

ORDINANCE NO. 2011-11-132

AN ORDINANCE AUTHORIZING THE MAYOR TO
EXECUTE AN AGREEMENT FOR USE OF RIGHT-OF-WAY (FISH ALLEY)

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

Section 1. That an Agreement for Use of Right-Of-Way between the City of Urbana and 115 West 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

AGREEMENT FOR USE OF RIGHT-OF-WAY
[115 West Main Street]

THIS AGREEMENT, made and entered into this _____ day of _____, 2011, by and between the CITY OF URBANA, a municipal corporation of the State of Illinois (hereinafter "City"), and 115 W. Main, LLC (hereinafter "Owner"),

WITNESSETH:

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

A. Fish Alley is a 12-foot dedicated right-of-way between the east right-of-way of Crane Alley and 44 feet to the east at the terminus of Fish Alley.

B. The Owner is herein granted by the City a limited right to occupy the right-of-way only for the purposes of storing recycling and trash receptacles with screening and installing and maintaining an HVAC unit within said right-of-way. This limited right is wholly dependent upon the Owner, its successors and assigns, fully and faithfully performing and complying with all the terms, conditions, and covenants contained within this Agreement. The Owner expressly acknowledges and agrees that such limited right is immediately revocable at the option of the City in the event that the Owner, its successor or assign, fails to perform or comply with any term, condition or covenant set forth within this Agreement. Further, it is expressly understood that regardless of the existence or not of any breach, the use by the Owner of the hereinabove described right-of-way shall at all times be subordinate to the City's use of said right-of-way.

C. The purpose of the herein permitted right to occupy such right-of-way shall be limited solely to the purposes described above, which are shown on Exhibit A, and use thereof, and for incidental uses directly related thereto. Upon cessation of such use as determined by the Director of Public Works of the City of Urbana (hereinafter "Director"), this Agreement shall immediately lapse and terminate. Any additional use other than that specifically named, without the further express written consent of the City, shall be construed as a violation of this Agreement.

D. When so instructed by the Director, the Owner will cause the recycling and trash receptacles, screening and/or HVAC unit to be removed, as nearly as possible in conformance with the Director's request, within thirty (30) days after receipt of written notice from the Director. The Owner is solely and entirely responsible for any and all costs directly or indirectly related to such removal and restoration in kind of the right-of-way.

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

F. The Owner agrees to defend the City from and against any claims, suits, or actions for death or injury to persons or damage to property or breach of the contract brought

AGREEMENT FOR USE OF RIGHT-OF-WAY (cont'd.)
Between the City of Urbana and 115 W. Main, LLC
[115 West Main Street]

against the City arising from any alleged claims, acts, or omissions in connection with this Agreement, including the storing of trash receptacles, screening and/or the installation and maintenance of an HVAC unit, whether or not suit is filed unless such claim, suit, or cause of action was based solely upon the negligence of the City, its employees, agents, or contractors. Additionally, the Owner shall indemnify the City for any sums the City becomes obligated to pay as damages arising out of such circumstances except to the extent such damages are due to the negligence of the City, its employees, agents, or contractors.

G. The Owner acknowledges that it shall be fully responsible and bear all costs associated with any and all maintenance, replacement or repair of the recycling and trash receptacles, screening and/or HVAC unit.

H. The Owner agrees to keep that portion of Fish Alley adjacent to its property at 115 West Main Street in a clean condition, free of litter and debris. Owner also agrees to power wash the pavement to clean off dirt and grime at least annually or whenever the Director of Public Works so directs based upon unsightly conditions.

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

In witness to their Agreement, the Parties have executed this document this _____
_____ day of _____, 2011.

CITY OF URBANA

OWNER

By: Mayor

By:

ATTEST:

By: _____
City Clerk

APPROVED:

By: _____
Legal Counsel

Prepared by and please return recorded copy to:
City of Urbana, Illinois
400 South Vine Street
Urbana, Illinois 61801