

#1424

PERMANENT EASEMENT FOR USE AND  
MAINTENANCE OF AND ACCESS TO  
PEDESTRIAN BRIDGE - Equitable  
Life Assurance Society of the  
United States (SHERLAND BUILDING)

JONES, OBENCHAIN, FORD, PANKOW & LEWIS

ATTORNEYS AND COUNSELLORS

G. BURT FORD  
JAMES H. PANKOW  
THOMAS F. LEWIS, JR.  
TIMOTHY W. WOODS\*  
JOHN R. OBENCHAIN  
ROBERT W. MYSLIWIEC\*  
ROBERT M. EDWARDS, JR.  
JOHN B. FORD  
MARK J. PHILLIPOFF\*  
JOHN W. VAN LAERE\*\*  
SUSAN ROGERS HANSON

\*ALSO ADMITTED IN MICHIGAN  
\*\*ALSO ADMITTED IN ILLINOIS

TELEPHONE AND TELECOPIER  
(219) 233-1194

1800 VALLEY AMERICAN BANK BUILDING  
POST OFFICE BOX 4577  
SOUTH BEND, INDIANA 46634

**REFERRED**  
**BOARD OF PUBLIC WORKS**

AUG 11 1987

*Legal*

RAPICOM  
(219) 233-8957

FRANCIS JONES  
ROLAND OBENCHAIN  
MILTON A. JOHNSON  
RETIRED

August 7, 1987

Board of Works  
City of South Bend  
13th Floor  
County-City Building  
South Bend, Indiana 46601

Re: Sherland Building Pedestrian Bridge;  
Easement and Access Rights

Dear Sirs:

I represent the Equitable Life Assurance Society of the United States, the owners of the Sherland Building, 105 East Jefferson Boulevard, South Bend, Indiana.

In the early 1970's, the then-owners constructed a pedestrian bridge over the north-south alley to the east of the building accessing the municipal parking garage at 121 South St. Joseph Street (hereinafter "the Bridge"). My understanding is that this was done with the permission of the Board of Works, but neither I nor the City Attorney's Office have been able to find any documentation on the subject.

We are now in the process of selling the building, and must provide the buyer with the following documents, in recordable form, as soon as possible:

1. A permanent easement for the air space over the above-mentioned alley, allowing the construction, use and maintenance of the Bridge by the owners, tenants and guests of the Sherland Building.

2. A permanent right of access from the parking garage to the Bridge, as the same now exists.

Essentially, all we are asking for is documentation of conditions and understandings which already exist.

Board of Works

-2-

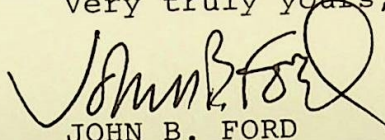
August 7, 1987

The legal description of the Sherland Building is as follows:

Lot Numbered 41 and the south one-half ( $\frac{1}{2}$ ) of Lot Numbered 42 as shown on the original Plat of the Town, now City of South Bend.

I sincerely appreciate your cooperation and assistance in this matter.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John B. Ford". The signature is stylized with a large, looping initial "J" and a long, sweeping underline that extends to the right.

JOHN B. FORD

JBF:sas

cc: Mr. Thomas L. Bodnar  
Chief Deputy City Attorney

JONES, OBENCHAIN, FORD, PANKOW & LEWIS

ATTORNEYS AND COUNSELLORS

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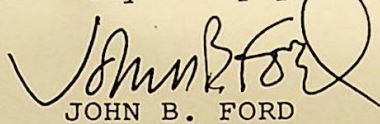
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I sincerely appreciate your cooperation and assistance in this matter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John B. Ford". The signature is written in dark ink and is positioned above the printed name.

