



City of West Allis Matter Summary

7525 W. Greenfield Ave.
West Allis, WI 53214

File Number	Title	Status
R-2005-0098	Resolution	In Committee
Resolution Approving the Amended and Restated License Agreement between the City of West Allis and Whitnall Summit Company LLC Relating to the Skywalk Bridge across West Washington Street in the 6600 to 6700 Blocks.		
Introduced: 3/15/2005		Controlling Body: Public Works Committee

COMMITTEE RECOMMENDATION ADOPT

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>3-15-05</u>			Barczak				
			Czaplewski				
		✓	Dobrowski	✓			
			Kopplin	✓			
			Lajsic				
			Narlock	✓			
			Reinke				
	✓		Sengstock	✓			
			Vitale	✓			
			Weigel				
			TOTAL	<u>5</u>	<u>-</u>		

SIGNATURE OF COMMITTEE MEMBER

Rubell Trull _____
 Chair Vice-Chair Member

COMMON COUNCIL ACTION ADOPT

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>MAR 15 2005</u>			Barczak	✓			
			Czaplewski	✓			
			Dobrowski	✓			
			Kopplin	✓			
			Lajsic	✓			
	✓		Narlock	✓			
			Reinke	✓			
			Sengstock	✓			
		✓	Vitale	✓			
			Weigel	✓			
			TOTAL	<u>10</u>	<u>✓</u>		



City of West Allis

7525 W. Greenfield Ave.
West Allis, WI 53214

Resolution

File Number: R-2005-0098

**Final Action:
MAR 15 2005**

Resolution Approving the Amended and Restated License Agreement between the City of West Allis and Whitnall Summit Company LLC Relating to the Skywalk Bridge across West Washington Street in the 6600 to 6700 Blocks.

WHEREAS, the City of West Allis and Whitnall Summit Company LLC entered into a License Agreement - Skywalk Bridge ("Agreement") dated December 10th, 2004, allowing Whitnall Summit Company LLC to build a skywalk across West Washington Street; and,

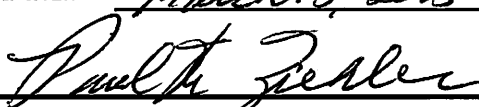
WHEREAS, the certain terms and conditions of said Agreement were incorrect or omitted; and,

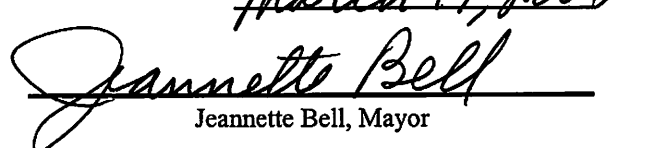
WHEREAS, the parties wish to correct those errors.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of West Allis as follows:

1. That the Amended and Restated License Agreement - Skywalk Bridge is approved in the form attached hereto.
2. That the Mayor and the City Administrative Officer, Clerk/Treasurer be and are hereby authorized and directed to execute and deliver the attached Agreement on behalf of the City of West Allis.
3. That the City Attorney is hereby authorized to make such non-substantive, technical changes to said Agreement as may be needed to clarify the Agreement or protect the City's interest

ATTR-Amend & Restate License Agreement-Skywalk Bridge

ADOPTED March 15, 2005

Paul M. Ziehler, City Admin. Officer, Clerk/Treas.

APPROVED March 17, 2005

Jeannette Bell, Mayor

AMENDED AND RESTATED

LICENSE AGREEMENT - SKYWALK BRIDGE

The License Agreement - Skywalk Bridge is amended and restated this 24th day of March, 2005, between the **CITY OF WEST ALLIS**, a Wisconsin municipal corporation ("Licensor") and **WHITNALL SUMMIT COMPANY LLC**, located at 6737 West Washington Street, West Allis, Wisconsin ("Licensee").

W I T N E S S E T H:

WHEREAS, the Licensor is the owner of the West Washington Street right-of-way located between South 70th Street and Carlson Way, in the City of West Allis, County of Milwaukee, State of Wisconsin; and,

WHEREAS, Licensee is the owner of certain improved property that abuts the aforesaid right-of-way; and,

WHEREAS, Licensee has requested a license and permission to install and maintain a Skywalk Bridge structure over the West Washington Street right-of-way to connect the Summit Place offices with the proposed multi-story parking garage on its property; and,

WHEREAS, Licensee proposes to construct said bridge structure across City right-of-way (West Washington Street) as shown on plans marked Exhibit "1", attached hereto and made a part hereof; and,

WHEREAS, Wis. Stats. §66.0425 authorizes the Licensor to grant privileges for obstructions within the public right-of-way pursuant to certain terms and conditions set forth therein; and,

WHEREAS, Licensor is willing to grant said privileges.

