



**MEMORANDUM**

**TO:** Mayor Laurel Lunt Prussing and Members of the City Council  
**FROM:** William R. Gray, Public Works Director  
N. Patrick Pioletti, Facilities Manager  
**DATE:** December 8, 2011  
**RE:** Clarification of ownership of parking deck walkway and use of right of way at 115 West Main Street

**Action Requested**

Approval of two related agreements, the first clarifying ownership of the walkway connecting the second floor of the parking deck directly to the second floor of the building located at 115 West Main Street and the second formally allowing use of the right of way (ROW) behind the same building.

**History**

**Walkway**

In 1983, when the parking deck was constructed, the then owner of 115 West Main Street paid for the construction of the walkway in existence there today. Unfortunately, the document for ownership was not properly recorded at the time. Since no formal record of ownership and maintenance responsibilities can be found, the City wishes to clarify that it has no future ownership and maintenance responsibilities for the parking deck walkway. The current owner of the property, however, is willing to enter into the attached agreement clarifying ownership of the walkway as theirs. This agreement is very similar to the one adopted by the City Council for the walkway located to the west of the one in question.

**Use of ROW**

The agreement for use of the ROW formalizes the arrangement now taking place. The owners and tenants of 115 West Main Street have no space on site for refuse and recycling containers and a condenser cantilevered over the Fish Alley ROW. Currently, those activities take place in the alley immediately behind the building.

**Fiscal Impact**

Earlier this year a masonry contractor performed routine maintenance (less than \$3000) on the structure to address repairs identified by a structural engineer. Other than recording fees, no other out of pocket expenses are anticipated under either agreement.

**Staff Recommendation**

**Approval of both attached ordinances.**

**Attachments: Agreement  
Ordinances**

ORDINANCE NO. 2011-11-131

AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO  
EXECUTE AN AGREEMENT CLARIFYING OWNERSHIP OF  
PARKING DECK WALKWAY (115 W. MAIN STREET)

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

Section 1. That an Agreement Clarifying Ownership of Parking Deck Walkway between the City of Urbana and 115 Main, LLC, in substantially the form of the copy of said Agreement attached hereto, be and the same is hereby approved.

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

PASSED by the City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

AYES:

NAYES:

ABSTAINS:

\_\_\_\_\_  
Phyllis Clark, City Clerk

APPROVED by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Laurel Lunt Prussing, Mayor

**AN AGREEMENT CLARIFYING OWNERSHIP OF PARKING DECK WALKWAY**

WHEREAS, the City of Urbana (hereinafter called “City”) is owner of a certain public parking deck located on Broadway Avenue between Main Street and Elm Street; and

WHEREAS, there exists for many years, since the parking deck was built, a walkway connecting the second floor of the said parking deck and the former “Masonic Building” located at 115 West Main Street, now owned by 115 W. Main, LLC (hereinafter called “Owner”). The walkway referred to herein is that structure between the north face of the parking deck thence stretching northward to the former “Masonic Building”, legally described as:

The West 44 feet of Lots 33 and 35 in the Original Town of Urbana, otherwise described as Lot 5 in a Subdivision on Lots 33 and 35 in the Original Town, Now City of Urbana, situated in Champaign County, Illinois, commonly known as 115 West Main Street (Permanent Parcel Index #92-21-17-206-007)

; and

WHEREAS, no formal record has been found regarding ownership and maintenance responsibilities regarding the walkway; and

WHEREAS, the walkway primarily serves as a convenient pedestrian entry from the parking deck to the second floor of the “Masonic Building”, and

WHEREAS, it is in the best interests of the parties hereto to clarify the ownership and responsibility for the walkway, and

The parties having reached an agreement desire to reduce such agreement to writing and hereby agree as follows:

1. (a) Ownership and maintenance responsibility of the walkway is divided as follows:
  - . City – from the point on the north face of the north wall of the parking deck to the south terminus of the walkway (“City Portion”)
  - . Owner – from the point on the north face of the north wall of the parking deck to the north terminus of the walkway (“Owner’s Portion”)
- (b) As between the City and the Owner, that portion of the walkway described in (a) above as the “Owner’s Portion” is agreed to be the property of Owner and whatever legal interest the City has or may have is hereby conveyed and quit claimed to Owner, thereby fixing the privileges and the full responsibility of ownership for the said Owner’s Portion walkway in the Owner.

2. It is acknowledged that the said walkway occupies air space above the alley right-of-way. Permission of the City is hereby granted for the continued location of the walkway in its present location (see Exhibit 1), so long as it is maintained in a safe condition. Upon written notice to the Owner that the walkway is not safe, the Owner will promptly cause it to be repaired and made safe or remove it at the Owner’s sole expense. The City agrees to maintain access to the City Portion of the walkway in compliance with accessibility standards.

3. This agreement is not intended to affect any rights or liabilities of either party with respect to any injury or claims of injury or damage based upon any incident that occurred prior to the date of this agreement.

4. Owner shall indemnify hold and save the City harmless from any and all liability and expense, including judgments, costs, and damages, for any alteration, repair, maintenance and restoration of the walkway undertaken by Owner, and from any and all personal injuries or deaths occurring out of any use, repair, maintenance and restoration of the walkway by Owner, including the passive negligence, if any, of the City and name the City as an additional insured party in connection with any liability insurance policy which Owner may have in effect from time to time for the 115 West Main Street property and its related use of the walkway.

5. All notices, demands, requests or other communications under or in respect of this Agreement shall be in writing and shall be deemed to have been given when the same are (a) deposited in the United States mail and sent by registered or certified mail, postage prepaid, return receipt requested, (b) personally delivered, (c) sent by a nationally recognized overnight courier, delivery charge prepaid or (d) transmitted by telephone facsimile, telephonically confirmed as actually received, in each case, to the City and the Owner at their respective addresses (or at such other address as each may designate by notice to the other), as follows:

(i) In the case of the Owner, to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
ATTN: \_\_\_\_\_  
Tel: (217) \_\_\_\_\_  
Fax: (217) \_\_\_\_\_

(ii) In the case of the City, to:

City of Urbana, Illinois  
400 South Vine Street  
Urbana, IL 61801  
ATTN: Mayor  
Tel: (217) 384-2454  
Fax: (217) 384-2363

6. The provisions of this agreement shall be binding upon the parties, their successors and assigns, and shall be deemed to be covenants running with the land constituting the 115 West Main Street property.

CITY OF URBANA:

Owner:

\_\_\_\_\_  
Laurel Lunt Prussing, Mayor

\_\_\_\_\_  
115 W. Main, LLC

ATTEST:

\_\_\_\_\_  
Phyllis D. Clark, City Clerk