

RESOLUTION R- 3635

A RESOLUTION OF THE KIRKLAND CITY COUNCIL APPROVING AND AUTHORIZING THE CITY MANAGER TO SIGN A RIGHT-OF-WAY USE PERMIT AS TO A PORTION OF UNVACATED, UNOPENED 118TH AVENUE N.E. LYING NORTH OF THE NORTH MARGIN OF N E 90TH STREET AND N E 90TH STREET LYING WESTERLY OF THE EAST LINE OF LOT 10, BLOCK 42, BURKE & FARRARS KIRKLAND DIVISION NO 14, RECORDS OF KING COUNTY, WASHINGTON

Whereas, that portion of 118th Avenue N E , lying northerly of the north margin of N.E. 90th Street, and N E 90th Street, lying westerly of and abutting the east line of Lot 10, Block 42 of Burke & Farrars Kirkland Division No. 14, recorded in Volume 20, page 14, records of King County, Washington are unvacated and unopened, and

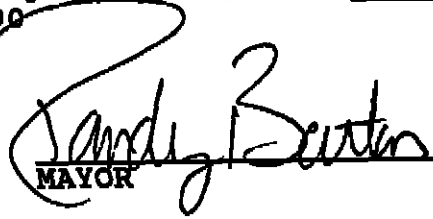
Whereas, the owners of the adjoining real property have requested a permit to use and occupy the surface of said rights-of-way for off-street parking facilities to serve the Costco Wholesale facility and corporate headquarters, and

Whereas, the City of Kirkland has no present, nor immediate use of said right-of-way surface, so long as any utility or other underground installations located therein are protected, now, therefore,

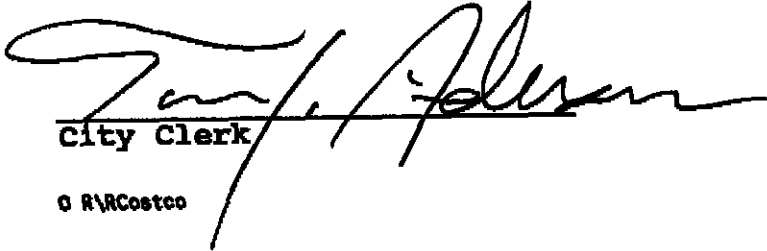
Be it resolved by the City Council of the City of Kirkland as follows:

Section 1 The City Manager is hereby authorized to sign on behalf of the City of Kirkland and issue to the parties therein named, that certain City of Kirkland Terminable Right-of-Way Use Permit attached to the original of this Resolution as Exhibit A and by this reference incorporated herein.

Passed by Majority vote of the Kirkland
City Council in Regular, open meeting this 6th
day of November, 1990


MAYOR

Attest:


City Clerk

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CITY OF KIRKLAND
TERMINABLE RIGHT-OF-WAY USE PERMIT

Portion of unvacated Northeast 90th Street

In consideration of the fees, covenants, conditions and agreements herein contained the CITY OF KIRKLAND, a Washington municipal corporation (the "City"), hereby grants to COSTCO WHOLESALE CORPORATION, a Washington corporation ("Permittee"), a terminable right-of-way use permit (the "Permit") to use and occupy a portion of unvacated public right-of-way on premises situated in the City of Kirkland, King County, Washington, legally described in Exhibit A, attached hereto and incorporated herein by this reference (the "Premises"), subject to the following terms and conditions.

1. The Premises.

The Premises include any and all improvements, fixtures, structures and landscaping now or hereafter located thereon. However, no structure or improvements shall be placed upon the Premises except such structures or improvements as are permitted or authorized pursuant to permits and approvals issued by the City, and then only so long as all conditions of approval of such permits and/or approvals are met and maintained. Any structure, improvement or other obstruction placed upon the Premises shall be so placed and maintained as not to interfere with the operation, repair, installation and maintenance of utility and underground installations now existing or hereafter installed within the permit area by the City or pursuant to its authorization.

2. Use of Premises.

The Permit is granted to Permittee for the purpose of constructing, maintaining, occupying and operating a parking lot, which shall include any and all appurtenant fixtures, structures and landscaping as Permittee, in the Permittee's sole and exclusive discretion, may deem necessary (the "Improvements")

3. Term of Permit.

The initial term of this Permit shall be for one (1) year, commencing on the date that the City issues to the Permittee the final building permit for construction of a parking lot that includes the Premises (the "Commencement Date") and ending at 11:59 p.m. on the date one year from the Commencement Date.

