

RESOLUTION R- 3748

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING ISSUANCE OF TERMINABLE RIGHT-OF-WAY USE PERMITS TO AUTHORIZE CONTINUATION OF EXISTING ENCROACHMENTS INTO THE RIGHT-OF-WAY OF CENTRAL WAY BY THE STRUCTURES HAVING COMMON ADDRESSES OF 128 CENTRAL WAY AND 132 CENTRAL WAY.

Whereas, the two adjacent commercial buildings having common addresses respectively of 128 Central Way and 132 Central Way, encroach slightly (approximately 1.5 feet) into the existing public right-of-way known as Central Way, within the City of Kirkland; and

Whereas, the owners of said commercial buildings have requested from the City terminable right-of-way use permits to allow said encroachments to continue; and

Whereas, the Department of Public Works has recommended to the City Council, issuance of said permits on the basis that said encroachment has existed since said buildings were constructed at least forty years ago and that said encroachments do not unreasonably interfere with the public use of the Central Way right-of-way including the pedestrian sidewalks;

Now, Therefore, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. Terminable right-of-way use permits in the form attached to this Resolution as Exhibits A and B are approved and may be issued respectively to 128 Central Way Limited Partnership as owners of the commercial structure known as 128 Central Way Limited Partnership, and 132 Central Way Limited Partnership, owners of the commercial building (Atrium Building) having a common address of 132 Central Way.

Passed by majority vote of the Kirkland City Council in regular, open meeting this 16th day of June, 1992.

Signed in authentication thereof this
16th day of June, 1992.



MAYOR

Attest:



City Clerk

D-R\R-128132\rit rml

**CITY OF KIRKLAND
TERMINABLE RIGHT-OF-WAY USE PERMIT**

Portion of Unvacated Central Way

In consideration of the fees, covenants, conditions and agreements herein contained the CITY OF KIRKLAND, a Washington municipal corporation (the "City"), hereby grants to 128 Central Way Limited Partnership, a Washington Limited Partnership ("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 maintaining, occupying and operating a commercial building which shall include any and all appurtenant fixtures, structures and landscaping as is existing (the "Improvements").

3. Term of Permit.

The initial term of this Permit shall be until the existing building is demolished, commencing on the date that the City signs the Resolution approving the Permit (the "Commencement Date").

4. Fees.

During the life of this Permit, Permittee shall pay to

the City a permit fee of \$1.00 per year.

5. Ratification of Permit.

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

6. 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.

7. 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, including leasehold tax, if any.

8. Construction of Improvements.

8.1 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 occupation and use of the premises by Permittee except to the extent such claims or liabilities are due to the negligence of the City, its officers, agents or employees.

8.2 Ownership of Improvements.

During the term of this Permit, all Improvements on the Premises shall belong to and be the property of Permittee. Provided that Permittee has performed its obligations pursuant to this Agreement, upon revocation, expiration or earlier termination of this Permit, all Improvements on the Premises shall be removed forthwith from the premises or at the option of Permitter become the property of the Permitter in such condition as the same are then in, "AS-IS".

9. 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.

10. 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.

11. 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.

12. 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 shall be expressed by resolution of the Kirkland City Council. Such consent shall not be unreasonably withheld. This agreement shall be recorded at expense of Permittee and shall run with the land until terminated.

13. Default.

13.1 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) Permittee 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.

13.2 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.

14. Notices.

All notices and payment hereunder may be delivered or mailed. If mailed, they shall be sent to the following respective address 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: _____

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 this day and year first above written.


THE CITY:

CITY OF KIRKLAND

Terrence L. Ellis
City Manager

PERMITTEE:

128 CENTRAL WAY
LIMITED PARTNERSHIP,
a Washington Limited
Partnership,

By 

Donald J. Stabbert,
General Partner

STATE OF WASHINGTON)
 ss:
COUNTY OF KING)

On this _____ day of _____, 1992, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared TERRENCE L. ELLIS, to me known to be the City Manager of the CITY OF KIRKLAND, the municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said City, for the uses and purposes therein set forth, and on oath stated that he was authorized to sign said instrument

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 _____
My Commission expires: _____

STATE OF WASHINGTON)
 ss:
COUNTY OF KING)

On this 18th day of May, 1992, before me, the undersigned, a Notary Public in and for the State of Washington, duly sworn, personally appeared DONALD J. STABBERT, to me known to be the General partner of 128 CENTRAL WAY LIMITED PARTNERSHIP, a Washington Limited 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, and on oath stated that he was authorized to execute the said instrument.

GIVEN under my hand and official seal this 18th day of May, 1992.

Connie Normbaker
NOTARY PUBLIC in and for the State
of Washington, residing Boylert
My Commission expires: 2/19/93

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EXHIBIT A
LEGAL DESCRIPTION FOR BUILDING ENCROACHMENT
INTO CENTRAL WAY RIGHT-OF-WAY

128 BUILDING

Beginning at the northwest corner of Lot 4 proceed N 88° 38' 05" E a distance of 16 00', thence S 1° 23' 54" E a distance of 168 58' to the Point of Beginning, thence N 71° 54' 33" E a distance of 24 01', thence S 1° 23' 57" E a distance of 1 20', thence S 71° 54' 33" W a distance of 24 01', thence N 1° 23' 54" W a distance of 1 20' to the Point of Beginning, all in Block 214, Town of Kirkland, according to the Plat thereof, recorded in Volume 6 of Plats, page 53, in King County, Washington

EXHIBIT A
LEGAL DESCRIPTION FOR BUILDING ENCROACHMENT
INTO CENTRAL WAY RIGHT-OF-WAY

132 BUILDING

Beginning at the northwest corner of Lot 4 proceed N 88° 38' 05" E a distance of 39 00', thence S 1° 23' 57" E a distance of 161 67' to the Point of Beginning, thence N 71° 54' 33" E a distance of 76 23', thence S 1° 24' 01" E a distance of 1 27', thence S 71° 54' 33" W a distance of 76 23', thence N 1° 23' 57" W a distance of 1 27' to the Point of Beginning, all in Block 214, Town of Kirkland, according to the Plat thereof, recorded in Volume 6 of Plats, page 53, in King County, Washington