JOHN B. FORD

JBF:sas

cc: Mr. Thomas L. Bodnar  
Chief Deputy City Attorney

C O P Y

C O P Y

PERMANENT EASEMENT FOR USE AND  
MAINTENANCE OF AND ACCESS TO  
PEDESTRIAN BRIDGE

~~CONFIDENTIAL~~

THE CITY OF SOUTH BEND, INDIANA ("Grantor"), being the owner of certain rights, title and interest with respect to that certain dedicated public alley running north and south between, inter alia, Lots Numbered 40 and 41 as shown on the Original Plat of the Town, now the City of South Bend, Indiana ("Alley"), for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grants, dedicates and conveys unto THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, a New York corporation, as the owner of Lot Numbered 41 and the south one-half (1/2) of Lot Numbered 42 as shown on the Original Plat of the Town, now City of South Bend, Indiana, and the Sherland Building situated thereon, and its successors and assigns ("Grantee"), in perpetuity, for purposes of ingress, egress, unrestricted access, use, maintenance and all other purposes in connection with a certain Pedestrian Bridge ("Bridge") owned by Grantee and now existing and to be maintained at the approximate minimum height of 13 feet above the surface of the Alley, between the Sherland Building, owned by Grantee, and a parking garage now owned by Parking Facilities of South Bend, Inc., an Indiana corporation (the "Garage"), an EASEMENT upon all of its right, title and interest in the following-described property:

Commencing at the Southeast corner of Lot 41, Original Plat of South Bend, South Bend, Indiana; Thence North 00 degrees - 26 minutes - 22 seconds West on the East line of said Lot 41, a distance of 27.15 feet to the point of

beginning; thence North 87 degrees - 48 minutes - 51 seconds East, a distance of 14.0075 feet to the West line of Lot 40, Original Plat of South Bend, Indiana; thence North 00 degrees - 26 minutes - 22 seconds West on the West line of said Lot 40, a distance of 11.33 feet; thence South 87 degrees - 48 minutes - 51 seconds West, a distance of 14.0075 feet to the East line of Lot 41; thence South 00 degrees - 26 minutes - 22 seconds East on the East line of Lot 41, a distance of 11.33 feet to the point of beginning.

The foregoing Easement is subject to the reserved right on the part of the Grantor, for itself and on behalf of the general public, to use the Alley for vehicular and pedestrian traffic, and is further conditioned upon the obligation, which is assumed by the Grantee upon delivery and acceptance hereof, to keep and maintain the Bridge in good condition and repair, and to indemnify the Grantor against any and all claims and expenses arising out of the use, ownership or maintenance of the Bridge.

The purpose of the Easement is to connect the Sherland Building to the Garage by way of the Bridge and to permit ingress and egress to and from the Sherland Building by way of the Bridge to and from the Garage. The Easement is granted in perpetuity, subject to the following:

If either the Sherland Building, or the Garage, at any time after 20 years from the date of this Easement, ceases to exist in substantially its present form, this Easement will revert to the City of South Bend, unless the following contingency occurs: the Sherland Building or the Garage is torn down, removed or

destroyed, and the party then owning the Sherland Building or the Garage intends to replace it with a similar structure, serving a similar function, at the same site and within a reasonable time, not to exceed five (5) years, that replacement structure is erected; then, in that case, the Easement shall not revert, but will remain in full force and effect, in perpetuity, subject to reversion as provided above if either building is removed permanently.

Each party shall, without charge at any time and from time to time, within ten (10) days after request by the other party, certify by written instrument duly executed and delivered, to the requesting party or any other person, firm or corporation specified by such party, that this Easement is unmodified and in full force and effect or if there has been modification, that the same is in full force and effect as modified and stating the modification.

Notwithstanding anything to the contrary in this Agreement, *the liability of the owner of the Sherland Building or the premises over which the Easement is granted shall be limited to its interest in its respective parcel and no such owner or its partners, whether general or limited, or their respective successors, heirs, representatives or assigns, shall have any personal liability hereunder. This exculpation of personal liability is absolute and without any exception whatsoever.*

Grantor hereby warrants and represents that:

(a) it is the owner in fee simple of the above-described property over which the Easement is granted;



(b) it has the right to bargain, sell and grant the Easement conveyed herein.

The Easement, rights and obligations set forth herein shall run with the land, shall create privity of contract and estate with and among, and be binding upon and inure to the benefit of, the parties hereto, their respective successors and assigns.

IN WITNESS WHEREOF, the undersigned have set their hands this 13th day of October, 1987.