(a) At the end of the one (1) year period or any renewal thereof, this Permit shall be subject to termination one (1) year from the date upon which either party hereto delivers to the other written notice of the intent to terminate the Permit at the expiration of the one (1) year period

(b) The foregoing notwithstanding, this Permit shall terminate at the end of one year, unless Permittee has prior thereto filed application to vacate the right-of-way that constitutes the Premises (the "Right-of-Way"), and shall then terminate upon the City's vacation of the said right-of-way.

4. Fees.

During the life of this Permit, Permittee shall pay to the City an annual permit fee of an amount equal to seven (7) percent of the appraised value of the Right-of-Way as of the Commencement Date. Such fee shall be amortized over a twelve (12) month period and shall be payable in equal monthly installments on the first day of each month during the term of this Permit at such place as the City may direct in writing. If the term of this Permit commences on any day other than the last day of a calendar month, the fee for any such partial month shall be prorated on a daily basis.

5. Ratification of Permit.

The Kirkland City Council shall ratify and approve the issuance of this Permit.

6. Vacation of Right-of-Way.

Permittee may prepare and submit to the City an application for vacation of the Right-of-Way. The granting of this Permit does not in any way commit the City to approve any application to vacate the Right-of-Way

7. Utilities Charges.

Permittee shall be liable for, and shall pay or cause to be paid before delinquency thereof, throughout the term of this Permit, all charges for all utility services furnished to the Premises.

8. Taxes, Fees and Charges.

Permittee shall be liable for and pay when due the following:

(a) All taxes imposed on or with respect to personal property and intangibles located on or used by Permittee in connection with the Premises;

(b) All other rents, license fees, permit fees, inspection fees, authorization fees or other charges which at any time may be assessed against or imposed with respect to the occupancy, use or possession of, or activity conducted on, the Premises by Permittee, its assigns or subtenants.

9. Construction of Improvements.

9.1 Commencement of Construction

Permittee intends, at Permittee's sole cost and expense, to construct the Improvements, in Permittee's sole and exclusive discretion, at such time as Permittee may elect. The City hereby consents to and approves any and all construction, improvement, alteration and repair of the Premises without further notice or consent subject to Permittee's compliance with then applicable building and environmental rules and regulations and Paragraph 9.3.

9.2 Hold Harmless.

To the extent permitted by law, Permittee shall indemnify, defend and hold harmless the City and the Premises from and against all claims and liabilities arising by virtue of or relating to construction of the Improvements or repairs thereto made at any time to the Premises except to the extent such claims or liabilities are due to the negligence of the City, its officers, agents or employees. Permittee shall regularly and timely pay any and all amounts properly payable to third parties with respect to such work.

9.3 Permits; Compliance With Codes.

All required permits, licenses, permissions, consents and approvals required to be obtained from governmental agencies or third parties in connection with construction of the Improvements, repairs, replacements or renewals to the Premises shall be acquired by and at the sole cost and expense of Permittee. Permittee shall cause all work on the Premises during the term of this Permit to be performed in accordance with all applicable laws then in effect.

9.4 Ownership of Improvements.

During the term of this Permit, all Improvements constructed by Permittee on the Premises shall belong to and be the property of Permittee. Provided that Permittee has performed its obligations pursuant to Paragraph 12 of this Agreement, upon revocation, expiration or earlier termination of this Permit, all Improvements constructed by Permittee on the Premises shall become the property of the City in such condition as the same are then in, "AS IS."

10. Indemnification.

To the extent permitted by law and except to the extent caused by a negligent act by the City, its officers, agents or employees, or by omission or breach of any term or condition hereof, the City shall not be liable for any injury (including death) to any persons or for damage to any property regardless of how such injury or damage may be caused, sustained or alleged to

have been sustained by Permittee or by any other as a result of any condition whatsoever related in any way to the Premises or to Permittee's use or occupancy of the Premises. Permittee agrees to defend and to hold and save the City harmless from all liability or expense (including expense of litigation which shall include all attorneys' fees the City incurs in such litigation) in connection with any such items of actual or alleged injury or damage.

