

RESOLUTION R - 3364

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE ISSUANCE OF A STREET USE PERMIT FOR A PORTION OF AN ELEVATED SIDEWALK COMMONLY REFERRED TO AS THE LAKE PLAZA BOARDWALK, SUBJECT TO CERTAIN CONDITIONS, INCLUDING THE CONDITION THAT PRIOR TO THE EFFECTIVE DATE OF SUCH STREET USE PERMIT, SAID ELEVATED SIDEWALK BE CONSTRUCTED AT THE PERMITTEE'S EXPENSE IN ACCORDANCE WITH PLAN SPECIFICATIONS AND CONSTRUCTION SCHEDULE APPROVED BY THE CITY OF KIRKLAND.

Whereas, there has been presented to the City Council a preliminary proposal for construction of an elevated sidewalk within the public right-of-way commonly referred to as the alley running between Central Way and Kirkland Avenue west of Lake Street within the southwest quarter of Section 5, Township 25 North Range 5, WM as deeded to the City of Kirkland under deed dated February 27, 1922; and

Whereas, said elevated sidewalk would extend south from Central Way at the Central Way sidewalk grade level, thereby providing direct access thereto from the private structures abutting the alley to the east at their Central Way and/or Lake Street grade level; and

Whereas, the "SEPA" responsible official for the City of Kirkland has determined that said proposal for elevated sidewalk to be located within public right-of-way is, pursuant to WAC 197-11-800, categorically exempt from threshold determination requirements of SEPA as "minor new construction"; and

Whereas, Pelican Wharf - Kirkland, Limited Partnership, as the leaseholder of certain property directly abutting said proposed elevated sidewalk has proposed the construction of same at their expense and requested the issuance to them of a street use permit for a portion of the elevated sidewalk directly abutting their business premises, all as set forth in the provisions of the proposed Terminable Conditioned Street Use Permit which is attached to this resolution as Exhibit "A" and by this reference incorporated herein; and

Whereas, the City Council finds that the public interest and public benefit will be served by the construction and installation of such an elevated walkway, as proposed; now, therefore,

Be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Council of the City of Kirkland hereby approves the construction and installation of an elevated sidewalk within the north 215.27 feet of the alley in Government Lot 5, Section 5, Township 25 North, Range 5 EWM as set forth in Exhibit "A" attached to this resolution and by this reference

incorporated herein.

Section 2. The City Manager is hereby authorized to sign on behalf of the City of Kirkland a Terminable Right-of-Way Use Permit for a portion of elevated sidewalk substantially in the form set forth in Exhibit "A" and attached hereto; provided that the City Manager shall not sign said Permit until such time as the Permit has been signed and approved by the permittees.

Passed by majority vote of the Kirkland City Council in regular, open meeting this 20th day of April, 1987.

Signed in authentication thereof this 20th day of April, 1987.

Doris Cooper

MAYOR

ATTEST:

Tom J. Anderson

Director of Administration & Finance
(ex officio City Clerk)

AS APPROVED BY COUNCIL RESOLUTION R3364,
ADOPTED BY THE KIRKLAND CITY COUNCIL APRIL 20, 1987

CITY OF KIRKLAND
TERMINABLE RIGHT-OF-WAY USE PERMIT

Portion of "elevated Lake Plaza sidewalk"
(to be constructed)

The City of Kirkland hereby grants to Pelican's Wharf - Kirkland, a Limited Partnership a terminable conditional street use permit to use and occupy the portion of the surface of the public elevated sidewalk commonly referred to as the Lake Plaza Boardwalk specifically hereinafter described, subject to the terms and conditions herein set forth.

1. Provided permittee first completes to the satisfaction of the City of Kirkland each and every precedent condition set forth in paragraph 12 below, then upon written evidence of such satisfactory compliance issued by the Director of Public Works, this terminable conditional street use permit shall become effective. If said precedent conditions are not so met within eighteen (18) months of the date hereof, this permit shall be void.

2. No permanent structures or improvements shall be placed within the permit area. Any temporary portable improvements or other obstructions placed in the permit area shall be so placed and maintained as to provide a clear demarcation between the permit area and the remaining portion of the elevated sidewalk in order that the use and occupancy of the permit area by permittee and permittee's invitees and customers shall not interfere with the free movement of pedestrian traffic upon the elevated sidewalk. Alcoholic beverages may be consumed within the permit area only when served in conjunction with meals and in conformance with Liquor Control Board regulations. Alcoholic beverages shall not be carried or taken from the permit area to any other portion of the elevated sidewalk. A breach of this paragraph by permittee shall be grounds for immediate revocation of this permit.

Upon either revocation or termination of this permit all temporary improvements and encroachments placed within the permit area shall forthwith be removed and the cost of such removal, including any action required to enforce same, shall be solely at the expense of permittee.

3. Permittee shall, at its sole expense, maintain the permit area hereinafter described, including all temporary and/or portable improvements and encroachments placed therein, including all areas thereof which permit or invite public access.

4. The permittee shall hold and save harmless the City of Kirkland, its officers, agents and employees from any and all

claim or claims, real or imaginary, of whatsoever nature made or asserted against the City of Kirkland, its officers, agents or employees growing out of the construction, development, use, maintenance or occupancy of said permit area, or any structure, improvement or encroachment placed within said permit area by the permittee.

