

St. Louis City Ordinance 64784

FLOOR SUBSTITUTE

BOARD BILL NO. [99] 176

INTRODUCED BY ALDERMAN Phyllis Young.

An ordinance authorizing and directing the City, acting through the Mayor, the Comptroller, and the Treasurer of the City of St. Louis, to enter into an agreement with the Security Building L.L.C. regarding certain easements and construction of a pedestrian bridge at the Marquette Garage, located in City Block 99, and containing an emergency clause.

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE. The Mayor, Comptroller, and Treasurer with approval as to form by the City Counselor are hereby authorized and directed to enter into an agreement the Security Building L.L.C. wherein the City, subject to the approval of the Board of Public Service, will receive an easement for certain purposes in a private alley owned by Security Building L.L.C. and a pedestrian bridge will be constructed by the City between the Marquette Garage and the Security Building subject to such terms and conditions in substantially such form as Exhibit A attached hereto and incorporated herein by reference.

SECTION TWO. Emergency. This being an Ordinance for the preservation of public peace, health, and safety, it is hereby declared to be an emergency measure within the meaning of Sections 19 and 20 of Article IV of the Charter of the City of St. Louis and shall become effective immediately upon its passage by the Board of Alderman and its approval by the Mayor.

EXHIBIT A

EASEMENT AND CONSTRUCTION OF WALKWAY AGREEMENT

THIS EASEMENT AND CONSTRUCTION OF WALKWAY AGREEMENT (this "Agreement") is made and entered into as of the ____ day of _____, 1999, between SECURITY BUILDING, L.L.C., a Missouri limited liability company ("SBL"), and the City of St. Louis, Missouri (hereinafter, the "City").

Recitals

A. SBL is the owner of certain real property located in the City of St. Louis, Missouri and depicted as Parcel B on Exhibit A attached and incorporated in this Agreement by reference and legally described on Exhibit B attached hereto and incorporated herein by reference (hereinafter, the "SBL Parcel"), and there is constructed on the SBL Parcel a multi-story building (the "SBL Building"), commonly known as the Security Building; and

B. Except for the currently existing sidewalk, door canopy, paved driveway, parking area and lighting, SBL has not built upon the approximately west twelve feet (12') (more or less, actual survey to govern) of the SBL Parcel, being the strip running north and south off the west side of the SBL Building (hereafter referred to as "Private Alley" and depicted as such on Exhibit A and legally described on Exhibit B-1, attached hereto and incorporated in this Agreement by reference). SBL has been and is now using said strip for ingress and egress from its building for parking, for driveway purposes, for location of its trash receptacle and for light and air therefore; and

C. The City is the owner of certain real property located in the City of St. Louis, Missouri and depicted as Parcel A and Parcel A-1 on Exhibit A and legally described on Exhibit B-2 (hereinafter, collectively the "City Parcel") and is successor in title to Superior Construction Company and assignee of such company's leasehold estate and by virtue of ownership of Parcel A may possess an easement in the Private Alley for ingress and egress from the building of the Superior Construction Company pursuant to easement agreement entered into on December 31, 1927 and recorded in Book 8293 Page 301 of the land records of the City of St. Louis, Missouri ("1927 Easement"); however, the 1927 Easement contains terms which have not been satisfied over the years, and the parties hereto are not in agreement regarding the validity and effect of such 1927 Easement; and

D. To facilitate the efficient and continuing development of City Block 99 in the City of St. Louis, and more particularly, the construction, operation and maintenance of a multi-level parking structure and pedestrian bridge from the building on the SBL Parcel and the parking structure on Parcel A of the City Parcel, the City desires and SBL is willing to (i) grant certain easements to City and terminate the easement set forth in the 1927 Easement and, (ii) grant certain nonexclusive permanent easement rights for the purposes set forth herein in the Private Alley subject to the terms and conditions hereof; and

E. SBL desires, and City is willing to construct, an elevated walkway between the City's Garage (as defined herein) and the SBL Building and grant SBL certain easements and the limited right to use the City's Garage in connection

with such walkway, but only for pedestrian access to and from the bridge and only during times when the City's Garage is open to other users, all on the terms set forth herein.

