Skywalk Map.

(4) Each easement granted herein shall be subject to all of the terms and conditions of the Skywalk Agreement, and the rights, obligations and duties of Grantor and Grantee therefor shall be as established by the terms and provisions of the Skywalk Agreement. Grantor shall retain title to any Skywalk Corridor improvements.

(5) not used

(6) During the term of the Limited Skywalk Easements granted herein and for so long afterward as there shall remain any Grantee-owned Skywalk Bridge connected to the Property, employees of and persons authorized by Grantee are entitled to travel on, through and over and to remain on such portions of the Property as are reasonably necessary to construct, reconstruct, repair, maintain or remove any Skywalk Bridge Project thereto connected to the Property and contemplated by these Limited Skywalk Easements and the Skywalk Agreement and further are entitled to temporarily maintain, to the extent reasonably necessary, a work area and store equipment and supplies on such construction easement area of the Property as Grantor and Grantee then reasonably agree or, if no agreement is reached, upon such portion of the Property defined as follows: (a) for construction, reconstruction or removal of a Skywalk Bridge Project: (i) a rectangle whose length is five feet added to each side of the width of the Skywalk Corridor easement and whose width is ten feet from the interior building wall into the Building and which is located at the Skywalk Bridge opening and (ii) an area four feet on a side greater than the finished support work on any floor where support work is necessary, at or adjacent to such support work, and (b) for repair and maintenance, a rectangle fourteen feet long by eight feet wide located immediately adjacent to the Skywalk Bridge opening or support structure and, to the extent reasonably necessary, outside the area of any choate Skywalk Corridor easement (provided, however, that the Grantee will restore at its expense the area of such construction easement on the Property to the condition existing prior to such repair or

insurance), and (c) to work in other areas on the Property, to the extent reasonably necessary, to construct, reconstruct, repair, maintain and remove any Skywalk Bridge connected to such Property; provided, however, that such rights and entitlements shall be limited solely to the necessary construction, reconstruction, repair, maintenance or removal activities, and further provided that such employees and persons authorized by Grantee, and any work area and area used in storing equipment and supplies on Grantor's Property, will interfere with the normal business activities on the Property as little as possible. Grantee agrees to defend and hold Grantor harmless from the negligent acts of such employees of and persons authorized by Grantee.

Grantor warrants that the easements granted herein are superior to any other interest in such easement areas of the Property and agree to defend and hold Grantee harmless from any action challenging the existence or superiority of such limited easements.

(8) The public's right to the use of the easement[s] granted herein shall also be subject to such reasonable police measures as are necessary in implementing Skywalk System hours or in prohibiting conduct within the Skywalk System which is in violation of the Skywalk Ordinance or any other law.

(9) The Limited Skywalk Easements as granted herein shall expire, become null and void, and, without any consideration, revert to and become reinvested in Grantor as fully and completely as if they had not been granted, upon the prior occurrence of the following:

(a) Any time after forty (40) years from the date of this grant of Limited Skywalk Easements, Grantor acting jointly with all other grantors of Limited Skywalk Easements on the Property, if any, may terminate all Skywalk Corridor easements [and Skywalk Bridge extension easements] granted herein upon two (2) years prior written notice to Grantee, which notice may be given at any time after thirty-eight (38) years from the date of this grant of Limited Skywalk Easements.

(b) not used

(c) Any Skywalk Corridor easement or portion thereof granted herein shall terminate upon the relocation of such easement or portion thereof by Grantor after notification to and approval by the City Council of Grantee, which approval shall not be unreasonably withheld, and after completion of construction or other manner of providing the relocated Skywalk Corridor by Grantor.

(d) If Grantee abandons any Skywalk Bridge connecting to the Property or any such Skywalk Bridge shall be taken by the power of eminent domain, then so much of the Skywalk Corridor easement as is choate solely by reason of the existence of such Skywalk Bridge shall terminate.

(e) If any portion of Grantor's Property is taken by the power of eminent domain, then so much of the Skywalk Corridor easements shall terminate as are choate solely by reason of the existence of the portion of the Skywalk System that traverses the portion of such Property that is so taken.

(f) In the event that the Skywalk System Plan Map is amended to eliminate a Skywalk Corridor or Skywalk Bridge, then so much of any Skywalk Corridor easement as corresponds to such Skywalk Corridor or Skywalk Bridge shall terminate.

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(g) Any time after eight and one-half (8 1/2) years from the date of this grant of Limited Skywalk Easements, Grantor acting jointly with all other grantors, if any, of Limited Skywalk Easements on the Property may give Grantee eighteen (18) months written notice of its election to terminate all or any specified part of its inchoate easements and each such designated easement area shall terminate at the expiration of such eighteen (18) months, unless prior to such expiration Grantee has executed the contracts for construction of the Skywalk Bridge or has executed a Skywalk Agreement with the owners/lessees of an adjacent property which requires construction of the wall opening or other skywalk-level access between the properties, which Skywalk Bridge or wall opening is necessary for such easement area to become choate; provided, however, the period of eighteen (18) months shall be extended for a period (the "Period of Extension") from and after the termination of any litigation in which Grantee is involved concerning the validity of the issuance of bonds for, the expenditure of public funds for, the plans and specifications for, or the award of the contract for the Skywalk Bridge Project, or of any litigation between any grantor of Limited Skywalk Easements on the Property and Grantee regarding any Limited Skywalk Easements, Skywalk Agreement or Skywalk Bridge Project, which is being maintained by any such grantor on any petition, cause of action, counterclaim, cross-claim, third party action, interpleader or other claim against Grantee, which Period of Extension shall be the longer of the time remaining in said original eighteen (18) month period at the commencement of said litigation or ninety (90) days.

(h) Termination of the Skywalk Agreement with respect to the Property.

(i) [for non-owner Grantor] In the event that Grantor's interest in the Property terminates in accordance with the terms of the instrument by which it was created, then this grant of Limited Skywalk Easements and all easements and attendant rights created hereby shall terminate as to such Grantor; provided, however, that such termination shall not cause termination, modification or otherwise affect any easements and attendant rights granted to Grantee in these same easement areas by any other grantor nor relative Grantor of responsibilities or obligations which are accrued or as to which claims are pending on the date of such termination.

(j) In the event that a Skywalk Corridor easement or a Skywalk Bridge extension easement on a property connected to Grantor's Property by a Skywalk Bridge or wall opening terminates, then so much of any easement as granted herein which was choate solely by reason of its connection to such Skywalk Bridge or wall opening shall again become inchoate and shall remain inchoate and not terminate except on the happening of an event of termination as provided in this paragraph 9.

(k) If a court of competent jurisdiction enters a final judgment prior to the expiration of forty (40) years from the date on which the easements herein were granted that any of the interests created hereby violate the Rule against Perpetuities, then such easements shall automatically terminate at the expiration of said forty (40) year period and such easements shall revert to and vest in Grantor. If such a final judgment is entered after the expiration of said forty (40) year period, then the easements herein granted shall terminate on the date of such final judgment and all interest in such easements shall revert to and vest in Grantor or its respective successors or assigns.

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(l) Notwithstanding anything herein which may appear to the contrary, the construction easements granted in paragraph 6 of this grant of Limited Skywalk Easements with respect to a particular Skywalk Bridge Project shall terminate when such Skywalk Bridge Project is no longer connected to the Property.

(m) With respect to a contract awarded as contemplated by subparagraph (g) of this paragraph 9, the Grantee will use reasonable diligence under the circumstances in administering the due performance and completion by the contractor; provided, however, that Grantee shall not be obligated to exercise such reasonable diligence if for any reason a Building to which such a Skywalk Bridge Project is to be connected is not ready for such connection.

(10) Whenever in this grant of Limited Skywalk Easements reference is made to the Skywalk Ordinance, such reference shall be to the Skywalk Ordinance of the City of Des Moines, Iowa, Ordinance No. 9781, as originally adopted by the City Council of Grantee on June 2, 1980 and as amended by Ordinance No. 9854, adopted by the City Council of Grantee on October 27, 1980, by Ordinance No. 9900, adopted by the City Council of Grantee on February 16, 1981, by Ordinance No. 9982, adopted by the City Council of Grantee on August 3, 1981, by Ordinance No. 10,031, adopted by the City Council of Grantee on October 26, 1981, by Ordinance No. 10,043, adopted by the City Council of Grantee on December 7, 1981, by Ordinance No. 10,052, adopted by the City Council of Grantee on January 4, 1982, and by Ordinance No. 10,229, adopted by the City Council of Grantee on November 15, 1982, without further amendment. In the event of any conflict between the terms of this grant of Limited Skywalk Easements and of the Skywalk Ordinance, the provisions of the Skywalk Ordinance shall control. However, no further amendment of said Skywalk Ordinance by Grantee shall affect the rights, duties and obligations of the parties hereto unless the terms of this grant of Limited Skywalk Easements shall conform to and be consistent with such amendment or the Grantor and Grantee hereto mutually amend this grant of Limited Skywalk Easements to render its terms in conformance and consistent with any such amendment to the Skywalk Ordinance or Grantor shall consent in writing to such amendment. In the event of any conflict between the provisions of this grant of Limited Skywalk Easements and the Skywalk Agreement, the provisions of this grant of Limited Skywalk Easements shall control.

(11) (a) In the event one or more of the provisions contained in this grant of Limited Skywalk Easements 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 grant of Limited Skywalk Easements, and this grant of Limited Skywalk Easements shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

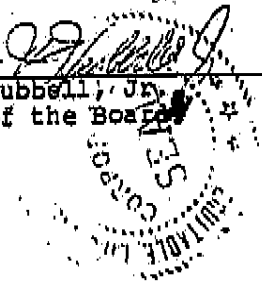
(b) In the event one or more of the terms or provisions contained in the Skywalk Ordinance shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any provision of this grant of Limited Skywalk Easements not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

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IN WITNESS WHEREOF, Grantor has hereunto set its hand and seal this 25th day of July, 1983.

EQUITABLE LIFE INSURANCE COMPANY OF IOWA

By James W. Hubbell, Jr.
James W. Hubbell, Jr.
Chairman of the Board



Luther L. Hill, Jr.
Luther L. Hill, Jr.
Executive Vice President

STATE OF IOWA)
) SS:
COUNTY OF POLK)

On this 25th day of July, 1983, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared JAMES W. HUBBELL, JR., and LUTHER L. HILL, JR., to me personally known, who being by me duly sworn, did state that they are the Chairman of the Board and Executive Vice President, respectively, of the EQUITABLE LIFE INSURANCE COMPANY OF IOWA, executing the within and foregoing instrument; that the seal affixed thereto is the seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and that JAMES W. HUBBELL, JR., and LUTHER L. HILL, JR., as said officers, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.



Russell E. Schrage
Notary Public in and for the
State of Iowa

I, Ben R. Lehman / ^{Temporary} City Clerk of the City of Des Moines, Iowa, do hereby certify that the within and foregoing Easement was duly approved and accepted by the City Council of said City of Des Moines by Resolution and Roll Call No. 3595, passed on the first day of August, 1983, and this certificate is made pursuant to authority contained in said Resolution.

