

RESOLUTION R-3548

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND RATIFYING AND CONSENTING TO AN ASSIGNMENT OF THE SECOND AVENUE STREET END USE PERMIT FROM MOSS BAY ASSOCIATION, A WASHINGTON LIMITED PARTNERSHIP, TO 135 LAKE STREET ASSOCIATES LIMITED PARTNERSHIP, A WASHINGTON LIMITED PARTNERSHIP.

Whereas, the City of Kirkland has heretofore granted a Second Avenue South Street end use permit by instrument dated October 21, 1974 and recorded on November 7, 1974 under King County Recording No. 7411070627 and amending instrument dated June 21, 1976 and recorded under King County Recording No. 7608110436; and

Whereas, 135 Lake Street Associates Limited Partnership, a Washington limited partnership, has purchased the permittee's interest in said street end use permit, together with the privately owned property abutting thereto to the north and commonly known as Moss Bay Office Building and Marina; and

Whereas, said parties have requested the consent of the City of Kirkland to the transfer and assignment of said street end use permit; and

Whereas, 135 Lake Street Associates Limited Partnership appears to be the actual legal entity or party in interest who will be responsible for ownership, operation and maintenance of the improvements within said street end, as authorized by the street end use permit; and

Whereas, such transfer or assignment appears to be in the public interest, to the public benefit and within the legislative authority of the City Council to approve; 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 does hereby consent to the transfer or assignment of the Second Avenue South street end use permit originally issued by the City pursuant to Resolution R2273, to 135 Lake Street Associates Limited Partnership conditioned upon the following:

a. The transfer or assignment of the street end use permit from Moss Bay Associates, a Washington limited partnership, to 135 Lake Street Associates Limited Partnership, a Washington limited partnership, shall be in writing in a form acceptable to the City and recordable by the King County Department of Records and Elections and shall be so recorded. A copy of said transfer or assignment agreement, including Recorder's receipt and file number, shall be filed with the City of Kirkland.

b. Said transfer or assignment agreement shall provide that the transferee or assignee shall perform and be bound by all of the terms and conditions of said street end use permit, as amended.

c. The transferee or assignee, 135 Lake Street Associates Limited Partnership, a Washington limited partnership, shall enter into a written amendment of the Second Avenue street end use permit in the form as set forth in Attachment A to the original of this Resolution and by this reference incorporated herein.

Section 2. The City Manager of the City of Kirkland is hereby authorized and directed to sign on behalf of the City of Kirkland the agreement setting forth the amendments to the street end use permit and the consent to assignment of the permit as amended from Moss Bay Associates, a Washington limited partnership, to 135 Lake Street Associates Limited Partnership, a Washington limited partnership.

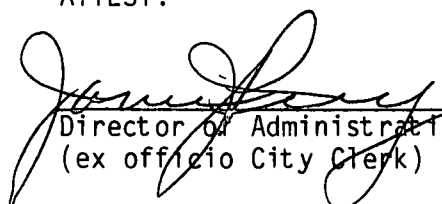
Passed by majority vote of the Kirkland City Council in regular, open meeting on the 19th day of September, 1989.

Signed in authentication thereof on the 19th day of September, 1989.



MAYOR

ATTEST:

 CITY CLERK
Director of Administration and Finance
(ex officio City Clerk)

CITY OF KIRKLAND
 AMENDED SECOND AVENUE SOUTH STREET END USE PERMIT

WHEREAS, C.S. Hadley, Sr. heretofore proposed and constructed a development including a Marina (Moss Bay Marina), office building and parking facilities along the shores of Lake Washington, Westerly of Lake Street, in the vicinity of 2nd Avenue South and the 2nd Avenue South Street end. All as specifically set forth in Exhibits A and B, appearing in City of Kirkland, Department of Community Development, File No. SBD-72-2 and UUP-72-19 and approved by City of Kirkland Resolution No. R2255, adopted June 17, 1974, and

WHEREAS, in conjunction with said development there was issued by the City of Kirkland a 2nd Avenue South Street End Use Permit, approved by Kirkland Resolution No. R2273 which permit was recorded on November 7, 1974, under King County Recording No. 7411070627, with amendment thereto recorded under King County Recording No. 7608110436, and