Agreement

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged and confirmed, SBL and City hereby agree as follows:

1. Termination and Grants of Easements Respecting the Private Alley. Effective as of the date hereof, SBL and City hereby terminate the grant of easement set forth in the 1927 Easement. Subject to the other provisions in this Agreement, SBL hereby grants, conveys and confirms to City for the benefit of the City Parcel and to City's respective successors-in-interest in respect of the City Parcel, and their respective agents, employees, contractors, licensees, invitees and assigns the following easements: (i) a nonexclusive, perpetual construction easement and right of ingress and egress on, in, under, and over the Private Alley for the sole purpose of developing, constructing, excavating, maintaining, replacing, repairing, and demolishing any and all improvements on the City Parcel and, (ii) a nonexclusive, perpetual easement under the Private Alley for the installation, use, maintenance, repair, replacement and removal of underground footings, supports and foundations for the purpose of supporting any and all building improvements constructed or to be constructed on the City Parcel which underground footings, supports and foundations may encroach underground the Private Alley, and (iii) a nonexclusive, perpetual easement for pedestrian access, ingress and egress to and from the City Parcel over, under, and across the Private Alley.

2. Manner of Construction; Coordination. Exercise of the rights under this Agreement by City (i) shall be performed in a manner so as not to unreasonably interfere with the use of the SBL Parcel and SBL's use of the Private Alley, (ii) shall coordinate efforts with any and all contractors or subcontractors engaged by it or SBL so as to prevent unreasonable interference with the business operations on the SBL Parcel; (iii) require City to repair and/or restore and reconstruct, the sidewalks and paved portions of the Private Alley and any currently existing improvements thereon that may be removed or damaged as a result of the exercise by City of any rights hereunder to the condition that existed prior to such damage; and (iv) to the extent permitted by law, indemnify, defend and hold SBL, their respective successors and assigns harmless from and against any and all loss, cost, damage or expense, including,

without limitation, reasonable attorneys' fees suffered by SBL as the result of City's exercising its rights hereunder.

SBL and City further agree that (i) except as required under (iii) in the above paragraph, all costs for the maintenance, repair, replacement, snow removal and cleaning of the Private Alley shall be borne by SBL, and (ii) SBL shall have no responsibility for any footings, supports, foundation or other improvements constructed by City under the Private Alley, all of which are located thereon at the sole risk of City and will be maintained by City. SBL expressly reserves unto itself and its successors and assigns the right to use and enjoy the Private Alley in a manner as previously used by SBL consistent with the City's rights granted hereunder, including without limitation, the right to place or install improvements on the Private Alley (which may or may not be connected to the SBL Building), to use the airspace over the Private Alley for the Bridge (as defined herein), to use the Private Alley for parking, driveway, ingress and egress, trash receptacles and other uses and purposes, provided the same do not unreasonably interfere with the easements granted to City.

3. Grant of Easement Only. No party hereto is hereby conveying any land or title thereto, but merely granting the rights, privileges and easements hereinabove set forth.

4. Pedestrian Bridge. The City shall construct, at its cost, an elevated pedestrian walkway\bridge which shall connect the SBL Building on the SBL Parcel to the parking structure ("City's Garage") on the City's Parcel (the Bridge), subject to the following terms and conditions: (i) the Bridge shall be constructed in accordance with the plans (the "Plans") approved by both parties and attached hereto as Exhibit C by Desman Associates, (ii) the Bridge shall be constructed in the location between the 6th level of the City's Garage and the 5th floor of the SBL Building, in the location shown on the Plans, with such construction to commence on or about August 1, 1999 and to proceed diligently thereafter to completion, anticipated to be completed on or about October 30, 1999; (iii) the Bridge shall be constructed by City in compliance with all applicable federal, state and local laws, ordinance, building and fire codes and basic building permit requirements; (iv) after completion of the Bridge, SBL shall at all times (a) maintain and repair the Bridge in a neat, safe, and clean condition, (except any repairs or maintenance arising from any construction or design defects, all of which are the responsibility of City), (b) be responsible for snow and ice removal, (c) provide adequate security for the safety of persons using the Bridge; (iv) SBL shall carry comprehensive general liability insurance with limits of at least Three Million Dollars (\$3,000,000.00) per