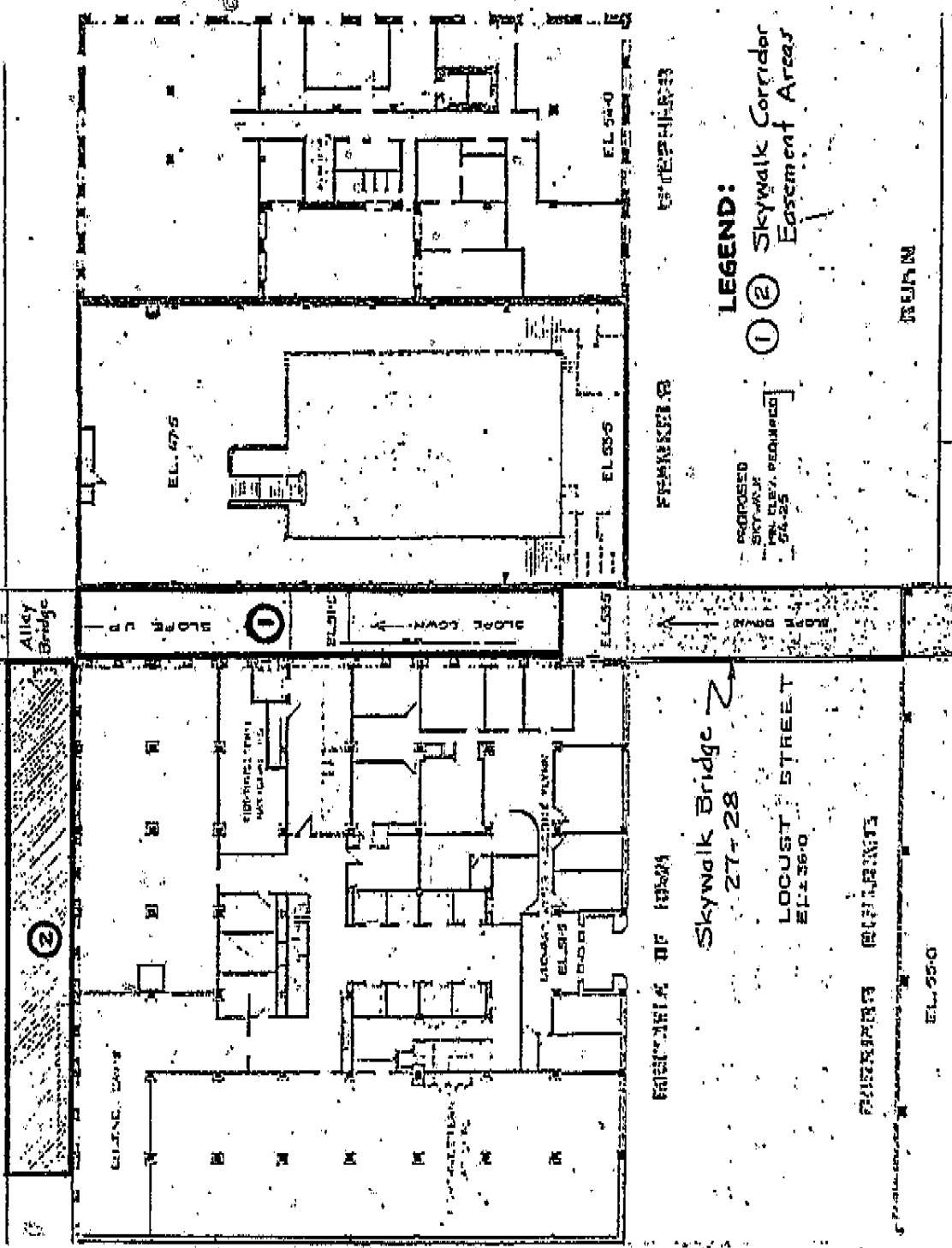
Signed this first day of August, 1983.

Ben R. Lehman
Ben R. Lehman
City Clerk of the
City of Des Moines, Iowa

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**EXHIBIT 1
TO EXHIBIT D1**

PROPOSED SKYWALK
EL. 54.5



LEGEND:

- ① Skywalk Corridor
- ② Easement Areas

PROPOSED SKYWALK
MIN. ELEV. REQUIRED
54.25

BOOK 5276 PAGE 365

7-3. LITIGATION FOR CLAIMS AND SAVE HARMLESS CLAUSE

The Contractor shall indemnify and hold the City of Des Moines harmless from all injury or damages to persons or property or claims thereof arising out of the prosecution of said work by the Contractor, his Subcontractor, Agents or Employees, and for all expenses of litigation arising from any act done or suffered to be done, by the said Contractor, his Subcontractor, Agents or Employees. The Contractor shall also hold the City of Des Moines harmless from all claims for damages arising from any neglect, default, or mismanagement or omissions of the contract, by himself, his Subcontractor, his Agents or Employees, in the performance of any duties imposed by this contract, or by law. If any litigation on account of such claims shall be commenced against the City of Des Moines, the Contractor upon notice thereof from the City, shall defend the same at his own cost and expense; and the record of any judgment rendered against the City of Des Moines on account of such claims for damages shall be conclusive as against the said Contractor, and entitle the City of Des Moines to recover the full amount thereof, with interest and cost, and attorneys fees incurred by said City, and right of action therefore shall accrue to the City of Des Moines as soon as such judgment shall have been rendered, whether the City shall have paid the amount or not.

7-21 INSURANCE

7-21.1 REQUIREMENTS. The Contractor shall secure and maintain, throughout the duration of this Contract, insurance of such types and not less than the amounts specified in the Special Provisions, but in no case less than the amounts listed below.

Insurance coverage will be considered acceptable when provided in one of the following methods:

- A. By issuance of the original policy designating the Contractor as the insured party under the provisions of the policy.
- B. By endorsement to an original policy.
- C. By separate contingent policy.

The Contractor shall furnish the City Clerk with proper affidavit or affidavits executed by representatives of duly qualified insurance companies, doing business in Iowa for approval by the City. Regardless of such approval by the City, it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times, and his failure to do so shall not relieve him of any contractual obligation or responsibility. Failure on the part of the Contractor to maintain his insurance in full effect will be considered as a failure in Contract performance and will be treated as such by the City.

Insurance policies filed with the City shall state that thirty (30) calendar days' written notice will be given to the City and to the Surety before any policy covered thereby is changed or cancelled.

KUPAN

FL 55-0

7-21.2 WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY: This insurance shall protect the Contractor against all claims under the Workmen's Compensation Law. The Contractor shall also be protected against claims for injury, disease, or death of employees which, for any reason, may not fall within the provisions of a Workman's Compensation Law.

7-

The liability limits shall not be less than the following:

Workmen's Compensation	Statutory
Employer's Liability	\$250,000 each person

7-

7-21.3 PUBLIC LIABILITY: This insurance shall be written in comprehensive form and shall protect the Contractor against all claims arising from injuries to any person or damage to property of others arising out of any act or omission of the Contractor; and in addition, this policy shall specifically provide Contractor's Protective Liability Insurance, and Contractual Liability Insurance covering the obligations stipulated in Section 7-3.

The Contractor shall provide and maintain insurance to protect the Owner against any and all claims for damages for personal injury, including accidental death, as well as from claims under the Contract, whether such operations be by the Contractor or any of his sub-contractors, or by any one directly or indirectly employed by the Contractor or his sub-contractors.

7-

The liability limits shall not be less than the following:

Personal Injury	\$250,000 each person
Personal Injury	500,000 each occurrence
Property Damage	50,000 each occurrence
Property Damage	100,000 aggregate

7-21.4 AUTOMOBILE LIABILITY: This insurance shall be written in comprehensive form and shall protect the Contractor against all claims for the operation of motor vehicles, whether they are owned, non-owned, or hired by him.

The liability limits shall not be less than the following:

Bodily Injury	\$250,000 each person
Bodily Injury	500,000 each accident
Property Damage	50,000 each property
Property Damage	100,000 each accident

7-21.5 RAILROAD INSURANCE: Unless otherwise specified, the Contractor shall procure and maintain railway protection insurance in the amount specified with the provisions required by the railroads affected by the project. The Contractor shall furnish the City and the railroad a certified copy of such policy together with a document attached thereto under the terms of which the insurance company assumes the liability of the railroad as defined above.

7-21.6 **COVERAGE FOR EXPLOSION-COLLAPSE-UNDERGROUND EXCLUSIONS:** When parts of the work governed by the Contract are not covered because of exclusions in the Comprehensive General Liability insurance, the Contractor shall provide and maintain insurance coverage with the Contractor and the City both being named insured for all hazardous work thus excluded; particularly for exclusions such as explosions, collapse and underground work.

7-21.7 **BUILDER'S RISK:** When buildings and appurtenant structures are included in the Work, Builder's risk insurance shall be written in completed value form and shall protect the Contractor and the City against risks of damage to buildings structures not otherwise covered from the perils of fire and lightning, the perils included in the standard extended coverage endorsement, and the perils of vandalism and malicious mischief. The amount of such insurance shall not be less than the insurable value of the Work at completion, and shall provide for losses to be payable to the Contractor and the City as their interests may appear.

If the aggregate value of equipment furnished by the City and the Contractor does not exceed \$10,000, such equipment shall be covered under Builder's Risk Insurance.

7-21.8 **INSTALLATION FLOATER:** This insurance shall protect the Contractor and the City from all insurable risks of physical loss or damage to materials and equipment not otherwise covered under Builder's Risk Insurance, while in warehouse or storage area, during testing, and until the Work is accepted by the City. It shall be of the All Risk type, with coverages designed for the job circumstances, and shall include the aggregate value of equipment and materials furnished by either or both the Contractor and the City, and shall be for an amount not less than the value of the material and equipment at completion.

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Exhibit E-2

Paragraphs 7-3, 7-21.1, 7-21.2, 7-21.3, 7-21.4, 7-21.5, 7-21.6 and 7-21.8 of the Standard Specifications of the City of Des Moines, Iowa for Construction of Public Improvements which are by reference included in and made applicable to the construction of each Skywalk Bridge Project shall be and hereby are amended specifically (1) to provide that all liability limits stated in paragraph 7-21.3 "Public Liability" are stricken as stated and are revised to require minimum coverages in at least the following amounts:

Personal Injury	\$1,000,000	Each Occurrence
Property Damage	\$1,000,000	Each Occurrence

and that such insurance shall be broad form liability and shall contain a collapse and explosion rider, and (2) to provide that the requirements of said paragraphs 7-3, 7-21.1, 7-21.2, 7-21.3 as amended above, 7-21.4, 7-21.5, 7-21.6 and 7-21.8 shall be equally applicable to the owners/lessees of each property connected to each Skywalk Bridge Project along with the City of Des Moines as their interests may appear in the same stead as if they together with the City of Des Moines, Iowa were collectively described as City in such provisions.

The City of Des Moines shall provide the Builders Risk Insurance described in paragraph 7-21.7 of said Standard Specifications for each Skywalk Bridge Project, which insurance shall name the owners/lessees of each property connected to each Skywalk Bridge Project as additional insureds as their interests may appear.

ADD 5276 PAGE 358

July
June 27, 1983

City of Des Moines
West First and Locust Streets
Des Moines, Iowa 50307

Re: Designation of Vertical Access Facility

Whereas It May Concern:

To fulfill the requirements related to a Vertical Access Facility under the Skywalk Agreement entered into between the undersigned and the City on even date herewith, the undersigned agrees that the elevator located in the Equitable Building shall be used in fulfilling the requirements relating to a Vertical Access Facility in the square block in which the property of the undersigned is located; provided, however, that it is understood that such Vertical Access Facility may be changed in accordance with the terms of such Skywalk Agreement.

Very truly yours,

EQUITABLE LIFE INSURANCE COMPANY OF IOWA

By Luther L. Hill, Jr.
Luther L. Hill, Jr.
Executive Vice President

Exhibit "F-1"



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ORDINANCE NO. 9781

AN ORDINANCE to amend the Municipal Code of Des Moines, Iowa, 1979, adopted by Ordinance No. 9616, passed July 23, 1979, by adding thereto a new subchapter 16 entitled "Skywalk Ordinance" to Chapter 23 (Streets and Sidewalks) of said Code, by adding a new subsection (c) to Section 8-2.01 thereof, by adding a new section to be known as Section 8-11, and by repealing Sections 2-205.18 and 2-205.19 thereof and enacting new Sections 2-205.18 and 2-205.19, relating to the development of a public skywalk system in downtown Des Moines, amending the Building Code to permit skywalks and amending the site plan review ordinance regarding skywalks.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of Des Moines 1979, adopted by Ordinance No. 9616, passed July 23, 1979, be and is hereby amended by adding a new subchapter 16 entitled, "Skywalk Ordinance" to Chapter 23 (Streets and Sidewalks) thereof, as follows:

SUBCHAPTER 16. SKYWALK ORDINANCE.

Sec. 23-236. TITLE.

This ordinance shall be known and may be cited and referred to as the "Skywalk Ordinance" of the City of Des Moines, Iowa.

Sec. 23-237. PURPOSES AND POLICY.

