

RESOLUTION NO. R 2294

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND ACCEPTING THAT CERTAIN UTILITY AND SURFACE EASEMENT AND AGREEMENT BETWEEN DM GROUP X, A LIMITED PARTNERSHIP AS GRANTOR, THE CITY OF KIRKLAND AS GRANTEE CITY AND S & H BUILDERS, A PARTNERSHIP AS GRANTEE AND AUTHORIZING THE MAYOR TO ENDORSE THE ACCEPTANCE OF THE CITY OF KIRKLAND UPON SAID EASEMENT GRANT AND AGREEMENT.

WHEREAS, DM Group X, a limited partnership and S & H Builders, a partnership have entered into a Utility and Surface Easement and Agreement as to certain properties specifically described in said easement and lying generally between the westerly terminus of N.E. 68th Street and Lake Street South in the City of Kirkland, and

WHEREAS, paragraph 8 of said Utility and Surface Easement and Agreement grants to the City of Kirkland the right to install, maintain and repair water and sewer utility facilities within said easement area, and to make customer service connections to said facilities, and

WHEREAS, said easement and agreement contains the following endorsement to be executed by the City of Kirkland:

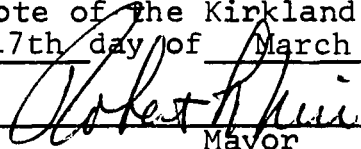
"To the extent that the foregoing document imposes benefits and obligations for or on the City of Kirkland, it is hereby accepted by the City of Kirkland, pursuant to City Council Resolution NO. R-2294."

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Kirkland, as follows:

Section 1. That certain Utility and Surface Easement and Agreement entered into between DM Group X, a limited partnership as grantor and S & H Builders, a partnership as grantee and wherein the City of Kirkland is identified as grantee City is accepted by the City of Kirkland. A copy of said easement and agreement is attached to the original of this Resolution and by this reference incorporated herein.


Section 2. The mayor is hereby authorized and directed to sign on behalf of the City of Kirkland the acceptance endorsement attached to said easement and agreement and quoted hereinabove.

PASSED by a majority vote of the Kirkland City Council in regular meeting on the 17th day of March, 1975.



Mayor

ATTEST:



Director of Administration & Finance
(ex officio City Clerk)

MEMORANDUM AGREEMENT

FOR CONSTRUCTION OF STORM DRAINAGE FACILITIES AND EASEMENT BETWEEN S & H BUILDERS, A PARTNERSHIP HEREINAFTER REFERRED TO AS "S & H BUILDERS" AND CITY OF KIRKLAND, A NONCHARTER CITY, HEREINAFTER REFERRED TO AS "CITY"

WITNESSETH:

WHEREAS, City presently has an unlocated five foot easement for sanitary sewers over, under and across Block 1, Plat of Lakeview Terrace, according to Plat thereof, records of King County, and

WHEREAS, Block 1, Plat of Lakeview Terrace is owned by and being developed by S & H Builders as part of an apartment complex, and

WHEREAS, there presently exists an old unused sanitary sewer line extending across Block 1, Plat of Lakeview Terrace westerly from Lakeview Drive, which line is no longer used nor needed by City as a sanitary sewer line, and

WHEREAS, said unused sanitary sewer line may have some utility or usability as a storm drainage or storm sewer line to replace the present flow of storm and surface waters from Lakeview Drive onto and across a drainage course westerly over said Block 1, Plat of Lakeview Terrace, and

WHEREAS, S & H Builders in order to more efficiently utilize their property have requested City to abandon or vacate the existing sanitary sewer easement described of record as being "a five foot easement for sanitary sewers over Block 1, Plat of Lakeview Terrace, according to Plat thereof, records of King County, Washington, and

