

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

09-010-0

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE GRANTING TO HERITAGE FOUNDATION, INC., (AKA DULUTH AREA FAMILY YMCA) A CONCURRENT USE PERMIT FOR A SKYWALK INTO AND OVER THE RIGHT-OF-WAY OF THE WEST FIRST STREET ALLEY FOR PROPERTY LOCATED AT 302 WEST FIRST STREET.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. Under the authority of Section 100 of the 1912 Home Rule Charter of the city of Duluth, as amended, and subject to the conditions, limitations, and restrictions hereinafter set forth, permission is hereby granted to Heritage Foundation, Inc., their successors and interests, referred to herein as the permittees, to occupy, serve and maintain a skywalk into and over part of the right of way of the West First Street alley adjoining Lot 50, Duluth Proper First Division, West First Street and Lot 49, Duluth Proper First Division, West Superior Street, as the same was dedicated to the use of public in the plat of Duluth Proper First Division, on file and of record in the office of the register of deeds in and for the St. Louis County, Minnesota, described as follows:

Lying between two lines 33.00 feet distant, measured at right angles to and parallel with Third Avenue West, Duluth Proper First Division. The easterly of said two lines being the westerly line of said Third Avenue West.

Section 2. That before this ordinance shall be effective for any purpose whatsoever, the aforesaid permittees shall file with the city clerk a duly executed and acknowledged written acceptance of the terms of this resolution; and a certificate of insurance approved as to form by the city attorney evidencing that the permittees have in force insurance meeting the following requirements: Comprehensive general liability insurance policy shall be maintained in force by permittees in an amount not less than \$1,500,000 for bodily injuries and in an amount not less than \$500,000 for property damage or \$1,500,000 single limit coverage. Such coverage shall include all permittees' activities occurring on the permitted premise whether said activities are performed by employees or

agents under contract to permittees. Such policy of insurance shall be approved by the city attorney and shall contain a condition that it may not be cancelled without 30 days written notice to the city of Duluth. The city of Duluth shall be named as an additional insured on said policy of insurance required by this paragraph. Current ISO additional insured endorsement CG 20 10 is not acceptable. If the ISO 20 10 is used, it must be a pre-2004 edition.

Section 3. That said permit granted under this ordinance may be terminated at any time when and if the city of Duluth determines to use the area occupied by said permittees for any purpose in accordance with the duly dedicated public easement or other lawful use. Giving the permittees 30 days written notice by resolution of the council of the city of Duluth to the last known address of the permittees shall be sufficient notice of termination.

Section 4. That upon the giving of the notice of termination as aforesaid, the permittees shall remove all fixtures and pertinences of every kind whatsoever thereto from the tract of land described above within said 30 days, all at the expense and cost of the permittees, and without right on the part of the permittees to claim from the city of Duluth, or any of its officers, agents or servants, any compensation, reimbursement for damages of any kind whatsoever.

Section 5. That by the acceptance of the terms of this ordinance as aforesaid, the permittees hereby agree to save harmless and defend and indemnify the city of Duluth against any claims or demand which may arise against the city of Duluth by reason of any act or omission of the permittees, its employees, agents, and assigns and agree that such skywalk shall be so constructed and at all times maintained so as in no way to interfere with or damage any portion of the sidewalk, or sewer, water mains, gas mains, pipes, conduits, or other public utilities now or to be hereinafter located in any part of said West First Street alley rights-of-way and agree that the city of Duluth shall not be liable for damage caused to said skywalk while the city is engaged in making repairs to the alley, public sidewalks, or public utilities or during snow removal operations,

and agree to pay to the city of Duluth all extra costs of installation of any such sewers, gas mains, water mains, pipes, conduits, or other public utilities made necessary by the presence of skywalk in said West First Street alley rights-of-way.

Section 6. The permittees shall, at their expense, protect, support, temporarily disconnect, relocate in the same street, alley or public place, or remove from the street, alley or public place, any property of the grantee when required by the proper city officials by reason of snow removal, traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade or alley grade, installation of sewers, drains, water pipes, power lines, signal lines and tracks, the installation or repair of any other type of structures or improvements by governmental agencies, when acting in a governmental or proprietary capacity.

Section 7. The permittees shall further observe the following conditions:

(a) This permit shall be in effect until the property currently held by Heritage Foundation, Inc., is transferred to another party, at which time the permit shall expire;

(b) This permit is subject to revocation by a resolution of the city council and 14 days notice to the permittees for failure to maintain the terms and conditions of this permit or at the discretion of the city;

(c) Skywalk shall be limited to the designated area shown on page III D 4 of the March 10, 2009, staff report to the planning commission (Public Document No. \_\_\_\_\_);

(d) The term of this permit shall expire on June 1, 2030.

Section 8. That this ordinance shall take effect 30 days after its passage and publication.

Approved as to form:

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Attorney

PC CF:tmf 3/11/2009

STATEMENT OF PURPOSE: This ordinance approves a concurrent use permit request for a privately owned skywalk for the YMCA located at 302 West First Street. The purpose of the request is to provide skywalk access between the second floor of the YMCA (302 West First Street) and the third floor of the Beal Building (5 North Third Avenue West).

The Duluth city planning commission voted to approve this concurrent use permit following a public hearing held March 10, 2009, by a vote of 9 yeas, 0 nays and 1 abstention.

The application was received on January 27, 2009, and this matter does not require a deadline for action.