occurrence respecting its use and operation of the Bridge with City named as an additional insured and property damage insurance for the full replacement cost of the Bridge. SBL shall indemnify, defend, and release the City from and against any and all costs, liabilities, suits, claims and causes of action, including reasonable attorneys' fees which result from SBL's use and operation of the Bridge, (excluding any costs, liabilities, suits, claims, and causes of action arising from any construction or design defects, all of which are the responsibility of City). Upon completion of the construction and installation of the Bridge, the City and SBL shall execute and record a Quit Claim Deed conveying all of City's right, title and interest in and to the Bridge to SBL. SBL must provide City with a certificate evidencing such insurance coverage and such policies must provide for at least thirty (30) days notice to Grantee prior to any cancellation, expiration or termination. In the event SBL fails to perform any of its obligations with respect to the Bridge, City shall, after 30 days' written notice to SBL specifying the nature of the failure and an opportunity for SBL to cure such failure during the 30 day period, have the right but not the obligation to cure any such failures and upon curing such failures, City shall be promptly reimbursed by SBL for all costs so incurred by City. At all times while the Bridge and the City's Garage exist, City grants to SBL, for the benefit of SBL and its successors, assigns, tenants, agents and invitees, (i) a nonexclusive easement for the use, support, maintenance, repair, replacement and removal of the Bridge, and (ii) a non-exclusive easement to use the City's Garage and all elevators, stairs and other areas of the Garage but only for pedestrian access to and from the Bridge during times when the City's Garage is open to other users. As part of the construction of the Bridge, City will install signage for the Bridge in locations reasonably acceptable to both parties. Notwithstanding SBL's obligation to maintain the Bridge, City will maintain in good condition and repair any improvements for the Bridge located on the City Parcel or in the City's Garage.

5. Successors and Assigns Bound. This Agreement shall be binding upon and shall inure to the benefit of SBL and City and their respective assigns and successors-in-interest to the SBL Parcel and the City Parcel, respectively, and their respective legal representatives, successors and assigns.

6. Enforceability. If any portion of this Agreement shall to any extent be invalid or unenforceable, the remaining provisions of this Agreement shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

7. Governing Law. This Agreement shall be governed by and construed according to the laws of the State of Missouri.

8. Easements Run With the Land. Each and all of the easements, covenants, declarations and rights granted or created herein are appurtenant to each of the SBL and City Parcels. None of the easements and rights granted or created herein may be transferred, assigned or encumbered other than as an appurtenance to each of the SBL and City Parcels, as the case may be. The easement and rights herein (i) are made for the benefit of the SBL and City Parcels; (ii) except as otherwise stated, shall run with the land forever; (iii) may be enforced as or real covenants; and (iv) shall bind every person having any fee, leasehold, or any other interest in any portion of the SBL Parcel and the City Parcel at any time or from time to time.

9. Authority to Act. SBL and City hereby represent and warrant to each other that each of them has been duly authorized to execute, deliver and perform this Agreement and to execute and deliver any other agreements or documents contemplated herein or necessary or desirable to effect the obligations, promises and covenants set forth in this Agreement.

10. Mutual Cooperation. In the event that the purpose and intent of the easements set forth herein are frustrated or cannot be affected due to changes in the physical condition of the Parcels or property adjacent to the Parcels, the parties hereto and their successors and assigns shall mutually cooperate in modifying this Agreement and the easements forth herein, to effect the purpose and intent of the provisions of this Agreement, and shall not unreasonably withhold or delay consent or approval of the relocation of the easements.