The City of Des Moines, Iowa finds and declares that it is the responsibility of the City to coordinate and integrate the development of the transportation system for downtown Des Moines, including streets, parking facilities and accommodations, sidewalks, skywalks, bus stops and taxi stops, related street signs, traffic control devices, markings and regulations and other related structures and facilities, and further finds and declares that the development of a skywalk-level sidewalk system (to be known as the "Skywalk System") in the skywalk district, as an integral part of the transportation system, is a benefit to the public in that it (1) enables pedestrians with or without physical handicaps to move in an enclosed second story skywalk system, protected from adverse weather and vehicles, (2) reduces pedestrian-vehicle conflicts at the street level, (3) encourages a more efficient use of public parking facilities, (4) promotes increased and more efficient pedestrian travel within the downtown, (5) encourages shopping and economic growth in the urban renewal area and other adjacent portions of the downtown area by inducing redevelopment, remodeling and more intensive retail, commercial and residential use, thereby increasing employment opportunities and increasing the tax base for the City and other taxing jurisdictions, and (6) provides an opportunity for aesthetic improvements, particularly at nodal areas of the skywalk system. Therefore, it

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is the policy of the City of Des Moines, Iowa, to participate in developing the public skywalk system shown on the Skywalk System Plan Map by constructing the skywalk bridges across the public rights-of-way and by obtaining easements for skywalk corridors and nodal points under the provisions and within the limitations of this ordinance.

Sec. 23-238. SKYWALK DISTRICT AND SKYWALK MAP.

The "Skywalk District" is the area enclosed by and including the right-of-way of the following streets:

Third Street from Keosauqua Avenue to Court Avenue; Court Avenue from Third Street to Fifth Avenue; Fifth Avenue from Court Avenue to Cherry Street; Cherry Street from Fifth Avenue to Ninth Street; Ninth Street from Cherry Street to High Street; High Street from Ninth Street to Eighth Street; Eighth Street from High Street to Keosauqua Avenue; Keosauqua Avenue from Eighth Street to Third Street.

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 that map over the length of an alley, it indicates that that 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, but wherever it is located, property interests on both sides of the alley shall have the right to connect to a skywalk corridor at their own cost.

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.

The exact location of existing portions of the skywalk system shall be shown on the Official Skywalk Map.

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.

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 that document is the map referred to in this section.

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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.

If in accordance with the provisions of this ordinance changes are made in the skywalk system or other matters portrayed on the Skywalk System Plan Map or on the Official Skywalk Map, then 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.

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.

Sec. 23-239. DEFINITIONS.

1. The "skywalk system" shall be the planned skywalk system shown on the Skywalk System Plan Map and includes skywalk corridors, nodal points within public easements, 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 and whose termini are skywalk bridges, other skywalk corridors or an opening in a building through which the skywalk corridor connects to an adjacent building. The primary public purpose of a skywalk corridor is the accommodation of public pedestrian travel from point to point at or near the second story level. Each skywalk corridor shall be deemed dedicated to such public purpose upon the acceptance of an easement for such corridor by the city council.

3. A "skywalk bridge" is a skywalk-level bridge from building face to building 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 to which it attaches. The primary public purpose of a skywalk bridge is to permit public pedestrian travel at the skywalk level across open spaces, such as streets, sidewalks, alleys and land where a building is set back from the public right-of-way. Each skywalk bridge shall be deemed dedicated to such public purpose upon passage of a resolution so stating by the city council.

4. 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 connection of a skywalk bridge to a non-endpoint of a skywalk corridor. The primary public purpose of a nodal area is to provide sufficient area for pedestrians from different pathways to

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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.

5. A "vertical access facility" is a pathway for pedestrians to move between the skywalk level skywalk corridors and the ground level public sidewalk and consists 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 upon the acceptance of its designation as such by the city council. However, each vertical access facility shall remain under the control of those with interests in the property on which it is located.

Sec. 23-240. SKYWALK COMMISSION.

1. (a) Creation; membership; vacancy. There is hereby created a skywalk commission, consisting of five (5) members appointed by the mayor, subject to the approval of the city council. One (1) member shall be appointed from among persons whose property is shown on the Skywalk System Plan Map to be traversed by or connected to the skywalk system, one (1) member shall be appointed from among persons whose leasehold is shown by the Skywalk System Plan Map to be traversed by or connected to the skywalk system, and three (3) members shall be appointed from among other citizens, residents of the city, who have knowledge or experience in matters which may pertain to the development and operation of a skywalk system. Any vacancy in the membership of the skywalk commission shall be filled by the mayor, subject to the approval of the council, the appointment to be for the remainder of the term.

All members of the skywalk commission shall perform their duties without compensation.

(b) Term of office. The term of office of members of the skywalk commission shall be three (3) years, except that for members first appointed the terms of office shall be as follows: One (1) shall be appointed for a three (3) year term, two (2) for two (2) year terms, and two (2) for one (1) year terms.

The expiration of all terms of office shall be the first Monday in April. However, all members shall hold over until their successors are appointed and qualified.

(c) Meetings. The skywalk commission shall hold regular meetings, the first within ten days of initial appointment and thereafter at least once each month at a time

and place within the corporate limits as it may determine by resolution. Special meetings may be held with at least twenty-four (24) hours notice upon the call of the chairperson or upon written request signed by three (3) commission members. Three (3) members of the skywalk commission shall constitute a quorum for the transaction of business.

The chairperson or members calling a meeting shall make reasonable effort to assure that every member attends all meetings of the skywalk commission but shall not, in the accomplishment of that goal, unduly delay the business of the commission. Any member failing to attend three consecutive meetings or twenty-five percent of the meetings in any twelve month period, unless absent from the city, or confined by illness or other disability, any of which reasons the commission may, by affirmative vote, determine sufficient excuse for nonattendance, shall automatically cease to be a member of the commission and a successor shall be appointed.

(d) Organization. Each April the skywalk commission shall elect a Chairperson and Vice-Chairperson from among its members. The Chairperson shall perform the usual duties of that office, and the Vice-Chairperson shall perform the duties of Chairperson during the absence or disability of the Chairperson. The skywalk commission may promulgate rules governing its proceedings.

The skywalk commission staff, including its recording secretary, shall be such city employees as the city manager shall from time to time assign to it.

The recording secretary shall cause notice of all skywalk commission meetings, and all agenda items, to be mailed or otherwise provided to those persons who file a written request for such notice with the recording secretary. In addition, the recording secretary shall post the notice and tentative agenda required by chapter 28A of the Code of Iowa outside the city clerk's office.

All decisions of the skywalk commission shall be compiled by subject matter, and all minutes of its meetings shall be compiled by date, and kept on file in the city clerk's office.

The council may annually appropriate a sum of money from the general funds of the City for the payment of the expenses of the skywalk commission. The commission shall have authority to obligate on behalf of the city all money so appropriated. The skywalk commission shall have no power to contract debts or incur expenses beyond the amount of money so appropriated.

2. Advisory powers.

The skywalk commission shall review and advise the city council

- (a) on any proposed amendment to the skywalk ordinance,
- (b) on any proposed amendment to any other ordinance that may affect the skywalk system,

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(c) on any proposed amendment to the Skywalk System Plan Map or the Official Skywalk Map,

(d) on any proposed location or change in location of a skywalk corridor or vertical access facility,

(e) on the policy and design standards for skywalk bridges,

(f) on any request to extend the three year period for reconstruction of a destroyed skywalk corridor, and

(g) on such other matters as it determines should be brought to the city council's attention.

3. Decision powers.

(a) Duties. The skywalk commission shall:

(i) Establish minimum standards for operation, maintenance and repair of the skywalk system. "Operation" shall include heating, cooling, lighting, cleaning and providing security for the skywalk system;

(ii) Establish the policy and approve the design for the skywalk logo, skywalk maps and route directories, skywalk directional signs and skywalk building identification signs;

(iii) Approve erection of sculpture, plantings, or supports for public announcements or art work or other amenities in any part of a nodal area on a public easement the dimensions of which exceed the minimum skywalk corridor dimensions;

(iv) 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 ordinance. 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 commission. 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 commission with an executed agreement providing for payment of all operation and repair costs on that portion of 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

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to change hours of operation, but if the skywalk commission does not approve subject to condition or disapprove a proposed change in hours within 15 days of the date such request is filed with the skywalk commission, the proposed change shall be deemed approved.

(v) 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 ordinance. Any private property interest may submit plans for the construction or other provision of a skywalk corridor to the skywalk commission for determination as to whether or not such plans conform to such minimum design standards.

(b) Arbitration.

(i) Any person aggrieved by a decision of the skywalk commission made under a decision power granted it in this subsection may request binding arbitration by a written request filed with the secretary of the skywalk commission within ten (10) days after receipt of the decision. Thereafter, within five (5) days, the skywalk commission and the party requesting arbitration shall each appoint one arbitrator. Within five (5) 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 (10) 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 commission. If the majority of the arbitration panel does not render its written decision and reasons within ten (10) days of its hearing, the decision of the skywalk commission 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.

(ii) 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 commission to the same extent that any other person can.

Sec. 23-241. APPLICATION TO BE INCLUDED IN THE SKYWALK SYSTEM.

1. No person may construct a portion of or connection from a property interest granted the right of connection by section 23-238 or by subsection 23-244(12) of this code to the skywalk system without approval of the City of Des Moines.

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2. 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 or applicants who effectively represent 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 said properties to the skywalk usages and restrictions provided by this ordinance. The city council shall receive the advice of the skywalk commission before acting on the application.

3. In determining the priority of construction and location of skywalk bridges, the city council shall give favorable consideration to construction of such bridge or 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 ordinance, which easements shall come into being at such time or times as the city council determines they are necessary for such purposes.

4. 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:

(a) if the the applicant:

(i) 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 23-238 or by subsection 23-244(12) of this code;

(ii) 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 ordinance. Each such easement for a skywalk corridor shall provide a direct a pathway across such property to the skywalk system connections to other property as is reasonable and

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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 skywalk commission, which approval shall not be unreasonably withheld, and upon completion of construction of such relocated portions of the skywalk system.

(iii) 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 ordinance as are in effect on the date such skywalk agreement is made; and

(b) if 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.

Sec. 23-242. THE CITY'S RESPONSIBILITIES.

1. 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.

2. In the event that 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.

3. The City shall construct any skywalk corridors, nodes, or vertical access facilities in City-owned buildings.

4. In the event that 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 (3) years, unless city council for good cause shown extends said three (3) year period.

5. 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 up to

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one-half of such expenses for all skywalk bridges connecting to that City-owned building.

Sec. 23-243. OBLIGATIONS OF THE PRIVATE PROPERTY INTERESTS.

1. In addition to granting the easements required by section 23-241 of this Code, the owners of any private property interest traversed by the skywalk system and the skywalk-level tenants of such property (hereinafter "the private property interests") and their successors or assigns:

(a) 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 skywalk commission, 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.

(b) 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 ordinance.

(c) In the event that 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 (3) years, unless the city council for good cause shown extends said three (3) 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 23-240(3)(b) of this code.

(d) Shall be responsible for the costs of operation, maintenance and repair of that portion of the skywalk system traversing their private property and up to the middle of all skywalk bridges connecting to that private property, all in conformance to the operation, maintenance or repair standards set by the skywalk commission. In the event that a particular private property interest

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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.

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(e) May enhance, to the extent they choose, a nodal area dedicated to the city by erection of sculpture, art work, plantings or other amenities as approved by the skywalk commission.

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(f) 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 naming the private property interests and the City as insureds in an amount sufficient to rebuild the skywalk system that traverses that private property.

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(g) Shall be entirely responsible for any additional construction or costs necessary to provide security or separation between the skywalk system and the private property.

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2. The obligation of a private property interest shall cease if it transfers its interest to another who assumes its obligation under the skywalk ordinance. 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 thirty (30) years from the date it entered a skywalk agreement, a private property interest or its successors or assigns may terminate its obligations upon two (2) years written notice to the city council, except that if the City makes significant capital repairs or replacements to any skywalk bridge to a property or to any skywalk bridge which is then served only by a skywalk corridor through a property, not paid for by insurance, those with private property interests in such property or properties cannot so terminate their obligations until twenty-five (25) years after completion of the capital repairs or replacements to such skywalk bridge. If the need for such significant capital repairs or replacements arises after fifteen (15) years from the date of the skywalk agreement or on which the last such repairs or replacements were made, the City shall give all affected private property interests ninety (90) days notice of its intent to make such capital repairs or replacements, and the private property interests may terminate their obligations by written notice to the city council within sixty (60) days of the date of the City's notice.