WHEREAS, S & H Builders in exchange for the vacation of such sanitary sewer easement is willing to construct a storm drainage or storm sewer line westerly across said Block 1 to pickup the accumulation of storm and surface drainage waters along Lakeview Drive and to convey same into an existing City storm sewer system located in Lake Street South, either by converting the existing sanitary sewer line and making the necessary connections thereto, or in the alternative, by constructing a new relocated storm sewer line,

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, it is agreed as follows:

1. S & H Builders will construct at their expense according to City approved specifications a storm drainage sewer line commencing at a storm sewer manhole (existing or to be constructed by City) within or within the vicinity of Lakeview Drive where it abuts said Block 1, and extending westerly under and across

Block 1, Plat of Lakeview Terrace according to Plat thereof records of King County, to connect into a storm sewer manhole, (existing or to be constructed by City) being a part of or an extension from the existing City of Kirkland storm sewer line within Lake Street South lying westerly of said Block 1.

2. In constructing the storm drainage sewer line, S & H Builders at its option may construct the necessary connections and utilize the existing abandoned sanitary sewer line extending in an east-west direction across said Block 1, between Lakeview Drive and Lake Street South, or in the alternative, relocate and construct a new storm sewer line across said Block 1, between said streets.

3. Upon completion of construction of the storm drainage sewer line and its acceptance by the City of Kirkland as a part of its storm drainage sewer facilities:

A. S & H Builders shall cause to be granted to City by appropriate recorded conveyance a storm drainage sewer line easement under and across Block 1, Plat of Lakeview Terrace, according to Plat thereof, records of King County, which easement shall be not more than five feet in width and shall be specifically located and described across said Block 1. The sanitary storm drainage facilities to be constructed by S & H Builders pursuant to this agreement shall be located within said easement.

B. The City of Kirkland shall vacate by appropriate recorded document the existing five foot easement for sanitary sewers over, under and across said Block 1, Plat of Lakeview Terrace, according to Plat thereof, records of King County, Washington.

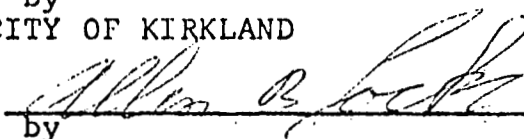
C. City shall thereafter maintain and repair said storm drainage sewer facility and shall have the right to enter upon the easement premises for such purposes and whenever it shall be necessary to cut into or disturb the surface of said easement area or any portion thereof, City shall restore said surface area insofar as it is practically possible to the same condition as existed immediately prior thereto.

DATED at Kirkland, Washington this 17th day of March, 1975.

S & H BUILDERS

by
CITY OF KIRKLAND

by



City Manager

Resolution NO. R-2294

RELEASE OF EASEMENT

THE CITY OF KIRKLAND, a municipal corporation in King County, Washington, as successor to the TOWN OF HOUGHTON, a municipal corporation, hereby releases and quit claims to the present owners of the servient tenement thereof all right, title and interest of the CITY OF KIRKLAND in and to the following described easement as dedicated to the TOWN OF HOUGHTON in the recording of the Plat of Lakeview Terrace on June 30, 1949, in Volume 56 of Plats, pages 55 and 56, records of King County, Washington:

A five-foot easement for sanitary sewer connection across Block 1 of said Plat of Lakeview Terrace.

This release is given for the reason that said easement is no longer required by the City of Kirkland for the purposes of effecting a sewer connection.

Dated this 17th day of March, 1975.

CITY OF KIRKLAND

By: Allen B. Luke
City Manager

By: Robert H. Kivi
Mayor

Resolution No. R-2294

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this 26th day of February,
A.D. 1975, before me, the undersigned, a Notary Public in
and for the State of Washington, duly commissioned and sworn
personally appeared Maxwell B. Dwyer
and General Partner to me known to
be the General Partner of the
Limited Partnership that executed the foregoing instrument,
and acknowledged the said instrument to be the free and
voluntary act and deed of said Limited Partnership for the
uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed
the day and year in this certificate above written.