NOW, THEREFORE, Licensor does hereby grant license and permission to Licensee to construct, reconstruct, use, occupy, repair, maintain, inspect and operate said Skywalk Bridge in air space above the right-of-way of West Washington Street, legally described in the map attached hereto as Exhibit "1" and made a part hereof, upon the following terms, conditions and restrictions:

1. The Skywalk Bridge shall be installed and maintained in the Street right-of-way pursuant to Plans approved by the Plan Commission of the City of West Allis as set forth in Section 12.13 of the Revised Municipal Code of the City of West Allis. Licensee shall make no additions, alterations or modifications to the Skywalk Bridge without the written consent of the Plan Commission as provided in said section.

2. The Skywalk Bridge shall be installed and maintained in accordance with all applicable laws, ordinances and regulations of the City of West Allis, State of Wisconsin and U.S. Code of Federal Regulations.

3. It is understood that during the time this license and permission is in effect, Licensee, its successor and assigns, will indemnify, save harmless and defend Licensor, its successors and assigns, from and against any and all claims, liabilities, losses, costs, damages or expenses (including reasonable attorneys fees) for injury or death to any person and/or for damage to any property caused by, arising out of, incidental to or in any manner connected with Licensee's use of the street right-of-way and the installation and maintenance of the Skywalk Bridge excepting, however, any claims or actions arising out of the negligence acts on the part of Licensor, its successor and assigns, employees and agents.

4. This grant is subject to the right of Licensor, its successors and assigns, to use, occupy and enjoy its rights and privileges in the street right-of-way for such purposes and in such manner and at such times, as it shall desire, the same as if this License had not been

executed by the Licensor. Licensee shall make certain that the design of the Skywalk Bridge allows for the clearance of all vehicles, including wide or oversize loads, which will need to make use of the street right-of-way. In the event at any time hereafter the City shall elect to alter, change the grade, construct or reconstruct West Washington Street or portion thereof, or if any other any such use, occupancy or enjoyment shall necessitate the removal or change in the location of said Skywalk Bridge, such removal or change in location shall be made by Licensee, at Licensee's expense, after receiving written demand therefore from the Licensor, and Licensor shall not be liable to Licensee on account thereof, or on account of any damage growing out of any lawful use which Licensor may make of its rights.

5. The term of this license and permission is for a minimum period of forty (40) years from the time of completion of the construction of the Skywalk Bridge. Thereafter, it may be terminated at any time by the Licensor, in the exercise of its sole and absolute discretion, by giving ninety (90) days written notice thereof to Licensee. Licensee shall, thereupon, within the ninety (90) day period remove the Skywalk Bridge from the Street right-of-way, and in the event of failure of Licensee to so remove the Skywalk Bridge, Licensor may remove it at the expense of the Licensee, without liability therefore, and Licensee agrees to reimburse Licensor for the cost incurred upon receipt of a bill therefore. Licensee shall not be entitled to any damages for removal of the Skywalk Bridge. Licensee agrees that failure to pay said bill for removal of the Skywalk Bridge shall result in the costs of removal being assessed and collected as a special tax.

6. As further consideration for this license and permission, Licensee, during the term of this License, agrees to inspect and maintain the Skywalk Bridge in good condition and repair and agrees to do all things necessary toward that end, including, but not limited to,

the biennial inspection of the Skywalk Bridge as recommended by the State of Wisconsin Department of Transportation. The Licensee shall inventory and inspect the Skywalk Bridge in accordance with the procedures outlined in the U.S. Code of Federal Regulations, Title 23; Chapter 1; Part 650; Subpart C – National Bridge Inspection Standards; and the procedures outlined in Wisconsin Statutes Section 84.17; as well as the procedures outlined in Wisconsin Administrative Code Trans. 212 – Standards for the Inspection of Bridges in Wisconsin. It is the intent of the City of West Allis and the recommendation of the State of Wisconsin Department of Transportation to apply the above-referenced rules and regulations to the Skywalk Bridge even though Wisconsin Administrative Code Trans. 212.03 states that bridges only used by pedestrians are excluded from the application of the chapter. The Licensee shall have the responsibility to retain the services of qualified bridge inspectors to prepare inspection reports upon the forms provided by the State of Wisconsin Department of Transportation beginning with an initial inventory inspection and thereafter at regular intervals not to exceed 2 years. These forms shall be provided to the City of West Allis for submission to the State of Wisconsin Department of Transportation.