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Sec. 23-244. SKYWALK SYSTEM DEVELOPMENT CRITERIA.

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1. There shall be at most one skywalk bridge per block face.

2. There shall be at least one vertical access facility in each block accessible to and usable by the handicapped. A vertical access facility may utilize an existing vertical transfer system in a private property traversed by the skywalk system.

3. 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.

4. The method of transfer between skywalk corridors in different buildings of different heights shall be accessible to and usable by handicapped persons.

5. The skywalk system shall be maintained free of all obstructions, except that sculpture, plantings or supports for public announcements or art work or other amenities, as approved by the skywalk commission, may be erected in those portions of nodal areas which exceed the minimum skywalk corridor widths and for which the city has accepted an easement.

6. Skywalk corridors shall conform to the following minimum design standards:

(a) Width: Skywalk corridors shall have a minimum width of fourteen (14) feet free and clear of any obstructions or intrusions, except in the following circumstances, the lesser widths specified may be allowed:

(i) Where a column, pipe or other integral structural feature or member of an existing building will intrude into a skywalk corridor, then such corridor and the easement therefor shall be for that narrower width, for the minimum distance which is necessary to prevent such intrusion;

(ii) Where the easement for a skywalk corridor is in a building corridor already constructed as of the effective date of this ordinance, then such skywalk corridor shall have a minimum width of twelve (12) feet free and clear of any obstructions or intrusions;

(iii) The city council in its discretion may accept a right to an easement for a skywalk corridor fourteen (14) feet in width and may restrict the actual width of the easement for a skywalk corridor to no less than twelve (12) feet in those situations where on one side of the skywalk corridor, any barricade wall, or other physical barrier or obstruction which stands or is erected or placed between such corridor and the abutting private property interest during the hours such corridor is open meets all of the following criteria:

(A) such physical barrier or obstruction comprises less than thirty-three and one-third (33 1/3) 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;

(B) 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 fourteen (14) foot right to an easement area but without the twelve (12) foot easement on the open side, so long as no such obstruction shall be placed or stood within the fourteen (14) foot right to an easement width which exceeds thirty-six (36) inches in height measured from the floor; where such open spaces exist on both sides of such corridor, then such intrusion shall be limited to a total of two (2) 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 said corridor shall be uniform for the length of such corridor through said 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 hereinabove.

(b) Height: Skywalk corridors shall have a minimum height of nine (9) 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.

(c) 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.

(d) Lighting: There shall be artificial lighting capable of providing a minimum intensity of 30 foot-candles 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

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of service in any circuit inside the building will not result in total interruption of the required lighting.

(a) 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.

7. 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 commission. The private property interests 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.

8. Skywalk corridors shall conform to such minimum design standards for skywalk corridors as exist at the time the easement for said corridor comes into being.

9. Skywalk bridges shall have a minimum width of fourteen (14) feet and a minimum height of nine (9) feet, both free and clear of any obstructions or intrusions, shall have a minimum clearance over the traveled portion of the right-of-way of sixteen (16) feet six (6) inches 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, except that if the city council determines to incorporate into the skywalk system any skywalk bridges existing as of the effective date of this ordinance, such bridges need not meet the minimum standards of this subsection.

10. 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.

11. Those skywalk bridges, skywalk corridors and vertical access facilities which are fire exits must be open 24 hours a day in the path of the fire exit, and all Fire 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.

12. 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 23-241 of this code.

Sec. 23-245. REGULATION OF USAGE.

1. The skywalk corridors and skywalk bridges shall be open for public pedestrian travel from no later than 7:00 A.M. to no earlier than 6:00 P.M. Monday through Friday of each week, except legal holidays, and the skywalk corridors and skywalk bridges or portions thereof shall be open for such additional hours as the skywalk commission may approve in accordance with subsection 23-240(3)(a)(iv) of this code. 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.

2. 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.

3. It shall be unlawful for persons to collect, assemble or group together and after being so collected, assembled or grouped together, stand or loiter on any portion of the skywalk system to the hindrance or obstruction of free passage of any person or persons passing on or along such skywalk system.

4. 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 same, hinder or prevent persons walking along or into or out of the same or attempting or desiring to do so.

5. 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 a police officer shall be presumed to have congregated, stood, loafed or loitered in violation of subsections 3 or 4 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 subsections 3 or 4 of this section.

6. 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 or hinder any use of the skywalk system or normal activities in the adjacent buildings or properties.

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7. No person shall bring, allow or permit an animal to be in the skywalk system, except that a sight or hearing impaired person may bring a dog trained as a seeing eye or hearing dog into the skywalk system.

8. Other than wheel chairs or motorized wheel chairs 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.

9. 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.

10. 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.

11. No person shall erect any advertising or signs, other than official skywalk system signs approved by the skywalk commission, in any skywalk corridor or skywalk bridge, and 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.

12. Violation of this section shall be punishable as a simple misdemeanor.

Sec. 2. That said Code, adopted by Ordinance No. 9616, passed July 23, 1979, be further amended by repealing Sections 2-205.18 and 2-205.19 thereof and enacting new Sections 2-205.18 and 2-205.19, relating to site plan review regarding skywalks, as follows:

Sec. 2-205.18. REQUIRED INFORMATION.

Site plans which are submitted for review shall be drawn to a scale of 1" = 50' or larger and shall include as a minimum the following items of information, unless otherwise waived by the planning director:

- (1) Date of preparation, north point, and scale.
- (2) Legal description and address of the property to be developed.
- (3) Name and address of the record property owner, the applicant, and the person(s) or firm preparing the site plan.

- (4) Existing and proposed zoning.
- (5) Existing and proposed contours at an interval not to exceed two feet, provided that at least two contours shall be shown.
- (6) Existing and proposed utility lines and easements.
- (7) Certification by a licensed land surveyor that the dimensions and bearings of the property lines are accurately delineated.
- (8) Total number and types of dwelling units proposed; proposed uses for all buildings; total floor area of each building; estimated number of employees for each proposed use where applicable; and any other information which may be necessary to determine the number of off-street parking and loading spaces required by the zoning ordinance.
- (9) Location, shape, exterior dimensions, and number of stories of each existing building to be retained and of each proposed building.
- (10) All required yard setbacks.
- (11) Location, grade, and dimensions of all existing and proposed paved surfaces and of all abutting streets.
- (12) Complete traffic circulation and parking plan, showing the location and dimensions of all existing and proposed parking stalls, loading areas, entrance and exit drives, dividers, planters, and other similar permanent improvements.
- (13) Location and type of any existing and proposed signs, and of any existing or proposed lighting on the property which illuminates any part of any required yard.
- (14) Location of existing trees six inches or larger in diameter, any rock outcrops, landslide areas, springs and streams and other water bodies, and any areas subject to flooding.
- (15) Location, amount and type of any proposed landscaping, fences, walls, or other screening as required by the zoning regulations and by the design standards set forth in section 2-205.19 of this code.
- (16) A vicinity map at a scale of 1" = 500' or larger showing the general location of the property.

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- (17) Soils tests and similar information if deemed necessary by the planning director to determine the feasibility of the proposed development in relation to the design standards set forth in section 2-205.19 of this code.
- (18) (i) In the event the applicant proposes to grade, strip, excavate, fill, undertake or cause any earth change on the site, or stockpile any granular construction material in excess of 5,000 cubic yards on the site, he shall submit to the planning department an application for a grading permit, containing all of the information set forth in section 2-205.31 of this code. The planning department shall forward such application for grading permit to the engineering department who shall process same in the manner set forth in section 2-205.32 of this code.
- (ii) Such application for grading permit may be submitted at the time the information above set forth is submitted to the planning department, or at any time thereafter, but in no event shall the applicant proceed to grade, strip, excavate, fill, undertake or cause any earth change on the site, or stockpile any granular construction material in excess of 5,000 cubic yards on the site until such time as said application has been approved by the city engineer.
- (19) In the event the private property is connected to the existing skywalk system (as shown on the Official Skywalk Map) or the applicant intends to connect to the planned skywalk system (as shown on the Skywalk System Plan Map), location of the existing and planned portions of the skywalk system on such property and locations of all existing and planned skywalk system connections to neighboring property. If the private property is not connected to the existing skywalk system (as shown on the Official Skywalk Map) and the applicant does not intend to connect to the planned skywalk system (as shown on the Skywalk System Plan Map), then the applicant does not have to include provisions for the skywalk system on the site plan.

Sec. 2-205.19. DESIGN STANDARDS.

The standards of design provided herein are necessary to insure the orderly and harmonious present development of property in such manner as will safeguard the public's health, safety, and general welfare and to insure that the future

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development of property in the city will not be foreclosed by such present development.

- (1) The design of the proposed development shall make adequate provisions for surface and subsurface drainage, for connections to water and sanitary sewer lines, each so designed as to neither overload or to substantially decrease the capacity of existing public utility lines in a fashion that will serve to inhibit or preclude the planned future development of other property within the city and so as not to increase the danger of erosion, flooding, landslide, or other endangerment of adjoining or surrounding property. The city's comprehensive plan shall be the principal guide in determining the prospective use and population density of other properties. However, the factors to be considered in arriving at conclusions on standards of design shall include those set forth in section 2-205.16 (b)(2) of this code.
- (2) The proposed development shall be designed and located within the property in such manner as not to unduly diminish or impair the use and enjoyment of adjoining property, and to this end shall minimize the adverse effects on such adjoining properties from automobile headlights, illumination of required perimeter yards, refuse containers, and impairment of light and air. For purposes of this section, the term "use and enjoyment of adjoining property" shall mean the use and enjoyment presently being made of such adjoining property, unless such property is vacant. If vacant, the term "use and enjoyment of adjoining property" shall mean those uses permitted under the zoning district in which such adjoining property is located.
- (3) The proposed development shall have such entrances and exits upon adjacent streets and such internal traffic circulation pattern as will not unduly increase congestion on adjacent or surrounding public streets and in a manner which will conform to the proposed future circulation of traffic throughout the city.
- (4) To such end as may be necessary and proper to accomplish the standards in paragraphs (1), (2), and (3) above, the proposed development shall provide fences, walls, screening, landscaping, erosion control or other improvements.
- (5) All electrical, telephone, and cable television transmission systems shall be placed underground whenever reasonably practicable.

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- (6) The proposed development shall conform to all applicable provisions of the 1977 Code of Iowa, as amended, and all applicable provisions of the 1979 Des Moines Municipal Code, as amended.
- (7) In the event the private property is connected to the existing skywalk system (as shown on the Official Skywalk Map) or the applicant intends to connect to the planned skywalk system (as shown on the Skywalk System Plan Map, the proposed development shall have such connections to the existing and planned skywalk system and such internal skywalk system pattern as will best permit the optimal expansion of the skywalk system to serve the greatest number of properties possible and best provide for the expected skywalk system traffic through the property. If the private property is not connected to the existing skywalk system (as shown on the Official Skywalk Map) and the applicant does not intend to connect to the planned skywalk system (as shown on the Skywalk System Plan Map), then this design standard shall not apply to the proposed site plan.

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Sec. 3. That said Code, adopted by Ordinance No. 9616, passed July 23, 1979, be further amended by adding a new subsection (c) to section 8-2.01 thereof and by adding thereto a new section to be known as Section 8-11, amending the Building Code to permit skywalks, as follows:

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Sec. 8-2.01. EXCEPTIONS.

(c) Notwithstanding the provision of section 4502 of this code, the structures of a duly authorized portion of the public skywalk system may project into an alley to the extent authorized by the city council pursuant to the Skywalk Ordinance.

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Sec. 8-11. NO BUILDING PERMIT UNTIL SKYWALK EASEMENT.

Where a skywalk corridor is shown on an approved site plan for a proposed development, no building permit shall be issued for that proposed development until the city council has accepted a right to an easement for such skywalk corridor.

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Sec. 4. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

Passed June 23, 1980
Signed June 23, 1980

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Here approved

R. Michael Hayes
R. Michael Hayes
City Solicitor
(Intergovernmental Programs)

Pete Crivaro, Mayor

Attest: Helen W. Barlow, City Clerk

I, Helen W. Barlow, City Clerk of the City of Des Moines, Iowa, do hereby certify that the above and foregoing is a true and correct copy of an ordinance passed by the City Council of said City at a meeting held June 23, 1980, signed by the Mayor June 23, 1980 and published in the Iowa Bystander July 3, 1980.