5. The permittee shall obtain, at its sole expense, comprehensive liability insurance in limits satisfactory to the City of Kirkland and shall provide the City with satisfactory proof of the continued insurance coverage during the life of this permit, or any renewal or extension hereof. Such insurance shall include the City of Kirkland as an additional insured or beneficiary.

6. This street use permit and all rights thereunder shall not be transferable by permittee for any reason whatsoever without the prior consent of the City of Kirkland, which shall be expressed by resolution of the Kirkland City Council.

7. No waiver by either party of any term or condition of this agreement shall be deemed or construed as waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or different provision of this agreement or permit.

8. The initial term of this permit shall be for one (1) year commencing with the effective date determined in accordance with paragraph 1 above; thereafter, all rights under this permit may be terminated at any time by the City of Kirkland upon giving permittee thirty (30) days' notice of termination; provided, however, that if such termination is based upon a breach of paragraph 1, 2 or 6 of this permit, then in that event the termination shall be effective immediately upon receipt by the permittee of the notice of termination. Service of the notice of termination, if made by mail, shall be deemed complete as of the date of mailing, provided said notice is mailed to the permittee at the following address, or such other address as the permittee may subsequently provide to the City in writing for the purpose of service:

Name _____

Address _____

This permit may also be terminated by the permittee at any time by the giving of a written notice of written termination to the City of Kirkland with delivery thereof to the Kirkland City Hall, 123 Fifth Avenue, Kirkland, Washington 98033, thirty (30) days prior to the effective date of such termination.

At such time as a notice of termination is served in

accordance with the provisions of this section, all rights hereunder shall terminate as of the effective date of the termination.

9. This agreement and permit merges and supersedes all prior negotiations, representations and agreements between the parties hereto, relating to the subject matter hereof, and constitutes the entire agreement and permit between the City of Kirkland and the permittee.

10. The area of the elevated sidewalk to which this Terminable Right-of-Way Use Permit applies, being the area available for use by Pelican's Wharf following construction of the elevated sidewalk, is described as follows: the southerly 80 feet of the easterly 8 feet of the northerly 215.27 feet of the sixteen foot wide public right-of-way which runs between Central Way and Kirkland Avenue within the southwest quarter of Section 5, Township 25 North, Range 5, EWM as deeded to the City of Kirkland under deed dated February 27, 1922.

11. In addition to the remedies provided in this permit, and otherwise by law, this agreement and permit may be specifically enforceable by either party.

12. PRECEDENT CONDITIONS: Pursuant to paragraph 1 above, each and every condition set forth in this paragraph shall be met to the satisfaction of the City of Kirkland with evidence of such satisfaction to be issued in writing by the Director of Public Works for the City of Kirkland -

a. Within a time schedule approved in writing by the Kirkland Department of Public Works, permittee shall construct, at permittee's sole expense, an elevated sidewalk within the northerly 215.27 feet of the public right-of-way, commonly referred to as the "alley" running between Central Way and Kirkland Avenue west of Lake Street, within the southwest quarter of Section 5, Township 25 North, Range 5 EWM, as deeded to the City of Kirkland under deed dated February 27, 1922. Said elevated sidewalk shall extend southerly from Central Way at approximately the Central Way grade level, and so as to permit accessibility directly thereto from the private structures abutting said elevated sidewalk at their Central Way or Lake Street grade level.

b. Construction of the elevated sidewalk shall be accomplished in accordance with the design therefore set forth in Exhibit "A" attached hereto and by this reference incorporated herein.

c. Following approval by the City Council, City staff and Department of Public Works of the architectural

and structural designs, construction specifications and construction schedule, the City will grant to permittee a temporary construction easement over and upon the property described in paragraph 12 a. above. Adequate provisions shall be taken during construction by the permittee to safeguard vehicles and pedestrians utilizing the Lake Plaza parking lot and the business establishments fronting thereon. Such safeguards shall have prior approval of the Department of Public Works and the Kirkland Police Department. Said temporary easement shall terminate as of the permit effective date provided for in paragraph 1 above.

- d. At, or prior to, the time of grant of the temporary construction easement, permittee shall:
 - i. File with the City of Kirkland, in a form approved by the City Attorney, a performance and payment bond issued by a surety company licensed to do business in the State of Washington. Said bond shall be in an amount not less than the total estimated cost of construction of the elevated sidewalk, and conditioned upon permittees completing construction of said facility in accordance with the approved plans and specifications, and to the satisfaction of the City of Kirkland and free of any and all construction costs or liens which may be claimed against either the City or the permittee or the permittee's construction contractor.
 - ii. Provide to the City of Kirkland a letter of commitment from permittee's construction finance lender, obligating said lender to provide full financial assistance to permittee, in order that the proposed construction shall be fully completed, free and clear of any liens or other claims against City owned property and the elevated sidewalk structure.
 - iii. The permittee shall hold and save harmless the City of Kirkland, its officers, agents and employees from any and all claim or claims, real or imaginary, of whatsoever nature made or asserted against the the City of Kirkland, its officers, agents or employees growing out of the activities of permittee and its contractors in the construction of said elevated sidewalk, including any cost, expense or fees incurred by the City of Kirkland in the investigation and/or defense

of any such claims, provided that this paragraph shall not apply as to any claim arising out of the sole negligence of the City of Kirkland, its officers and/or employees.

DATED at Kirkland, Washington this _____ day of _____, 1987.

PERMITTEES:

CITY OF KIRKLAND:

Pelican's Wharf - Kirkland
a Limited Partnership By:

General Partner

By _____
City Manager