WHEREAS, said development includes use of a substantial portion of 2nd Avenue South as it extends westerly from Lake Street South out into Lake Washington, and

WHEREAS, said development provides for and reserves freedom of public access to Lake Washington, together with full public use of certain portions of said development, both within said street end and upon private property, and

WHEREAS, the assignee of said Street End Use Permit and the City of Kirkland have agreed to further amendments to the Street End Use Permit, and

WHEREAS, it is the purpose of this document to set forth the terms and provisions of the 2nd Avenue South Street End Use Permit as amended in form of an intergrated document,

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

1. The City of Kirkland hereby grants to C.S. Hadley, Sr. and Moss Bay Marina a Joint Venture as his assignee, right to use and place encroachments in Second Avenue South as it lies westerly of Lake Street South and extends into Lake Washington, subject to the terms and conditions hereinafter set forth, and for a period not to exceed fifteen years, provided however, that said permit may be renewed for additional periods of fifteen years. The permittee interest of C.S. Hadley, Sr. and Moss Bay Marina a joint venture is now assigned to 135 Lake Street Associates a Washington limited partnership. ["Under the provisions of this paragraph this permit will expire October 20, 2004, unless application for an additional 15 year term is applied for by the permittee and approved by the City of Kirkland, between October 21, 1989 and October 19, 2004"].

2. Use of the 2nd Avenue South Street End including the placement of encroachments therein shall be restricted to the development and uses approved by the amended classified use permit originally issued by the City of Kirkland under Kirkland Resolution No. R-2255 June 17, 1974, and subject to all of the conditions imposed by said unclassified Use Permit, and any Amendments thereto, and this Street End Use Permit. Any other development or use or any modification of such development and use failing to meet the unclassified Use Permit or substantial development permit conditions, or which in any way restricts or limits the public access and the public use as set forth in said permits or this Street End Use Permit shall cause immediate revocation of this permit.

3. Upon either revocation or termination of this permit, all improvements and encroachments placed within said street end shall forthwith be removed and the costs of such removal, including the costs of any action required to enforce same, shall be solely that of the permittee, provided that the City may, at the time of such revocation or termination, determine that the public interest would be better served by retaining

said improvements and encroachments, in which case ownership of same shall revert to the City.

4. In addition to all other terms and conditions of this permit set forth or by reference incorporated herein:

"A. The City and the general public shall, at all times, have public access on the main east-west Pier within the 2nd Avenue Street End right of way and shall also have free moorage or tie-up privileges along the south side of said pier ("2nd Avenue South Pier"); provided that such general public moorage or tie-up privileges shall be subject to the rules and regulations of the city pertaining to the public piers within Marina Park, and further provided that the City shall have within the permit area, the right to construct additional finger or moorage piers extending southerly from and connecting to the 2nd Avenue South Pier.

"B. At the time of initial construction, permittee shall, at his expense, grade the southerly ten feet of the 2nd Avenue South Street and to an elevation satisfactory to the City as being compatible with permittee's development and to the property to the south of said street end and to landscape said southerly ten feet."

"C. Permittee shall, at his sole expense, maintain the area described in paragraph 6, including all encroachments and improvements placed therein, and all areas of public access, however, permittee shall not be required to maintain the public marine sewage pumpout station installed or to be installed on a float moored to the south side of the 2nd Avenue South Pier."

"D. The permittee shall hold and save harmless the City of Kirkland, its officers, agents and employees from any and all 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, repair, or occupancy of said street end, or any encroachment placed within said street end by permittee. The permittee shall obtain, at his expense, comprehensive liability insurance in limits at least equal to those carried by the City of Kirkland under its own liability insurance policy and shall provide the City with satisfactory proof of the

continued insurance coverage during the life of this permit, or any renewal thereof. Such insurance shall include the City of Kirkland as an additional insured or beneficiary."