7. Prior to the use of the Skywalk Bridge, Licensee shall furnish to Licensor a copy of a certificate of liability insurance, in a form acceptable to the City Attorney, showing a minimum coverage of Three Million Dollars (\$3,000,000.00) in general casualty insurance. The certificate shall state that in the event the insurance shall be changed or cancelled, such change or cancellation shall not be effective until thirty (30) days after the Licensor has received written notice from the insurance company. The insurance shall name the City as an additional insured and shall contain a waiver of subrogation claims against the City. Required insurance shall be maintained during the term of this license and permission.

8. Licensee hereby accepts this license and permission upon the terms, conditions and restrictions hereinabove set forth, and in consideration of the benefits to be derived therefrom, does covenant to keep and observe each and every one of said terms, conditions and restrictions.

9. Licensee hereby waives any right to contest in any manner the validity of this license and permission as well as section 66.0425 of the Wisconsin Statutes.

10. Any notice or demand required or permitted to be given to the Licensee pursuant to this license and permission shall be in writing and sent by United States Certified or Registered Mail, postage prepaid, addressed as follows:

Licensee: Richard G. Carlson
President
Whitnall Summit Company
6737 West Washington Street
#2220
West Allis, WI 53214

Copy to: Anthony G. Henika
Attorney at Law
9114 West Puetz Road
Franklin, WI 53132

Licensor: Department of Development
Attn: John F. Stibal, Director
City of West Allis
7525 West Greenfield Avenue
West Allis, WI 53214

Copy to: Scott E. Post
City Attorney
City of West Allis
7525 West Greenfield Avenue
West Allis, WI 53214

Any such notice if mailed as provided herein shall be deemed to have been given on the date mailed and shall be deemed to have been received on the expiration of three (3) business days

after mailing. Any party may, by written notice to the other party, designate a change of address for the purposes set forth herein.

11. This license and permission and all obligations therewith shall run with the land and be binding upon the respective parties hereto, and upon their respective successors and assigns and shall be recorded in the Office of the Register of Deeds for Milwaukee County for and against the affected Parcels, namely Outlot 1 of CSM 6542 and Parcel 2 of CSM 6388 as set forth in Exhibit "1".

IN WITNESS WHEREOF, the parties have executed this Agreement, under seal, to be effective the day and year first written above.

**CITY OF WEST ALLIS,
LICENSOR**

By: Jeannette Bell
Jeannette Bell, Mayor

Attest: Paul M. Ziehler
Paul Ziehler, City Administrative Officer
Clerk/Treasurer

State of Wisconsin)
) ss
Milwaukee County)

Personally came before me this 17 day of March, 2005, the above-named Jeannette Bell and Paul Ziehler, to me known to be the Mayor and City Administrative Officer, Clerk/Treasurer, respectively, of the City of West Allis and the persons who executed the foregoing instrument and acknowledge the same on behalf of the City.

Diane M. Moir
Notary Public, State of Wisconsin
My Commission Expires: 4/16/06

(SIGNATURES CONTINUED ON NEXT PAGE)

**WHITNALL SUMMIT COMPANY LLC,
LICENSEE**

Richard G. Carlson, President

By: Anthony G. Henika
Anthony G. Henika, D.P.O.A.

State of Wisconsin)
) ss
Milwaukee County)

Personally came before this 24th day of March, 2005, the above-named Anthony G. Henika, to me known to be D.P.O.A. for Richard G. Carlson, President of Whitnall Summit Company LLC and the person who executed the foregoing instrument and acknowledged the same on behalf of said company.

