

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

10-015-0

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

AN ORDINANCE GRANTING TO FANNIE ROSE, LLC, A CONCURRENT USE PERMIT FOR PLACEMENT OF RETRACTABLE AWNINGS, LIGHT FIXTURES AND BENCHES IN THE RIGHT-OF-WAY OF EAST SUPERIOR STREET AND NORTH FIRST AVENUE EAST ABUTTING PROPERTY AT 101-107 EAST SUPERIOR 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 granted to Fannie Rose LLC., and its successors in interests, referred to herein as the permittees, to install and maintain retractable awnings, building-mounted light fixtures, and benches, referred to herein as the private improvements, unto and over the following described areas of the public easement and to temporarily occupy such easement for such purpose: that part of the right of way of the East Superior Street and North First Avenue East adjoining Lot 17 and Wly ½ of Lot 19, East Superior Street, Duluth Proper First Division 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, as shown in Public Document No. \_\_\_\_\_.

Section 2. Before this ordinance shall be effective for any purpose whatsoever, the permittee shall file with the city clerk: a duly executed and acknowledged written acceptance of the terms of this ordinance and a certificate of insurance approved as to form by the city attorney evidencing that the permittee has in force insurance meeting the following requirements:

Comprehensive general liability insurance policy shall be maintained in force by permittee 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 permittee's activities occurring upon or within the public easement occupied pursuant to this ordinance whether

said activities are performed by employees or agents under contract to permittee. 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. The certificate shall also reference this ordinance by number. 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.

The permittee shall further cause a current version of the required insurance certificate to be filed with the city clerk while the permission granted by this ordinance is exercised.

Section 3. The permit granted by this ordinance may be terminated at any time by the city official exercising departmental authority of the public easement if the city of Duluth determines to use the area occupied by the permittee for any purpose in accordance with the duly dedicated public easement or other lawful use. Unless a shorter notice period is necessitated by emergency circumstances, or the violation of the conditions set forth in this ordinance, giving the permittee 30 days written notice and delivered via electronic transmission, facsimile transmission or standard United States Postal Service mail delivery to the last known electronic address, facsimile number or mailing address of the permittee shall be sufficient notice of termination.

Upon notice of termination, permittee shall remove the private improvements within 30 days, all at the expense and cost of the permittee, and without right to claim from the city of Duluth, or any of its officers, agents or servants, any compensation or reimbursement for damages of any kind whatsoever.

Section 4. By accepting the terms of this ordinance, the permittee agrees 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 the existence of the private improvements, or any act or omission of the permittee, its employees, agents, and assigns and agree that the private improvements shall be

so constructed and at all times maintained so as in no way to interfere with or damage any portion of the public improvements or other public utilities now or to be hereinafter located in any part of said public easement. The permittee further agrees that the city of Duluth shall not be liable for damage caused to the private improvements while the city is engaged in repairs, maintenance or replacement to the public improvements or public utilities, including any snow removal operations, and agrees to pay to the city of Duluth all extra costs of installation of any sewers, gas mains, water mains, pipes, conduits, or other public utilities made necessary by the presence of the private improvements in the public easement.

Section 5. The permittee shall, at its expense, protect, support, temporarily disconnect, or remove from the public easement, the private improvements when required by city officials by reason of snow removal, traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street 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 6. The permittee shall further observe the following conditions:

(a) Upon any sale or transfer of permittee's interest in the permit granted by this ordinance, the permittee shall provide written notice to the city clerk within five days of such transfer. The permittee's successor in interest shall file with the city clerk within ten days of such transfer a duly executed and acknowledged written acceptance of the terms of this ordinance and the certificate of insurance required in Section 2 above;

(b) This permit is subject to termination by the city of Duluth for failure to comply with the terms and conditions of this permit. Giving the permittees ten days written notice, delivered as provided in Section 3, above, shall be sufficient notice of termination. Upon termination, permittee shall

remove the private improvements as provided in Section 4 above;

(c) Permittee's use of the public easement shall be limited to the private improvements shown on attachments A and B in the February 16, 2010 staff report to the planning commission, FN 10010 (Public Document No. \_\_\_\_\_).

Section 7. The term of this ordinance shall expire on June 1, 2015.

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

Approved as to form:

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Attorney

PLANNING/PC      KD:jab      2/26/2010

STATEMENT OF PURPOSE: This ordinance authorizes Fannie Rose, LLC, to install benches on the public sidewalk and retractable awnings and light fixtures over the public sidewalk abutting 101-107 East Superior Street.

On February 16, 2010, the city planning commission held a public hearing on this matter and voted unanimously to recommend the petitioned for concurrent use permit be approved by the city council according to drawings dated 12/28/2009 and submitted by the applicant and referred to as attachments A and B to the planning commission staff report.