"E. Commercial vessels and boats shall be prohibited from mooring or tying up to the south side of the 2nd Avenue south pier. Permittee, may otherwise, rent or lease moorage space within the Moss Bay Marina to commercial vessels and boats including commercial passenger tour boats provided that the rental agreement or lease shall contain a prohibition against the commercial vessel or boat embarking or disembarking passengers from any pier within the Moss Bay Marina including the portions of the Marina overlying permittee's private property."

"F. In the event the permittee at any time during the life of this permit may enter into a management contract or other agreement with any third party for the operation or management of the improvements within the street end use permit area, a copy of such agreement shall be filed with the City Clerk for the City of Kirkland."

5. Permittee shall pay for the use of said street end and the placement therein of said improvements and encroachments a permit fee annually on the 31st day of December, (or such other date as may be mutually agreed upon in writing) in an amount equal to 7% of the gross receipts received by permittee from all moorage piers within or which extend into said street end as described in paragraph 6; provided however, pursuant to RCW 35.23.410 the amount of said rental shall be reviewed and following such review may be adjusted every five years during the life of the permit term or any renewals thereof.

5A. The provisions of paragraph 5 shall be reviewed not less often than five years and the amount required to be paid to the City for the use of said street end shall be readjusted between permittee and the City by mutual agreement, or if such agreement cannot be reached, then by a board of arbitration, one to be chosen by the City, one by the permittee and the third by the other two, with their decision to be final.

6. The portion of the 2nd Avenue South Street end for which this permit is issued is limited to 2nd Avenue South lying westerly of Lake Street South within the City of Kirkland and easterly of the inner harbor line in Lake Washington, less the southerly 10 feet thereof.

7. This street use permit shall not be transferable by the permittee for any reason whatsoever without the prior consent of the Kirkland City Council expressed by Resolution.

Any transfer or assignment of the street end use permit shall be in writing in a form acceptable for recording by the King County Department of Records and Elections and shall be so recorded. A copy of said transfer or assignment agreement, including recorder's receipt and recording number shall be filed with the City Clerk for the City of Kirkland.

8. No waiver by either party of any term or condition of this agreement shall be deemed or construed as a 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 a different provision of this agreement and permit.

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 C.S. Hadley, Sr. and any assignee of the permit interest herein concerning the right to use and to place encroachments within the portion of the street end hereinabove described.

10. The permittee and any successor in interest or assignee of the street end use permit acknowledges that all rights under this permit are subject to the shoreline, environmental, building, land use and other police power regulations applicable to the use of the property subject to said permit, including any improvements placed therein.

11. In addition to the remedies provided in this permit, and

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

12. This amended permit when signed and recorded with the King County Department of Elections and Records shall, as of the date hereof, constitute an amendment to the 2nd Avenue South Street End Use Permit originally entered into October 21, 1974 and recorded November 7, 1974 under King County Recording No. 7411070627.

DATED at Kirkland, Washington, this _____ day of _____, 1989.

Permitor:
CITY OF KIRKLAND

by: City Manager

ATTEST:

City Clerk

Permitee:
135 Lake Street Associates a
Washington Limited Partnership

by: General Partner

This permit amendment authorized by Resolution No. R _____, adopted by the Kirkland City Council on the _____ day of _____, 1989.

ATTEST:

City Clerk

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this day personally appeared before me _____, to me known to be the _____ of the City of Kirkland, the corporation that executed the within and foregoing instrument, and acknowledged the instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he/she was duly authorized to execute said instrument on behalf of the corporation.

GIVEN under my hand and official seal this _____ day of _____, 1989.

NOTARY PUBLIC in and for the
State of Washington, residing
in King County.
My commission expires:

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this _____ day of _____, 1989, before me, the undersigned, a Notary Public, personally appeared _____ who acknowledged himself to be the General Partner of 135 Lake Street Associates, a Washington limited partnership, and as such being so authorized to do, executed the foregoing instrument, on behalf of said limited partnership for the purposes therein contained by signing his name as such offer.

WITNESS my hand and official seal hereto affixed the day and year first above written.

NOTARY PUBLIC in and for the
State of Washington, residing
in King County.