"GRANTOR"

CITY OF SOUTH BEND, INDIANA

ATTEST:

Sandra M. Farmerlee  
Clerk, Bd. of Public Works

By John E. Leszczynski  
Notary Public  
Michigan

"GRANTEE"

EQUITABLE LIFE ASSURANCE SOCIETY  
OF THE UNITED STATES,  
A NEW YORK CORPORATION

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

STATE OF INDIANA     )  
                                  )   SS:  
ST. JOSEPH COUNTY    )

Before me, the undersigned, a Notary Public in and for St. Joseph County, Indiana, personally appeared JOHN E. LESZCZYNSKI



BOARD OF PUBLIC WORKS  
INTER-OFFICE MEMO

COPY

DATE: August 11, 1987

10/13/87  
permanent  
easement  
approved

To: Thomas Bodnar  
Chief Deputy City Attorney  
From: Sandra M. Parmerlee, Clerk  
Re: Request Easement - Sherland Building

The Board of Public Works has received a request for easement from Mr. John B. Ford on behalf of the Sherland Building

I would appreciate your reviewing this matter and providing to the Board a recommendation concerning this request.

Thanks.

SMP/mp  
Att.

*Wife: John Ford*

#1424 ①

8735045

Transfer 9909  
Taxing Unit SA  
Date 11-2-57

ST. JOSEPH CO.  
INDIANA  
FILED FOR RECORD  
NOV 2 9 48 AM '57  
FILM NO.  
REC'D

5

PERMANENT EASEMENT FOR USE AND  
MAINTENANCE OF AND ACCESS TO  
PEDESTRIAN BRIDGE

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DULY ENTERED FOR TAXATION  
BEVERLY D. CRONE  
AUDITOR  
ST. JOSEPH CO. INDIANA

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IN WITNESS WHEREOF, the undersigned have set their hands this 13th day of October, 1987.

ATTEST:

Sandra M. Parmerlee  
Clerk, Bd. of Public Works

"GRANTOR"

CITY OF SOUTH BEND, INDIANA

BY John P. Szepanski  
Patricia E. Williams  
Michael A.

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_

"GRANTEE"

EQUITABLE LIFE ASSURANCE SOCIETY  
OF THE UNITED STATES,  
A NEW YORK CORPORATION

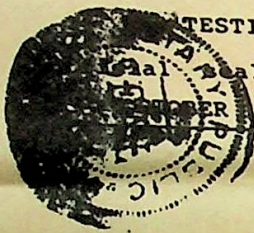
BY James M. [Signature]

STATE OF INDIANA )  
                          ) SS:  
ST. JOSEPH COUNTY )

Before me, the undersigned, a Notary Public in and for St. Joseph County, Indiana, personally appeared JOHN E. LESZCZYNSKI,

PATRICIA E. DE CLERCO,  
and MICHAEL L. VANCE, known to me to be the PRESIDENT AND MEMBERS  
OF THE BOARD OF PUBLIC WORKS OF THE CITY OF SOUTH BEND

\_\_\_\_\_, who acknowledged that they did sign the foregoing  
instrument and that the same is their free act and deed.



IN TESTIMONY WHEREOF, I have hereunto set my hand and  
official seal at SOUTH BEND, IN, this 13TH day of  
SEPTEMBER, 1987.

Sandra M. Parmerlee  
Notary Public, Sandra M. Parmerlee  
Resident of St. Joseph County, IN  
My commission expires: 7-24-88

STATE OF ILLINOIS )  
COOK COUNTY ) SS:

Before me, the undersigned, a Notary Public in and for  
COOK County, ILLINOIS, personally appeared  
JAMES A. WEST and \_\_\_\_\_, known to me to be the  
ASSISTANT SECRETARY OF EQUITABLE LIFE ASSURANCE  
SOCIETY OF THE U.S., who acknowledged that they did  
sign the foregoing instrument and that the same is their free act  
and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and  
official seal at Chicago, IL, this 2<sup>nd</sup> day of  
October, 1987.

Irene F. Zevor  
Notary Public

My commission expires: 5-20-91

Prepared By:

Jonathan R. Cooper  
Benesch, Friedlander, Coplan & Aronoff  
1100 Citizens Building, 850 Euclid Avenue  
Cleveland, Ohio 44114  
(216)363-4500

OFFICIAL SEAL  
IRENE F. ZEVOR  
NOTARY PUBLIC STATE OF ILLINOIS  
MY COMMISSION EXP. MAY 20, 1991