Helen W. Barlow, City Clerk

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ORDINANCE NO. 9854

AN ORDINANCE to amend the Municipal Code of Des Moines 1979, as amended by Ordinance No. 9781, passed June 23, 1980, by repealing subsection (5) of Section 23-242, repealing Section 23-243 and subsection (11) of Section 23-244 thereof and enacting a new subsection (5) of Section 23-242, a new Section 23-243, and a new subsection (11) of Section 23-244, all relating to the development of a public skywalk system in downtown Des Moines.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of Des Moines 1979, as amended by Ordinance No. 9781, passed June 23, 1980, be and is hereby amended by repealing subsection (5) of Section 23-242, repealing Section 23-243 and subsection (11) of Section 23-244 thereof and enacting a new subsection (5) of Section 23-242, a new Section 23-243 and a new subsection (11) of Section 23-244, all relating to the development of a public skywalk system in downtown Des Moines, as follows:

Sec. 23-242. THE CITY'S RESPONSIBILITY.

5. 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.

Sec. 23-243. OBLIGATIONS OF THE PRIVATE PROPERTY INTERESTS.

1. In addition to granting the easements required by section 23-241 of this Code, the owners of any private property interest traversed by the skywalk system and the skywalk-level tenants of such property (hereinafter "the private property interests") and their successors or assigns:

(a) 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 skywalk commission, 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.

(b) 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 Ordinance.

(c) In the event that 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 (3) years, unless the city council for good cause shown extends said three (3) 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 23-240(3)(b) of this code.

(d) 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 commission. In the event that 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.

(e) May enhance, to the extent they choose, a nodal area dedicated to the city by erection of sculpture, art work, plantings or other amenities as approved by the skywalk commission.

(f) 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.

(g) Shall be entirely responsible for any additional construction or costs necessary to provide security or separation between the skywalk system and the private property.

2. The obligation of a private property interest shall cease if it transfers its interest to another who assumes its obligation under the skywalk ordinance. 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 thirty (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 (2) years written notice to the city council, which notice may be given at any time after twenty-eight (28) years from the date of such skywalk agreement; provided, however:

(a) that if the City makes significant capital repairs or replacements to a skywalk bridge abutting on such private property interests' property on or before fifteen (15) years from the date of their skywalk agreement, then they cannot so terminate their skywalk agreement until twenty-five (25) years after completion of such significant capital repairs and replacements or thirty (30) years from the date of their skywalk agreement, whichever is later; provided that in such event the prior written notice referred to above in this subsection 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 their skywalk agreement, whichever is later; and

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

Sec. 23-244. SKYWALK SYSTEM DEVELOPMENT CRITERIA.

11. Those skywalk bridges, skywalk corridors and vertical access facilities which are designated by city council as fire exits or paths to fire exits must be open in accordance with the applicable fire ordinances of the City of Des Moines, as

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Ordinance No. 9854 cont'd.

the same 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.

Sec. 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

Passed October 27, 1980
Signed October 27, 1980

Form approved:

R. Michael Hayes
R. Michael Hayes
City Solicitor
(Intergovernmental Programs)

Elaine Szymoniak
Mayor Pro Tempore

Attest: Helen W. Barlow, City Clerk

I, Helen W. Barlow, City Clerk of the City of Des Moines, Iowa, do hereby certify that the above and foregoing is a true and correct copy of an ordinance passed by the City Council of said City at a meeting held October 27, 1980, signed by the Mayor Pro Tempore October 27, 1980 and published in the Iowa Bystander November 13, 1980.

Helen W. Barlow, City Clerk

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AN ORDINANCE to amend the Municipal Code of Des Moines 1979, as amended by Ordinance No. 9781, passed June 23, 1980, and as further amended by Ordinance No. 9854, passed October 27, 1980, by repealing subsection (6) of Section 23-244 thereof and enacting a new subsection (6) of Section 23-244, all relating to the development of a public skywalk system in downtown Des Moines.

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Be It Ordained by the City Council of the City of Des Moines, Iowa;

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Section 1. That the Municipal Code of Des Moines 1979, as amended by Ordinance No. 9781, and as further amended by Ordinance No. 9854, passed October 27, 1980, be and is hereby amended by repealing subsection (6) of Section 23-244 thereof and enacting a new subsection (6) of Section 23-244, all relating to the development of a public skywalk system in downtown Des Moines, as follows:

SECTION 23-244 SKYWALK SYSTEM DEVELOPMENT CRITERIA

6. Skywalk corridors shall conform to the following minimum design standards:

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(a) Width: Skywalk corridors shall have a minimum width of ~~fourteen~~ (14) feet free and clear of any obstructions or intrusions, except in the following circumstances, the lesser widths specified may be allowed:

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(i) Where a column, pipe or other integral structural feature or member of an existing building will intrude into a skywalk corridor, then such corridor and the easement therefor shall be for that narrower width, for the minimum distance which is necessary to prevent such intrusion;

City Clerk

(ii) Where the easement for a skywalk corridor is in a building corridor already constructed as of July 3, 1980, then such skywalk corridor shall have a minimum width of twelve (12) feet free and clear of any obstructions or intrusions;

(iii) The city council in its discretion may accept a right to an easement for a skywalk corridor fourteen (14) feet in width, and may restrict the actual width of the easement for a skywalk corridor to no less than twelve (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, chain link 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:

- (A) such physical barrier or obstruction comprises no more than forty (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;
- (B) 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 fourteen (14) foot right to an easement area but without the twelve (12) foot easement on the open side, so long as no such obstruction shall be placed or stood within the fourteen (14) foot right to an easement width which exceeds thirty-six (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, then such intrusion shall be limited to a total of two (2) 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 said corridor shall be uniform for the length of such corridor through said 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 hereinabove.

- (b) Height: Skywalk corridors shall have a minimum height of nine (9) 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.
- (c) 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.
- (d) 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

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BOOK 5276 PAGE 397

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.

(a) 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 Farenheit at all times.

Sec. 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

Passed February 16, 1981
Signed February 16, 1981

Pete Crivaro, Mayor

Form Approved:

R. Michael Hayes
City Solicitor
Intergovernmental Programs

Attest: Helen W. Barlow, City Clerk

I, Helen W. Barlow, City Clerk of the City of Des Moines, Iowa do hereby certify that the above and foregoing is a true and correct copy of an ordinance (RC 822) passed by the City Council of said City at a meeting held February 16, 1981, signed by the Mayor February 16, 1981 and published in the Iowa Bystander February 26, 1981.

Helen W. Barlow, City Clerk

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AN ORDINANCE to amend the Municipal Code of Des Moines 1979, as amended by Ordinance No. 9900, passed February 16, 1981, by repealing subsection (5) of Section 23-244 thereof and enacting a new subsection (5) of Section 23-244, relating to skywalk system development criteria.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

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Section 1. That the Municipal Code of Des Moines 1979, as amended by Ordinance No. 9900, passed February 16, 1981, be and is hereby amended by repealing subsection (5) of Section 23-244 thereof and enacting a new subsection (5) of Section 23-244, relating to skywalk system development criteria, as follows:

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Sec. 23-244. SKYWALK SYSTEM DEVELOPMENT CRITERIA.

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5. The skywalk system shall be maintained free of all obstructions, except that sculpture, plantings, supports for public announcements or art works, or other amenities, as approved by the skywalk commission, may be erected in those portions of the nodal areas, skywalk corridors or skywalk bridges which exceed fourteen (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.

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Sec. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

Form approved

R. Michael Hayes
City Solicitor
Intergovernmental Programs

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Pete Crivaro, Mayor

Attest: Helen W. Barlow, City Clerk

I, Helen W. Barlow, City Clerk of the City of Des Moines, Iowa, do hereby certify that the above and foregoing is a true and correct copy of an ordinance (Roll Call No. 3984) passed by the City Council of said City at a meeting held August 3, 1981, signed by the Mayor August 3, 1981 and published in the Iowa S bystander August 13, 1981.

Helen W. Barlow, City Clerk

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EXHIBIT G

Ordinance

ORDINANCE NO. 10,031

AN ORDINANCE to amend Subchapter 16 of Chapter 23 (the Skywalk Ordinance) of the Municipal Code of Des Moines 1979, as amended by Ordinance No. 9781, passed June 23, 1980, Ordinance No. 9854, passed October 27, 1980, Ordinance No. 9900, passed February 16, 1981 and Ordinance No. 9982, passed August 3, 1981, by repealing subsection (3) of Section 23-240 and subsections (6) and (9) of Section 23-244 thereof and enacting a new subsection (3) of Section 23-240 and new subsections (6) and (9) of Section 23-244, relating to decision powers of the Skywalk Commission and the clearance of the skywalk system over alleys.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That Subchapter 16 of Chapter 23 of the Municipal Code of Des Moines 1979, as amended by Ordinance No. 9781, passed June 23, 1980, Ordinance No. 9854, passed October 27, 1980, Ordinance No. 9900, passed February 16, 1981 and Ordinance No. 9982, passed August 3, 1981, be and is hereby amended by repealing subsection (3) of Section 23-240 and subsections (6) and (9) of Section 23-244 thereof and enacting a new subsection (3) of Section 23-240 and new subsections (6) and (9) of Section 23-244, relating to decision powers of the skywalk Commission and the clearance of the skywalk system over alleys, as follows:

Sec. 23-240. SKYWALK COMMISSION.

3. Decision powers.

(a) Duties. The skywalk commission shall:

- (i) Establish minimum standards for operation, maintenance and repair of the skywalk system. "Operation" shall include heating, cooling, lighting, cleaning and providing security for the skywalk system;
- (ii) Establish the policy and approve the design for the skywalk logo, skywalk maps and route directories, skywalk directional signs and skywalk building identification signs;
- (iii) Approve erection of sculpture, plantings, or supports for public announcements or art work or other amenities in any part of a nodal area on a public easement the dimensions of which exceed the minimum skywalk corridor dimensions;
- (iv) 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 ordinance. A request to so change the hours a portion of the skywalk system is open signed by all private property interest on the portion of the skywalk system affected by the change shall

BOOK 5276 PAGE 400

be deemed granted upon notice to the skywalk commission. 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 commission with an executed agreement providing for payment of all operation and repair costs on that portion of 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 subject to condition or disapprove a proposed change in hours within 15 days of the date such request is filed with the skywalk commission, the proposed change shall be deemed approved.

- (v) 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 ordinance. Any private property interest may submit plans for the construction or other provision of a skywalk corridor to the skywalk commission for determination as to whether or not such plans conform to such minimum design standards.
- (vi) Approve, or approve with such reasonable conditions as the skywalk commission 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 skywalk commission may grant such variance only when it is satisfied under the evidence before it that:
- (A) by reason of exceptional topographical conditions or other extraordinary or exceptional circumstances, the strict application of the terms of this ordinance actually prohibits connection of a property to the skywalk system in a manner reasonably similar to that of other property in the skywalk district; and

BOOK 5276 PAGE 401

- (B) 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
- (C) the requested variation shall be in harmony with the intended spirit and purpose of this skywalk ordinance,

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 thirteen (13) feet eight (8) inches over the highest point of the surface of such alley. 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.

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 (10) days prior to the date of the public hearing by publication once in a newspaper of general circulation in the city of Des Moines, Iowa, 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 plus the actual costs of notice of the public hearing.

Within ten (10) days after the date the skywalk commission 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 commission 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 (10) days' notice given in the same manner as for the original hearing before the skywalk commission. 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 commission.

(b) Arbitration.

- (i) Any person aggrieved by a decision of the skywalk commission made under a decision power granted it in subparagraphs (a)(i)-(v) of this subsection may request binding arbitration by a written request filed with the secretary of the skywalk commission within ten (10) days after receipt of the

decision. Thereafter, within five (5) days, the skywalk commission and the party requesting arbitration shall each appoint one arbitrator. Within five (5) 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 (10) 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 commission. If the majority of the arbitration panel does not render its written decision and reasons within ten (10) days of its hearing, the decision of the skywalk commission 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.

- (ii) 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 commission to the same extent that any other person can.