William L. Dwyer
Notary Public in and for the
State of Washington, Residing
at Bellevue

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this 8th day of January,
A.D. 1975, before me, the undersigned, a Notary Public in
and for the State of Washington, duly commissioned and sworn
personally appeared BRIEN STAFFORD
and _____ to me known to
be the _____ of
the Partnership that executed the foregoing instrument, and
acknowledged the said instrument to be the free and voluntary
act and deed of said Partnership for the uses and purposes
therein mentioned.

WITNESS my hand and official seal hereto affixed
the day and year in this certificate above written.

Louis C. Bauer
Notary Public in and for the
State of Washington, Residing
at Bellevue

Acceptance by the City of Kirkland:

To the extent that the foregoing document imposes
benefits and obligations for or on the City of Kirkland, it
is hereby accepted by the City of Kirkland pursuant to
Kirkland City Council Resolution No. R-2294

Resolution No. R-2294

Robert K. Hill
Mayor

Attest:

Tom J. Addison
Director of Administration and
Finance (ex officio City Clerk)

Utility and Surface Easement and Agreement

This agreement is between DM GROUP X, a limited partnership, hereafter called "Grantor", the CITY OF KIRKLAND, hereafter called "Grantee City", and S & H BUILDERS, a partnership, hereafter called "Grantee". Grantor, Grantee City, and Grantee agree as follows:

1. The covenants of the Grantor run with the land described on Exhibit A and are binding upon all subsequent owners of that land.

2. The covenants of the Grantee run with the land described on Exhibit B and are binding upon all subsequent owners of that land.

3. The conveyances by Grantor and Grantee are subject to all existing encumbrances, restrictions, and reservations of record. However, the conveyances shall cover all after acquired title of Grantor and Grantee.

4. The obligations of the Grantor and Grantee are binding upon its successors and assigns.

5. All benefits provided to the Grantee in this instrument are expressly subject to the condition precedent that Grantee fully and faithfully perform all of its obligations under this agreement and, if Grantee fails to do so, Grantor may terminate all of Grantee's rights and privileges granted here and all rights of third parties claiming through Grantee.

6. Grantor hereby grants and conveys to the Grantee the right to install, construct, improve, repair, replace, and maintain underground utilities on the real property described on Exhibit C, provided that none of the

rights granted here shall be exercised so as to impair the use by Grantor of underground utilities then serving Grantor or the land described on Exhibit A.

7. Grantor hereby grants and conveys to Grantee the right to use the surface of the land described on Exhibit C for the purpose of beautification, walkways, and other surface uses provided that the use by Grantee:

(a) Does not include the placing of any building or other structure on the land,

(b) Does not conflict with the Grantor's right to use the land in common with Grantee, and

(c) Does not impair or detract from the Grantor's use and enjoyment of that portion of the land described on Exhibit A which is not subject to Grantee's use.

8. The rights granted to Grantee under paragraphs 6 and 7 are not exclusive, but are to be shared in common with the Grantor, provided however, that both Grantor and Grantee recognize that certain utility facilities installed or to be installed within the easement area are owned by and/or are a part of the Grantee City's water and sewer systems and as to such water and sewer facilities, the Grantee City shall have the following rights and obligations:

(a) The right to come upon said easement premises to install, maintain, and repair such water and sewer utility facilities.

(b) The right to make service connections to said water and sewer facilities for customers of the Kirkland Water and Sewer Systems.

(c) Whenever the Grantee City shall cut into or disturb the service of the easement area, or any

portion thereof, the Grantee City shall restore said service area insofar as it is practically possible to the same condition as existed immediately prior thereto.

9. Grantee has the right to make utility service connections within the property described on Exhibit C and the right to grant permission to others to do so, subject always to the restrictions on use set forth in paragraphs 6 and 7 and on the express condition that the Grantee is liable for and responsible for the use by those third persons.