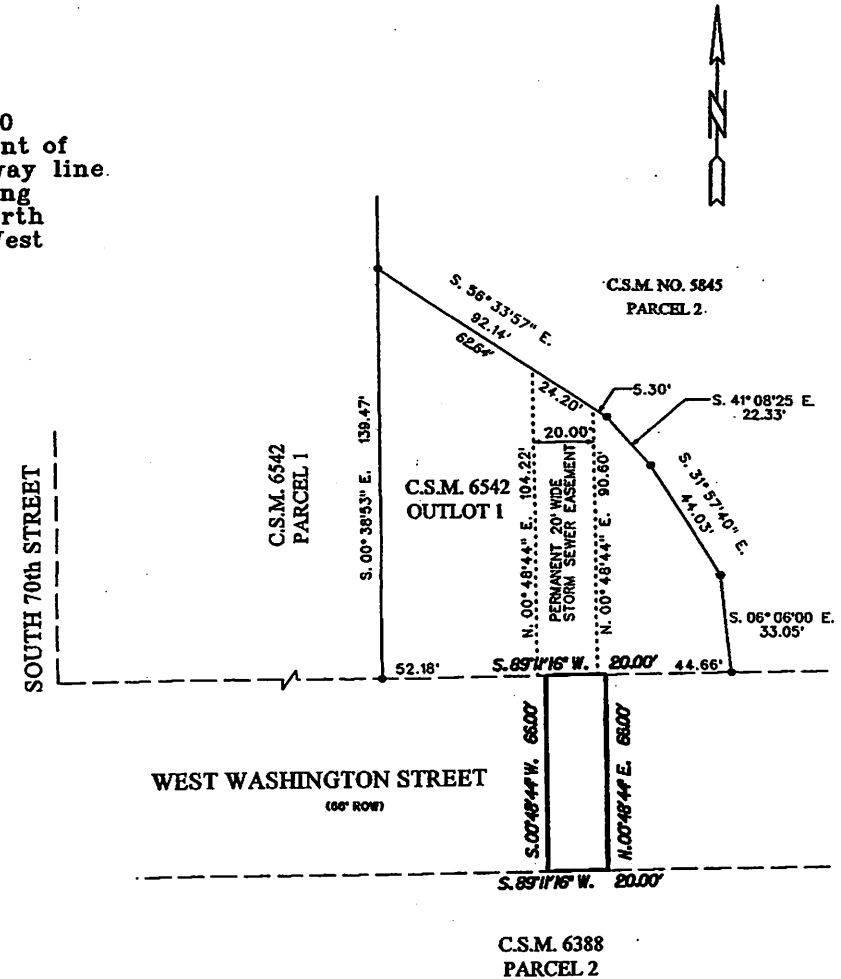
Darlyn M. Adams
Notary Public, State of Wisconsin
My Commission Expires: 12/10/06

EXHIBIT "1"

DESCRIPTION & LOCATION

That portion of the right-of-way of West Washington Street adjoining Outlot 1 of Certified Survey Map 6542 and Parcel 2 of Certified Survey Map 6388 both of which being a part of the Northeast 1/4 of the Southeast 1/4 of Section 34, Township 7 North, Range 21 East, in the City of West Allis, County of Milwaukee, State of Wisconsin, more particularly described as follows:

Commencing at the southwest corner of Outlot 1 which is a redivision of Parcel 2 of Certified Survey Map no. 6147; thence North 89° 11' 16" East, 55.00 feet along the north right-of-way line of West Washington Street to the Point of Beginning; thence South 00° 48' 44" West, 66.00 feet to the south right-of-way line of said West Washington Street; thence South 89° 14' 21" West, 20.00 feet along said south right-of-way line; thence North 00° 48' 44" East, 66.00 to the north right-of-way line of said West Washington Street; thence South 89° 11' 16" West along said north right-of-way line 20.00 feet to the Point of Beginning.



SCALE 1"=50' 1/4 SEC. NO. 453
DRAWN BY RFS CHECKED BY L.K.
DESCRIPTION BY P.C.D.
SURVEY
REVISIONS

CITY OF WEST ALLIS	
ENGINEERING DEPARTMENT	
SKYWALK BRIDGE LICENSE AGREEMENT West Washington Street Approx. 1200' EAST of South 70th Street	
APPROVED	<i>Joseph M. Brant</i> ASSIST. CITY ENGINEER
DATE 11-10-2004	FILE NO. Y-1146