23-244. SKYWALK SYSTEM DEVELOPMENT CRITERIA.

6. Skywalk corridors shall conform to the following minimum design standards:

- (a) Width: Skywalk corridors shall have a minimum width of fourteen (14) feet free and clear of any obstructions or intrusions, except in the following circumstances, the lesser widths specified may be allowed:
 - (i) Where a column, pipe or other integral structural feature or member of an existing building will intrude into a skywalk corridor, then such corridor and the easement therefor shall be for that narrower width, for the minimum distance which is necessary to prevent such intrusion;
 - (ii) Where the easement for a skywalk corridor is in a building corridor already constructed as of July 3, 1980, then such skywalk corridor shall have a minimum width of twelve (12) feet free and clear of any obstructions or intrusions;

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(iii) The city council in its discretion may accept a right to an easement for a skywalk corridor fourteen (14) feet in width, and may restrict the actual width of the easement for a skywalk corridor to no less than twelve (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, chain link 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:

- (A) such physical barrier or obstruction comprises no more than forty (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;
- (B) 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 fourteen (14) foot right to an easement area but without the twelve (12) foot easement on the open side, so long as no such obstruction shall be placed or stood within the fourteen (14) foot right to an easement width which exceeds thirty-six (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, then such intrusion shall be limited to a total of two (2) 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 said corridor shall be uniform for the length of such corridor through said 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 hereinabove.

- (b) Height: Skywalk corridors shall have a minimum height of nine (9) 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.

- (c) 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.
- (d) 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.
- (e) 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.
- (f) Minimum clearance over alleys. Any skywalk corridor constructed over an alley shall have a minimum clearance over the surface of the alley of fourteen (14) feet six (6) inches (unless a variance is granted in accordance with subsection 23-240(3)(a)(vi) of this code which permits a lower minimum clearance over an alley).

23-244. SKYWALK SYSTEM DEVELOPMENT CRITERIA.

9. Skywalk bridges shall have a minimum width of fourteen (14) feet and a minimum height of nine (9) feet, both free and clear of any obstructions or intrusions, shall have a minimum clearance over the traveled portion of streets of sixteen (16) feet six (6) inches and over the surface of alleys of fourteen (14) feet six (6) inches (unless a variance is granted in accordance with subsection 23-240(3)(a)(vi) of this code 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, except that if the city council determines to incorporate into the skywalk system any skywalk bridges existing as of the effective date of this ordinance, such bridges need not meet the minimum standards of this subsection.

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Ordinance No. 10,013 cont'd.

Sec. 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

Order Approved

P. Michael Hayes
P. Michael Hayes
City Administrator
Intergovernmental Programs

Passed October 26, 1981
Signed October 26, 1981

Pete Crivaro, Mayor

Attest: Helen W. Barlow, City Clerk

Helen W. Barlow, City Clerk of the City of Des Moines, Iowa, do hereby certify that the above and foregoing is a true and correct copy of an ordinance (Roll Call No. 5457) passed by the City Council of said City at a meeting held October 26, 1981, signed by the Mayor October 26, 1981 and published in the Iowa Bystander November 5, 1981.

Helen W. Barlow, City Clerk

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EXHIBIT G
ORDINANCE NO. 10,043

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AN ORDINANCE to amend Subchapter 16 of Chapter 23 (the Skywalk Ordinance) of the Municipal Code of Des Moines 1979, as amended by Ordinance No. 9781, passed June 23, 1980, by repealing Section 23-235 thereof and enacting a new Section 23-238, relating to Skywalk District and Skywalk Map.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That Subchapter 16 of Chapter 23 (the Skywalk Ordinance) of the Municipal Code of Des Moines 1979, as amended by Ordinance No. 9781, passed June 23, 1980, be and is hereby amended by repealing Section 23-238 thereof and enacting a new Section 23-238, relating to Skywalk District and Skywalk Map, as follows:

Sec. 23-238. SKYWALK DISTRICT AND SKYWALK MAP.

The "Skywalk District" is the area enclosed by and including the right-of-way of the following streets:

Third Street from Keosauqua Avenue to Court Avenue; Court Avenue from Third Street to Fifth Avenue; Fifth Avenue from Court Avenue to Cherry Street; Cherry Street from Fifth Avenue to Ninth Street; Ninth Street from Cherry Street to High Street; High Street from Ninth Street to Eighth Street; Eighth Street from High Street to Keosauqua Avenue; Keosauqua Avenue from Eighth Street to Third Street.

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:

- (a) by paying the cost of connection, and
- (b) if the skywalk corridor is in or over an alley
 - (i) 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, and

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(ii) 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 (iii) below, and

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(iii) 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. Provided, however, if 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 (1) the City enters a skywalk agreement which requires present construction of such alley skywalk corridor and (2) 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.

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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.

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The exact location of existing portions of the skywalk system shall be shown on the Official Skywalk Map.

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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.

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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 that document is the map referred to in this section.

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.

If in accordance with the provisions of this ordinance changes are made in the skywalk system or other matters portrayed on the Skywalk System Plan Map or on the Official Skywalk Map, then 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.

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.

Sec. 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

Form approved

R. Michael Hayes
R. Michael Hayes
City Solicitor
Intergovernmental Programs

Pete Crivaro, Mayor

Attest: Helen W. Barlow, City Clerk

I, Helen W. Barlow City Clerk of the City of Des Moines, Iowa, do hereby certify that the above and foregoing is a true and correct copy of an ordinance (Roll Call No. 6002) passed by the City Council of said City at a meeting held December 7, 1981, signed by the Mayor December 7, 1981 and published in the Iowa Bystander December 17, 1981.

Helen W. Barlow, City Clerk

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ORDINANCE NO. 10,052

AN ORDINANCE to amend Subchapter 16 of Chapter 23 (the Skywalk Ordinance) of the Municipal Code of Des Moines 1979, amended by Ordinance No. 9781, passed June 23, 1980, Ordinance No. 9854, passed October 27, 1981, Ordinance No. 9900, passed February 16, 1981, Ordinance No. 9982, passed August 3, 1981 and Ordinance No. 10,031, passed October 26, 1981, by repealing subsection 1 of Section 23-244 thereof and enacting a new subsection 1 of Section 23-244, relating to skywalk system development criteria.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That Subchapter 16 of Chapter 23 (the Skywalk Ordinance) of the Municipal Code of Des Moines 1979, as amended by Ordinance No. 9781, passed June 23, 1980, Ordinance No. 9854, passed October 27, 1981, Ordinance No. 9900, passed February 16, 1981, Ordinance No. 9982, passed August 3, 1981 and Ordinance No. 10,031, passed October 26, 1981, be and is hereby amended by repealing subsection 1 of Section 23-244 thereof and enacting a new subsection 1 of Section 23-244, relating to skywalk system development criteria, as follows:

Sec. 23-244. SKYWALK SYSTEM DEVELOPMENT CRITERIA.

1. There shall be at most one skywalk bridge per block constructed in a block face if (i) at least one of the blocks to be connected by such skywalk bridge has at least 1500 persons regularly employed or residing within such block; and (ii) 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, and (iii) such skywalk bridge shall be connected to a skywalk corridor which is shown on the Skywalk System Plan Map; and (iv) that there shall be a vertical access facility accessible from such skywalk bridge in each block connected by such skywalk bridge.

Sec. 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

Passed January 4, 1982
Signed January 4, 1982

Form approved

R. Michael Hayes
City Solicitor
Intergovernmental Programs

Pete Crivaro, Mayor

Attest: Helen W. Barlow, City Clerk

I, Helen W. Barlow City Clerk of the City of Des Moines, Iowa, do hereby certify that the above and foregoing is a true and correct copy of an ordinance (Roll Call No. 73) passed by the City Council of said City at a meeting held January 4, 1982, signed by the Mayor January 4, 1982, and published in the Iowa Bystander January 14, 1982.

Helen W. Barlow, City Clerk

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AN ORDINANCE to amend the Municipal Code of Des Moines 1979, as amended by Ordinance No. 9854, passed October 27, 1980 and Ordinance No. 10,031, passed October 26, 1981, by repealing subsection (3) of Section 23-240 and subsection (1) of Section 23-243 thereof and enacting a new subsection (3) of Section 23-240 and a new subsection (1) of Section 23-243, relating to skywalks.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of Des Moines 1979, as amended by Ordinance No. 10,031, passed October 26, 1981, be and is hereby amended by repealing subsection (3) of Section 23-240 thereof and enacting a new subsection (3) of Section 23-240, relating to the Skywalk Commission, as follows:

Sec. 23-240. SKYWALK COMMISSION.

3. Decision powers.

(a) Duties. The skywalk commission shall:

- (i) Establish minimum standards for operation, maintenance and repair of the skywalk system. "Operation" shall include heating, cooling, lighting, cleaning and providing surveillance for the skywalk system.
- (ii) Establish the policy and approve the design for the skywalk logo, skywalk maps and route directories, skywalk directional signs and skywalk building identification signs;
- (iii) Approve erection of sculpture, plantings, or supports for public announcements or art work or other amenities in any part of a nodal area on a public easement the dimensions of which exceed the minimum skywalk corridor dimensions;
- (iv) 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 ordinance. 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 commission. 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 commission with an executed agreement providing for

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payment of all operation and repair costs on that portion of 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 subject to condition or disapprove a proposed change in hours within 15 days of the date such request is filed with the skywalk commission, the proposed change shall be deemed approved.

- (v) 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 ordinance. Any private property interest may submit plans for the construction or other provision of a skywalk corridor to the skywalk commission for determination as to whether or not such plans conform to such minimum design standards.
- (vi) Approve, or approve with such reasonable conditions as the skywalk commission 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 skywalk commission may grant such variance only when it is satisfied under the evidence before it that:
- (A) by reason of exceptional topographical conditions or other extraordinary or exceptional circumstances, the strict application of the terms of this ordinance actually prohibits connection of a property to the skywalk system in a manner reasonably similar to that of other property in the skywalk district; and
 - (B) 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
 - (C) the requested variation shall be in harmony with the intended spirit and purpose of this skywalk ordinance,

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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 thirteen (13) feet eight (8) inches over the highest point of the surface of such alley. 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.

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 (10) days prior to the date of the public hearing by publication once in a newspaper of general circulation in the city of Des Moines, Iowa, 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 plus the actual costs of notice of the public hearing.

Within ten (10) days after the date the skywalk commission 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 commission 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 (10) days' notice given in the same manner as for the original hearing before the skywalk commission. 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 commission.

(b) Arbitration.

- (1) Any person aggrieved by a decision of the skywalk commission made under a decision power granted it in subparagraphs (a)(i)-(v) of this subsection may request binding arbitration by a written request filed with the secretary of the skywalk commission within ten (10) days after receipt of the decision. Thereafter, within five (5) days, the skywalk commission and the party requesting arbitration shall each appoint one arbitrator. Within five (5) days of their mutual appointment, those two arbitrators shall select a third arbitrator who

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shall chair the arbitration panel. The arbitration panel shall schedule a public hearing within ten (10) 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 commission. If the majority of the arbitration panel does not render its written decision and reasons within ten (10) days of its hearing, the decision of the skywalk commission 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.

- (ii) 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 commission to the same extent that any other person can.

Sec. 2. That said Code, as amended by Ordinance No. 9854, passed October 7, 1980, be further amended by repealing subsection (1) of Section 23-243 thereof and enacting a new subsection (1) of Section 23-243, relating to obligations of the private property interests, as follows:

Sec. 23-243. OBLIGATIONS OF THE PRIVATE PROPERTY INTERESTS.

1. In addition to granting the easements required by section 23-241 of this code, the owners of any private property interest traversed by the skywalk system and the skywalk-level tenants of such property (hereinafter "the private property interests") and their successors or assigns:

- (a) 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 skywalk commission, 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.

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(b) 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 subchapter.

(c) In the event that 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 (3) years, unless the city council for good cause shown extends said three (3) 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 23-240(3)(b) of this code.

(d) 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 commission. In the event that 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.

(e) 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 commission. If as a result of such surveillance, or otherwise, a private property interest has knowledge of a violation of law, such private property interest,

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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 only 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. In the event that 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 the private property upon reasonable notice and hearing before the city council.