10. Grantee shall promptly beautify the surface of the land described on Exhibit C, and provide a walkway which may be used by persons residing on Exhibit A in common with Grantee and other persons using it with the consent of Grantee or Grantor. If at any time Grantee shall cut into or disturb the surface of the land area, Grantee shall promptly complete any work and restore the surface to the condition required by this paragraph.

11. Grantee shall maintain all underground utilities not required to be maintained by the Grantee City pursuant to paragraph 8 above, located within the land described on Exhibit C which service the land described on Exhibit A, make any repairs which may be reasonably necessary to maintain underground utility service, and replace any underground utilities where replacement is reasonably appropriate to maintain uninterrupted utility service for the benefit of the land described on Exhibit A. Grantee acknowledges the importance to Grantor of maintaining uninterrupted utility service for the benefit of the land described on Exhibit A and expressly agrees to take steps necessary to prevent the interruption of that service and immediately restore service in the event of its interruption.

12. The person or persons executing this document on behalf of the Grantee personally and expressly warrant their own authority to bind the Grantee to the obligations imposed upon Grantee in this instrument.

13. In the event of any controversy, claim or dispute arising out of, or relating to, this agreement or the method and manner of its performance, the controversy, claim or dispute shall be determined by the courts of the State of Washington and venue shall be in King County. The prevailing party shall be awarded in addition to any other relief, a reasonable sum as attorneys' fees and costs. In determining what is a reasonable sum for attorneys' fees and costs, the actual amount of the attorneys' fees and costs the prevailing party is obligated to pay to his attorney or attorneys, shall be presumed to be reasonable, which presumption shall be rebuttable. In the event neither party wholly prevails, the court shall award to the party whose position is determined to be comparatively correct an equitable portion of the attorneys' fees and costs to which the party would have otherwise been entitled had the party wholly prevailed. Evidence as to fees and costs shall at the option of any one of the parties be presented solely after determination of the principal controversy.

DM GROUP X

By *[Signature]*

By _____

S & H BUILDERS, A Partnership

By *[Signature]*

By _____

Resolution No. R-2294

PARCEL A:

LOT 20 IN BLOCK 4 OF HARRY WHITE & CO.'S COMMERCIAL ADDITION TO KIRKLAND, ACCORDING TO THE PLAT RECORDED IN VOLUME 8 OF PLATS, PAGE 16, IN KING COUNTY, WASHINGTON.

PARCEL B:

THAT PORTION OF GOVERNMENT LOT 3 OF SECTION 8, TOWNSHIP 25 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 2092.00 FEET NORTH OF THE SOUTHWEST CORNER OF GOVERNMENT LOT 4 OF SAID SECTION; THENCE DUE WEST TO THE GOVERNMENT MEANDER LINE OF SAID SECTION; THENCE NORTH ALONG SAID MEANDER LINE 165.00 FEET; THENCE EAST TO A POINT 310.00 FEET EAST OF THE EAST LINE OF COUNTY ROAD KNOWN AS LAKE AVENUE, AS SAME EXISTED ON APRIL 14, 1950, AND TRUE POINT OF BEGINNING; THENCE EAST TO A POINT 1186.50 FEET EAST OF SAID MEANDER LINE; THENCE SOUTH 135.00 FEET; THENCE WESTERLY ALONG A LINE "WHICH IF PRODUCED WOULD INTERSECT A POINT 2122.00 FEET NORTH OF THE SOUTHWEST CORNER OF SAID GOVERNMENT LOT 4", A DISTANCE OF 440 FEET MORE OR LESS, TO THE NORTHWEST CORNER OF A STRIP OF LAND DEEDED TO KING COUNTY BY DEED RECORDED UNDER AUDITOR'S FILE NO. 3359691; THENCE SOUTH 30.00 FEET; THENCE WEST ALONG A LINE "WHICH IF PRODUCED WOULD INTERSECT A POINT 2092.00 FEET NORTH OF THE SOUTHWEST CORNER OF SAID GOVERNMENT LOT 4" TO A POINT 310.00 FEET EAST OF THE EAST LINE OF SAID LAKE AVENUE; THENCE NORTH TO THE TRUE POINT OF BEGINNING;