11. Headings. The section and paragraph headings contained in this Agreement are for reference only and shall not affect in any way the meaning or interpretation of this Agreement.

12. Entire Agreement. This Agreement constitutes the entire agreement between the parties concerning the matters described herein, and there are no other covenants, agreements, promises, terms and provisions, conditions, undertakings or understandings that are oral or written, between the parties concerning the matters set forth herein. This Agreement may only be amended or modified by written instrument executed by the then owners of the SBL Parcel and the City Parcel and recorded in the Office of the Recorder of Deeds of the City of St. Louis, Missouri.

13. Notices. All notices hereunder shall be deemed to have been made when such written notice has been hand-delivered, deposited in the United States mail or delivered by overnight express mail carrier (for example, Federal Express). Every notice, approval, consent or other communication authorized or required by this Agreement shall be in writing and hand-delivered or sent by registered or certified mail (return receipt requested, postage prepaid), or delivered by overnight express mail, to the addresses set forth below:

If to Grantor:

Security Building, L.L.C.
319 North 4th Street
St. Louis, Missouri 63101
Attn: Mr. J. Peter Dolan

If to City:

The City of St. Louis
Treasurer's Office
Room 220 City Hall
Tucker and Market Street
St. Louis, Missouri 63103
Attn: Treasurer

with a copy to:

City Counselor's Office
Room 316 City Hall
St. Louis, Missouri 63103
Attn: City Counselor

or to such other addresses as the parties hereto shall from time to time designate in accordance herewith.

14. Priority. Except as otherwise provided herein, all easements and other rights granted by this Agreement are superior in priority to all liens which may now exist or hereafter arise with respect to either the SBL Parcel or the City Parcel; provided, however, the parties acknowledge the SBL Parcel is presently subject

to a mortgage lien held by Jefferson Bank & Trust Company ("Bank") which is superior to this Agreement. SBL will use commercially reasonable efforts to obtain from Bank a subordination of its existing mortgage lien on the SBL Parcel to the easements and rights granted in this Agreement.

15. Execution in Counterparts. This Agreement may be executed in two (2) or more identical counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one and be the same instrument. The signature of any party hereto and the acknowledgment of such signature may be removed and attached to any other counterpart. Any counterpart to which is attached the signatures of all parties shall constitute an original of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

SECURITY BUILDING, L.L.C., a Missouri limited liability company

By: _____

Title: _____

APPROVED AS TO FORM, ONLY:
MAYOR, THE CITY OF ST. LOUIS,

MISSOURI
City Counselor,
City of St. Louis, Missouri

By: _____

Clarence Harmon, Mayor

COMPTROLLER, THE CITY OF ST. LOUIS, MISSOURI

By: _____

Darleen Green, Comptroller

TREASURER, THE CITY OF ST. LOUIS, MISSOURI, acting in his capacity
as Supervisor of Parking Meters

By: _____

Larry C. Williams, Treasurer

CONSENT OF MORTGAGEE

STATE OF MISSOURI)

) ss. On this ___ day of _____, 1999, before
CITY OF ST. LOUIS) me, a Notary Public in and for said state, personally
appeared _____, to me personally known, who, being
by me duly sworn, did say that he is a member of Security Building, L.L.C., a
Missouri limited liability company, and that said instrument was signed on
behalf of such limited liability company by authority of all of its members and
he acknowledged said instrument to be the free act and deed of said entity.

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

Notary Public
My Commission expires:

530190
EXHIBIT A
SITE PLAN

EXHIBIT B
SBL PARCEL

EXHIBIT B-1
PRIVATE ALLEY

EXHIBIT B-2
CITY PARCEL

Legislative History				
1ST READING	REF TO COMM	COMMITTEE	COMM SUB	COMM AMEND
09/24/99	09/24/99	STR		
2ND READING	FLOOR AMEND	FLOOR SUB	PERFECTN	PASSAGE
10/22/99			10/29/99	11/05/99
ORDINANCE	VETOED		VETO OVR	

64784		
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