- (f) May enhance, to the extent they choose, a nodal area dedicated to the city by erection of sculpture, art work, plantings or other amenities as approved by the skywalk commission.
- (g) 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.
- (h) Shall be entirely responsible for any additional construction or costs necessary to provide security or separation between the skywalk system and the private property.

Sec. 3. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

Passed November 15, 1982
Signed November 15, 1982

Form approved

R. Michael Hayes
City Solicitor
Intergovernmental Programs

Pete Crivaro, Mayor

Attest: Ben R. Lehman, Temporary City Clerk

I, Ben R. Lehman, Temporary City Clerk of the City of Des Moines, Iowa, do hereby certify that the above and foregoing is a true and correct copy of an ordinance (Roll Call 5323) passed by the City Council of said City at a meeting held November 13, 1982, signed by Mayor November 15, 1982, and published in the Iowa Bystander, November 25, 1982.

Ben R. Lehman
Temporary City Clerk

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EXHIBIT H-1

LEASE AGREEMENT

THIS LEASE, made and entered into this 23rd day of July, 1983, by and between the CITY OF DES MOINES, IOWA, a municipal corporation (hereinafter referred to as "Lessor") and EQUITABLE LIFE INSURANCE COMPANY OF IOWA, an Iowa corporation (hereinafter referred to as "Lessee"), witnesseth:

WHEREAS, Lessor owns the vacated second floor Air Space over the portion of east-west alley adjacent to Lot 7 subject to an option to purchase such air spaces set forth in an Option Agreement dated January 17, 1983 and recorded in Book _____, Page _____ in the records of the County Recorder of Polk County Iowa which option has been subordinated to this Lease Agreement and is attached hereto as Exhibit 1 to this Lease Agreement, and the whole of the portion of north-south alley adjacent to Lots 7 and 8, all in Block 12, Original Town of Fort Des Moines (the block bounded by Locust Street, Seventh Street, Walnut Street and Sixth Avenue), now included in and forming a part of the City of Des Moines, Polk County, Iowa; and

WHEREAS, Lessee owns that property legally described as:

Lots 7 and 8, Block 12, Original Town of Fort Des Moines, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa (hereinafter called the "Property"); and

WHEREAS, Lessee agreed in a Skywalk Agreement of even date by and between Lessor and Lessee (hereinafter referred to as the "Skywalk Agreement", filed of record in the Office of the Recorder of Polk County, Iowa in Book 5276, beginning at Page 398, the defined terms of which are incorporated herein by this reference) to construct a structure enclosing Skywalk Corridor easement areas one (1) and two (2) on Exhibit 1 to Lessee's grant of Limited Skywalk Easements, which is Exhibit D-1 to said Skywalk Agreement (hereinafter referred to as "Limited Skywalk Easements", filed of record in the Office of the Recorder of Polk County, Iowa in Book 5276, beginning at Page 358); and

WHEREAS, Lessor agreed in said Skywalk Agreement to lease Lessee these air spaces in which Lessee shall construct said Skywalk Corridors; and

WHEREAS, this Lease Agreement is to be identified as Exhibit H-1 to said Skywalk Agreement;

NOW, THEREFORE, in furtherance of said Skywalk Agreement, and in consideration of each party undertaking its respective obligations under said Skywalk Agreement, Limited Skywalk Easements and this Lease Agreement, Lessor and Lessee agree as follows, to-wit:

1. PREMISES.

Lessor leases to Lessee and Lessee leases from Lessor the following described Air Spaces:

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Air Space 1

Air Space 1 is all of the Air Space which is located above the portion of north-south alley lying west of and adjacent to Lots 7 and 8, Block 12, Original Town of Fort Des Moines, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa, and which is located between a plane with an elevation of 13.75 feet above the existing alley surface and a plane 40 feet above such existing alley surface.

Air Space 2

Air Space 2 is all of the Air Space which is located above the portion of east-west alley lying south of and adjacent to Lot 7, Block 12, Original Town of Fort Des Moines, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa, and which is located between a plane with an elevation of 14.5 feet above the existing alley surface and a plane 41 feet above such existing alley surface.

2. USE OF PREMISES.

(a) Physical construction. Air Space 1 is to be used by Lessee for the sole purpose of construction of a Skywalk Corridor at the second-story level over said north-south alley, which Skywalk Corridor encloses Easement 1 of Lessee's Limited Skywalk Easements and which Skywalk Corridor shall be provided in accordance with said Limited Skywalk Easements and Skywalk Agreement. This Skywalk Corridor shall be constructed substantially in accordance with the final plans and specifications approved in writing by the City Manager of Lessor.

Air Space 2 is to be used by Lessee for the sole purpose of construction of a Skywalk Corridor at the second-story level over said east-west alley, which Skywalk Corridor encloses Easement 2, and which Skywalk Corridor shall be provided in accordance with said Limited Skywalk Easements and Skywalk Agreement. This Skywalk Corridor shall be constructed substantially in accordance with final plans and specifications approved in writing by the City Manager of Lessor.

No construction shall commence prior to such approval by said City Manager. All modifications to such plans and specifications must also be approved by said City Manager.

(b) Alley clearance. The Skywalk Corridor over Air Space 1 shall have a minimum clearance of thirteen feet eight inches (13' 8") over the existing surface of said alley. The Skywalk Corridor over Air Space 2 shall have a minimum clearance of fourteen feet six inches (14' 6") over the existing surface of said alley.

(c) SUPPORTS. The Skywalk Corridor over Air Space 1 shall be supported by a system of caissons, grade beams, column piers and columns as depicted and located on Exhibits S1 and S3 to this Lease Agreement.

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The Skywalk Corridor over Air Space 2 shall be supported on its north side by attachment to the existing improvements located on the Property, which improvements are owned by Lessee, and shall be supported on its south side by supports located on the south one and one-half feet of said east-west alley and Lessor hereby grants the right to Lessee to erect such supports.

In the event Lessee exercises the option to buy the Air Space contained in Section 3 of this Lease Agreement, Lessor also shall convey by Quit Claim Deed all its right, title and interest to the Skywalk Corridor in said Air Space without any additional consideration beyond the then fair market value of said Air Space for conveyance of said Skywalk Corridor.

3. TERM.

The term of this Lease shall be equal to the duration of said Skywalk Agreement as to Lessee, but in any case, not longer than forty (40) years from the date of this Lease; provided, however, in the event a Skywalk Corridor which has been built or is to be built in Air Space 1 or in a part or all of Air Space 2 is located or relocated into a building on either side of said north-south or east-west alley and any structure which had already been erected in said Air Space to provide said Skywalk Corridor is removed, then this Lease shall terminate as to said Air Space or portion of Air Space upon the completion of such Skywalk Corridor located outside such Air Space and also as to space allocated to the support systems hereinabove described.

4. CONSIDERATION.

As consideration for use of this Air Space, Lessee shall construct, operate, maintain and repair a Skywalk Corridor within this Air Space in accordance with the terms of Lessee's Limited Skywalk Basements and said Skywalk Agreement. Lessee shall not be obligated, in addition, to pay any amount as rental for use of this Air Space.

5. OPTION TO BUY; REMOVAL OF IMPROVEMENTS.

At the termination of this Lease, Lessee shall have the right to buy any of such Air Spaces as are then occupied by Skywalk Corridor at the then fair market value of such Air Space. Lessee must exercise this option to buy by giving Lessor notice thereof on or before the sixtieth (60) day prior to termination of this Lease with respect to the Air Space. Lessor shall convey to Lessee title to such Air Space by quit claim deed.

The "then fair market value" of the Air Space shall be the fair market value of such Air Space, but shall not include the value of the Skywalk Corridors in such Air Space determined at the time of the proposed conveyance by a MAI appraiser mutually agreeable to Lessor and Lessee; or, in the event the Lessor and Lessee cannot mutually agree upon the appointment of a single appraiser within ten (10) days of the date Lessee gives written notice of its exercise of the option, each shall appoint one MAI appraiser within five (5) days and these appraisers shall appoint the third MAI appraiser within an additional five (5) days. The appraiser or panel of appraisers shall render a written appraisal of such fair market value to the Lessor and Lessee within twenty-five (25) days of appointment. Such written appraisal

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shall be delivered to Lessor and Lessee by registered or certified mail, receipt return requested, addressed as each designates at the time of appointment of the appraiser or appraisers. The Lessor and Lessee shall share equally in the fees and expenses of the appraiser or appraisers.

In the event either party is dissatisfied with the written appraisal, such party may within twenty (20) days thereafter and in any case prior to the conveyance of title, bring an action in the Iowa District Court in Polk County, Iowa, for a declaratory judgment as to the then fair market value of the Air Space at the time of sale. The date for conveyance of title to the Air Space shall be postponed until after final resolution of such declaratory judgment action.

Lessee shall have the right to rescind its election to exercise its option to buy such Air Space if Lessee shall so notify Lessor in writing within twenty (20) days from the date of the determination of the appraiser or appraisers (as the case may be) or, if an action is brought in the Iowa District Court in Polk County, Iowa, then at any time prior to twenty (20) days after the date of the final ruling in any such declaratory judgment action (or in any appeal thereof).

In the event Lessee does not exercise this option to buy or in the event Lessee rescinds its option to buy as provided above, then Lessee shall remove all improvements from said Air Space within four (4) months of the termination of this Lease.

6. CONSTRUCTION AND MAINTENANCE EASEMENTS.

During construction of the Skywalk Corridors in any of these Air Spaces, Lessee shall have the right to close off so much of the alley underneath such Air Space and to use such alley areas as may be necessary to enable it to complete such construction. Thereafter, Lessee shall have the right to use such alley beneath this Air Space as may be reasonably necessary from time to time to maintain or repair the structure in the Air Space. Whenever Lessee needs to use this easement for construction, maintenance or repair of the structure erected such Air Spaces, it shall make application for an obstruction permit under the applicable ordinances of Lessor; provided, however, Lessee shall not be required to pay any fee for such obstruction permit.

7. PERMITTED ENCUMBRANCES; TAXES.

(a) Lessee shall have the right to grant a mortgage on any structure to be located in the Air Space and to assign its rights under this Lease Agreement to any such mortgagee for mortgage purposes for a period not to exceed the term hereof, but Lessee shall not otherwise be entitled to encumber the leasehold created herein.

(b) Lessee shall pay any and all taxes and special assessments against such leasehold area or the improvements therein as the same may become due; provided, however, that at Lessee's request, Lessor shall join in any request to any governmental body that the portion of the Air Space occupied by choate Skywalk Corridor, and improvements thereon, be free from taxation.

8. ASSIGNMENT.

It is the intent of the parties to this Lease Agreement that the rights and obligations of this Lease Agreement run with the ownership

of the Property for the duration of this Lease Agreement. Therefore, Lessee cannot assign its interest in this Lease Agreement to, and such assignment must be accepted by, any person to whom it transfers its interest in the entirety of the Property, and this lease agreement shall be binding on any successor to Lessee's interest in the Property; provided, however, Lessee shall not be relieved of its obligations under this Lease Agreement unless it also assigns the Skywalk Agreement and the person who acquires the Property accepts such assignment of the Skywalk Agreement and this Lease Agreement in writing and a copy of such written acceptance is served on Lessor.

Lessee may grant a mortgage on the structure to be located in the Air Space or may grant a mortgage on the Property; provided that such mortgage shall be expressly subordinate to this Lease Agreement.

9. WARRANTY; HOLD HARMLESS.

(a) Lessee shall furnish and maintain comprehensive broad form general liability insurance coverage of the leased premises with a duly licensed insurance company in an amount of at least \$1,000,000 for each occurrence for personal injuries including death and at least \$1,000,000 for each occurrence for property damage and such insurance shall name the City, its agents, officers and employees as additional insureds. The Lessee shall submit to the Lessor evidence of this insurance on or before the effective date of this Agreement and on or before any renewal date for such insurance. The insurance policy shall provide that it cannot be cancelled or terminated until at least thirty (30) days' prior written notice of such event has been received by the City.

(b) Lessee, agrees to defend, indemnify and hold harmless Lessor, its agents, officers and employees, from and against all liability for injuries to persons or damage to the property caused by Lessee's use or occupancy of the leased premises, except for those acts of negligence of Lessor, its agents, officers and employees while acting in their official capacity which cause said injury to persons or damage to property.