EXCEPT THAT PORTION THEREOF LYING EAST OF A LINE PARALLEL WITH AND 240.00 FEET WEST OF THE WEST LINE OF THIRD STREET SOUTH, AS SAME EXISTED ON SEPTEMBER 25, 1955, AND EXCEPT ANY PORTION THEREOF LYING WITHIN LAKEVIEW TERRACE, ACCORDING TO THE PLAT RECORDED IN VOLUME 46 OF PLATS, PAGE 55, IN KING COUNTY, WASHINGTON.

PARCEL C:

THAT PORTION OF GOVERNMENT LOT 3 OF SECTION 8 TOWNSHIP 25 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING ON THE EAST LINE OF LAKE AVENUE, AS SAME EXISTED ON NOVEMBER 4, 1953, AT A POINT 2092.00 FEET NORTH OF THE SOUTH LINE OF SAID SECTION; THENCE NORTH 89°24'45" EAST 1152.8 FEET TO THE WESTERLY LINE OF COUNTY ROAD; THENCE SOUTH 1°49'40" WEST ALONG SAID WESTERLY LINE 11.50 FEET; THENCE SOUTH 89°22'05" WEST 1152.8 FEET TO THE EAST LINE OF SAID LAKE AVENUE; THENCE NORTHERLY ALONG SAID EAST LINE 12.40 FEET TO THE POINT OF BEGINNING;

EXCEPT THAT PORTION THEREOF LYING WITHIN LAKEVIEW TERRACE, ACCORDING TO THE PLAT RECORDED IN VOLUME 46 OF PLATS, PAGE 55, IN KING COUNTY, WASHINGTON.

Resolution No. R-2294

EXHIBIT A

EXHIBIT B

That portion of Government Lot 3 in Section 8, Township 25 North, Range 5 East, W.M., King County, Washington, described as follows:

Commencing at the southwest corner of Government Lot 4 in said Section 8, said corner having K.C.A.S. coordinates $Y = 244226.46$ $X = 1661969.81$; thence $N 1^{\circ}56'50'' W$ (K.C.A.S. Meridian) 1895.39 feet to the point of beginning at the intersection of the easterly margin of S.R.908, lying 32.00 feet easterly of the monumented centerline of said road and an existing fence line, said fence line being the north line of that tract of land described under Auditor's File No. 4588213, said point of beginning being further described as being a point on a curve from which the center bears $N. 81^{\circ}22'59'' W$. 1843.86 feet distant; thence northerly along said curve to the left and along said margin through a central angle of $5^{\circ}09'35''$ an arc distance of 175.05 feet to the south line of that tract of land described under Auditor's File No. 3142968; said line being further defined by an existing iron pipe; thence $S 88^{\circ}39'11'' E$ along said south line 281.41 feet to a point 356.50 feet easterly of the balanced Meander line in said section; thence $S 1^{\circ}23'29'' W$ 174.64 feet to an existing fence line; thence $N 88^{\circ}36'31'' W$ along said fence line and parallel with the south line of said Section 8 a distance of 295.58 feet to the point of beginning.

EXHIBIT C

The following described real estate located in King County, Washington:

Beginning at a point on the east margin of Lake Avenue 2,092 feet North of the South line of Section 8, Township 25 North, Range 5, East to W.M., records of said County, thence North $89^{\circ}24'45''$ East 1,152.8 feet to the Westerly margin of County road; thence South $1^{\circ}49'40''$ West along said Westerly margin 11.5 feet; thence South $89^{\circ}22'5''$ West 1,152.8 feet to the East margin of Lake Avenue; thence Northerly 12.4 feet to the true point of beginning, except that portion within the Plat of Lakeview Terrace, according to Plat recorded in Volume 46 of Plats, page 55.