11. Insurance.

Permittee shall obtain at its sole expense, comprehensive liability insurance in limits satisfactory to the City and shall provide the City with satisfactory proof of the continued insurance coverage during the life of this Permit or any renewal or extension thereof. Such insurance shall include the City an additional insured or beneficiary.

12. Maintenance and Repair.

Permittee shall, at its sole cost and expense, and throughout the term of this Permit, keep the Premises and the Improvements in good condition and in a good and tenantable state of maintenance and repair, consistent with the general standard of comparable parking lots in the city of Kirkland.

13. Assignment.

This Permit and all rights hereunder shall not be transferable by Permittee for any reason whatsoever without the prior consent of the City which may be expressed by resolution of the Kirkland City Council.

14. Default.

14.1 Events of Default.

Any of the following shall be an event of default:

a. Any material representation or warranty made by a party shall prove to be false in any material respect;

b. Either party shall have failed to make any payment due hereunder for a period of sixty (60) days after receipt of notice of nonpayment; or

c. Either party shall fail to perform any other obligation of this Permit for a period of thirty (30) days after notice from the other of default.

14.2 Remedies.

In the event of default by either party, the other shall be entitled to terminate or to specifically enforce the terms of this Permit. In addition, the City acknowledges and understands that Permittee has made certain commitments and entered into agreements with third parties in reliance upon the City's representations, warranties and covenants hereunder. In the event the City breaches its obligations hereunder, Permittee shall be entitled to recover any and all consequential and incidental damages arising as a result of the City's breach. The remedies described herein shall not be exclusive of any other remedy provided herein or by law or in equity, but each shall be cumulative. All sums not paid when due shall accrue interest at the rate of twelve percent (12%) per annum from the due date until paid.

15. Attorneys' Fees.

In the event that either party shall be required to bring any action to enforce any of the provisions of this Permit, or shall be required to defend any action brought by the other party with respect to this Permit, and in the further event that one party shall entirely prevail in such action, the non-prevailing party shall, in addition to all other payments required therein, pay all of the prevailing party's actual costs in connection with such action, including such sums as the court or courts may adjudge reasonable as attorneys' fees in the trial court and in any appellate courts.

16. Notices.

All notices and payments hereunder may be delivered or mailed. If mailed, they shall be sent to the following respective addresses or to such other respective addresses as either party may hereafter designate in writing:

To the City: City of Kirkland
123 Fifth Avenue
Kirkland, Washington 98033
Attention: _____

To Permittee: Costco Wholesale Corporation
10809 120th Avenue N.E.
Kirkland, Washington 98033
Attention: John R. Osterhaus


With Copy To: Donald E Marcy
Cairncross, Ragen & Hempelmann, P.S
70th Floor, Columbia Center
701 Fifth Avenue
Seattle, Washington 98101

Notices and payments sent by certified or registered mail shall be deemed to have been given when and if properly mailed, and the postmark affixed by the United States Post Office shall be conclusive evidence of the date of mailing

IN WITNESS WHEREOF, the parties hereto have signed this Permit as of the day and year first above written.

THE CITY


CITY OF KIRKLAND



Terry L. Ellis, City Manager

PERMITTEE.

COSTCO WHOLESALE CORPORATION



John R. Osterhaus, Vice President

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 7 day of NOVEMBER, 1990, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared TERRY L. ELLIS, to me known to be the City Manager of The CITY OF KIRKLAND, the Washington municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

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

Betty L. Kellan
Notary Public in and for the
State of Washington, residing
at Bellevue
Comm Exp 7-15-93

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 24th day of OCTOBER, 1990, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared JOHN R. OSTERHAUS, to me known to be the Vice President of COSTCO WHOLESALE CORPORATION, the Washington corporation that executed the foregoing instrument, and acknowledged the said 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 was authorized to execute the said instrument.

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

Nina R. Barson
Notary Public in and for the
State of Washington, residing
at Kirkland, WA



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EXHIBIT A**Legal Description**

118th Avenue NE, lying northerly of the north margin of NE 90th Street, and NE 90th Street, lying westerly of the east line of Lot 10, Block 42 of Burke-Farrars Kirkland Division No 14, Volume 20, Page 14, King County, Washington