(c) Lessee, to the extent permitted by law, agrees to defend, indemnify and hold harmless Lessor from any claims against Lessor for loss of access, air, light or view which result from the construction of or the proposed construction of any Skywalk Corridor in either Air Space.

(d) The obligations of Subsections 9(a) and (b) above shall continue until all Air Spaces on which Skywalk Corridors have been erected either have been conveyed to Lessee or such Skywalk erected in such Air Spaces have been removed.

IN WITNESS WHEREOF, the parties to this Lease Agreement have hereunto set their hands on this day and year first above written.

LESSOR - CITY OF DES MOINES, IOWA

By Pete Crivaro
Pete Crivaro, Mayor

[Signature]
City Clerk

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Attest

[Signature]
Luther L
Executive

STATE OF

COUNTY OF

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of said
Des Moines

STATE OF

COUNTY OF

On
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Chairman
the EQUIP
foregoing
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JAMES W.
acknowled
and deed

LESSEE - EQUITABLE LIFE INSURANCE COMPANY OF IOWA

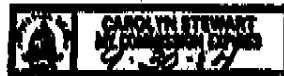
By James W. Hubbell, Jr.
Chairman of the Board

Attest:

Luther L. Hill, Jr.
Luther L. Hill, Jr.
Executive Vice President

STATE OF IOWA)
) SS:
COUNTY OF POLK)

On this 1st day of August, 1983, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared PETE CRIVARO and BEN R. LEHMAN, to me personally known, who, being by me duly sworn, did state that they are the Mayor and City Clerk of the City of Des Moines, Iowa; and that the said instrument was signed on behalf of said City of Des Moines, Iowa, and that the said PETE CRIVARO and BEN R. LEHMAN, acknowledged the execution of said instrument to be the voluntary act and deed of said City of Des Moines, Iowa, by it and by them voluntarily executed.



Carolyn Stewart
Notary Public in and for the
State of Iowa

STATE OF IOWA)
) SS:
COUNTY OF POLK)

On this 27th day of July, 1983, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared JAMES W. HUBBELL, JR., and LUTHER L. HILL, JR., to me personally known, who being by me duly sworn, did state that they are the Chairman of the Board and Executive Vice President, respectively, of the EQUITABLE LIFE INSURANCE COMPANY OF IOWA, executing the within and foregoing instrument; that the seal affixed thereto is the seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and that JAMES W. HUBBELL, JR., and LUTHER L. HILL, JR., as said officers, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.



Russell E. Schrage
Notary Public in and for the
State of Iowa

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SUBORDINATION OF REAL ESTATE OPTION

THIS SUBORDINATION OF REAL ESTATE OPTION made on 27 July, 1983, by F. M. HUBBELL, SON & COMPANY, INCORPORATED, an Iowa corporation ("Hubbell");

W I T N E S S E T H:

WHEREAS, Hubbell is the owner and holder of that certain real estate option granted by the City of Des Moines, Iowa, a municipal corporation ("City"), dated January 17, 1983, (hereinafter referred to as the "Option"). The Option concerns all of the right, title and interest of the City in and to the following described property (the "Property"):

The N/S alley lying west of and adjoining Lots 5 and 6, Block 12; and the air rights above an elevation of 14.5 feet above ground level over the E/W alley lying north of and adjoining Lots 6, Block 12; all in the town of Fort Des Moines, an Official Plat, all now included in and forming a part of the City of Des Moines, Iowa; and

The West 1/2 of the N/S alley lying west of and adjoining Lots 5 and 6, Block 13, Town of Fort Des Moines, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, (vacated by Ordinance No. 9603, passed July 2, 1979); and

WHEREAS, Equitable Life Insurance Company of Iowa ("Equitable") and the City desire to enter into agreements which will permit the construction of a Skywalk Corridor by Equitable of the air rights above an elevation of 14.5 feet above ground level over the E/W alley lying north of and adjoining Lot 6, Block 12 original town of Fort Des Moines, an Official Plat, now included in and forming a part of the City; and

WHEREAS, the City and Equitable have requested Hubbell to subordinate its interest in the Option to the Lease Agreement entered into between the City and Equitable on even date herewith (the "Lease") and Hubbell is willing to subject and subordinate said right, interest and claim in the Option to the Lease.

Exhibit 1

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NOW, THEREFORE, for valuable consideration, the receipt of which is hereby acknowledged, Hubbell does hereby waive the priority of the Option in favor of the Lease, so that the Option shall be subject and subordinate to the Lease.

IN WITNESS WHEREOF, Hubbell has caused this Subordination of Real Estate Option to be signed, sealed and delivered the day and year first above written.

F. M. HUBBELL, SON & COMPANY
INCORPORATED

By James W. Hubbell III
James W. Hubbell III
Vice President

John L. Drake
John L. Drake, Secretary

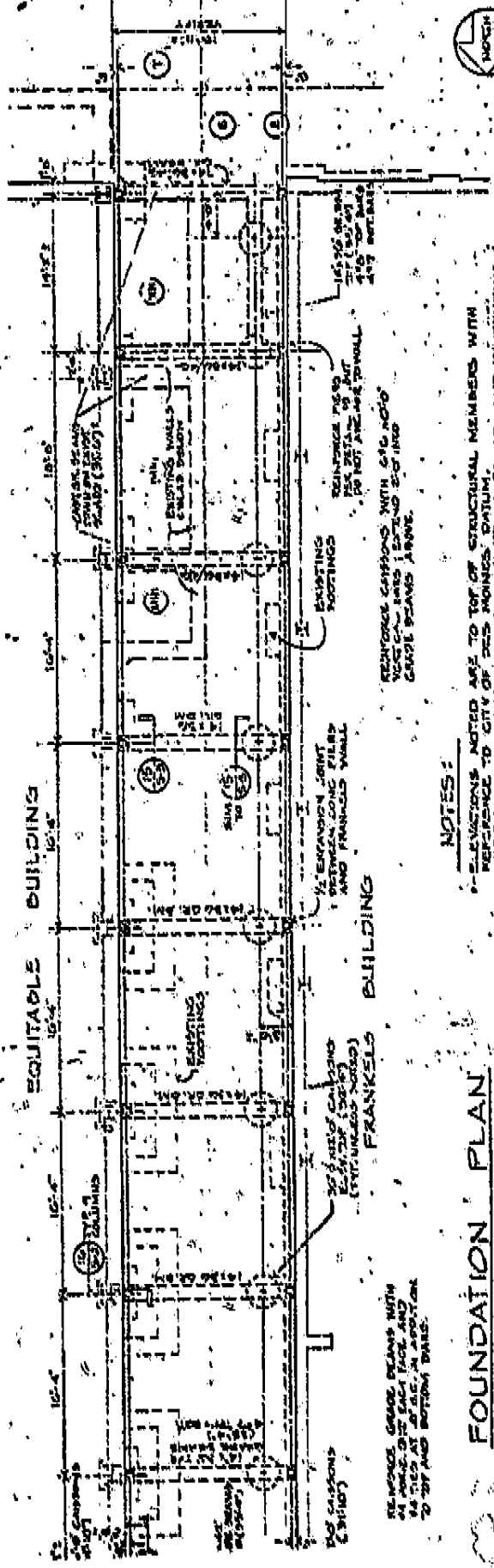
STATE OF IOWA)
) ss:
COUNTY OF FOLK)

On this 27 day of July, 1983, before me, a Notary Public within and for said County, appeared James W. Hubbell III and John L. Drake, to me personally known, who, being each by me duly sworn, did say that they are respectively the Vice President and Secretary of F. M. Hubbell, Son & Company, Incorporated, that said instrument was signed and sealed by authority of its Board of Directors, and said James W. Hubbell III and John L. Drake acknowledged said instrument to be the voluntary act and deed of said company, by it and by them voluntarily executed.

THERESA LOFFREDO
Notary Public in and for the
State of Iowa



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FOUNDATION PLAN
 SCALE: 1/8" = 1'-0"

NOTES:

- ELEVATIONS NOTED ARE TO TOP OF STRUCTURAL MEMBERS WITH REFERENCE TO CITY OF DES MOINES DATUM.
- VERIFY ALL DIMENSIONS AND ELEVATIONS TO OF AND IN EXISTING BUILDINGS AND REPORT DISCREPANCIES BEFORE BEGINNING WITH WORK.
- LOCATE UTILITIES BEFORE FOUNDATION WORK BEGINS.

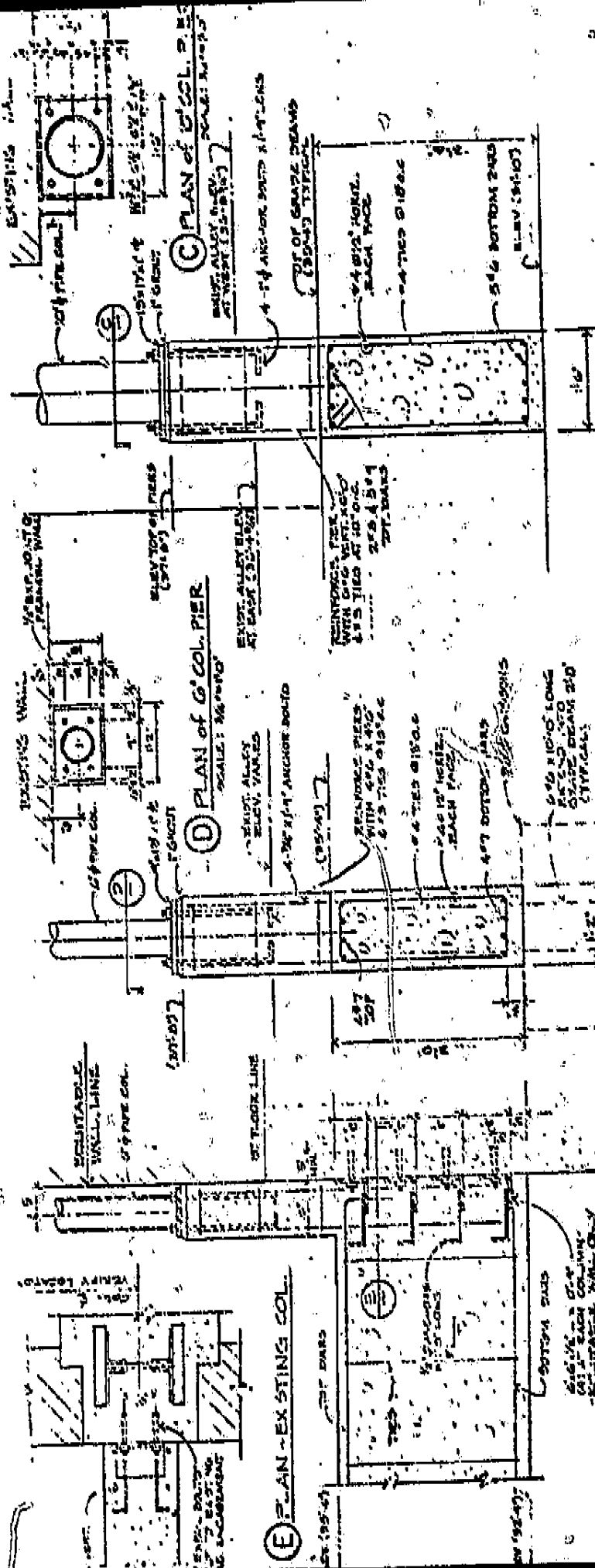
REMOVES GRADE BEAMS WITH
 AT POINTS IN EACH FACE AND
 REINFORCES AT 20" O.C. IN POSITION
 TO CITY AND NATIONAL BARS.

EXPANSION JOINT
 BETWEEN CONC FIELDS
 AND FRANKELS WALL

REINFORCE BEAMS WITH 4#6 NO. 6
 VERTICAL BARS 12" ON 2'-0" LONG
 GRADE BEAMS ABOVE.

S.1	REINFORCEMENT CONSTRUCTION FIELD RECORD		BY DATE	CHECKED DATE	APPROVED DATE
	BY	DATE	BY	DATE	BY

STRUCTURAL PLANS:



S:3	STRUCTURAL DETAILS	
	PREPARED BY CONSTRUCTION SWAL, RICHARD	DATE 5/22/2022 DRAWN J. V. N.

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