

**RESOLUTION NO. 4218**

A RESOLUTION OF THE CITY OF KIRKLAND EXPRESSING AN INTENT TO APPROVE A BILL OF SALE AND STREET-END USE PERMIT FILED BY 135 LAKE STREET ASSOCIATES, FILE NUMBER CC-99-88.

WHEREAS, the City has received an application filed by 135 Lake Street Associates to construct and maintain breakwater improvements within the Second Avenue South right-of-way; and

WHEREAS, by Resolution Number R-4204, the City Council of the City of Kirkland established a date for a public hearing on the proposed street-end use permit; and

WHEREAS, notice for the public hearing on the proposed street-end use permit was given and a public hearing was held on October 19, 1999; and

WHEREAS, it appears desirable and in the public interest that said street-end use permit be granted;

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

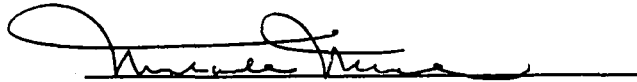
Section 1. The City Council will, by appropriate resolution, approve a bill of sale and street-end use permit substantially in the form of the Bill of Sale and Second Avenue South Street End Use Permit attached as Exhibit A for that portion of the Second Avenue South street end described in Exhibit A following the issuance of the City Notice of Approval and issuance of all necessary federal and state approvals for the construction of proposed improvements within the Second Avenue South street end and related marina and breakwater improvements on adjoining properties (City of Kirkland File No. SD-IIA-99-26).

Section 2. Certified or conformed copies of this Resolution shall be delivered to the following within seven (7) days of the passage to this resolution:

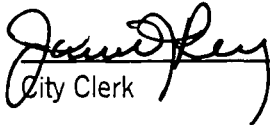
- (a) Applicant
- (b) Department of Planning and Community Development of the City of Kirkland
- (c) Fire and Building Departments of the City of Kirkland
- (d) Public Works Department of the City of Kirkland
- (e) The City Clerk for the City of Kirkland.

PASSED by majority vote of the Kirkland City Council on the 7th day of December, 1999.

SIGNED IN AUTHENTICATION THEREOF on the 7th day of December, 1999.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

**City of Kirkland**  
**Bill of Sale and Second Avenue South Street End Use Permit**

**Article I      Recitals**

WHEREAS, the City of Kirkland granted Moss Bay Associates, a Washington Limited Partnership ("Moss Bay") 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, which permit covers a pier and pilings owned by Moss Bay and will expire on October 20, 2004; and

WHEREAS, Moss Bay assigned the Second Avenue South street end use permit to 135 Lake Street Associates Limited Partnership ("Lake Street") by Resolution R-3548; and

WHEREAS, it is the purpose of this agreement to set forth the terms and provisions of an integrated document whereby Lake Street transfers the pier and pilings located within the Second Avenue South right-of-way to the City of Kirkland and whereby the City of Kirkland grants Lake Street the right to use and place baffles in the Second Avenue South right-of-way ("Agreement"); and

WHEREAS, Lake Street intends to remove its existing marina adjacent to the Second Avenue South right-of-way and construct a new marina ("New Marina") that will be protected from the natural elements by the existing baffles and pilings in the Second Avenue South right-of-way and by placing new baffles on new pilings at the end of the existing pier in the Second Avenue South right-of-way; and

WHEREAS, the Kirkland City Council, on October 19, 1999, held a public hearing considering the proposed Second Avenue South street end use permit; and

WHEREAS, the Kirkland City Council, on October 19, 1999, expressed its preliminary approval to the concept of owning the pier and pilings located within the Second Avenue South right-of-way and the concept of granting Lake Street a permit to construct additional pilings and baffles, and to own and maintain the baffles, in the Second Avenue South right-of-way.

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

**Article II      Bill of Sale**

This Agreement shall constitute the Bill of Sale by and between Lake Street ("Seller" or "Permitee"), and the City of Kirkland ("Buyer" or "City"), with reference to the following facts:

- a. In consideration of Buyer granting Seller a permit to construct additional pilings and baffles and to own and maintain the new and existing baffles in the Second Avenue South right-of-way, Seller shall herewith convey to the City of Kirkland, with warranty

of title and free and clear of encumbrances, all of Seller's right, title and interest to the existing decking and pilings in the Second Avenue South right-of-way owned by Seller and set forth in Exhibit A attached hereto and incorporated herein by reference (the "Personal Property" or "Existing Structure"). The conveyance shall be effective upon the Buyer's issuance of a Notice of Approval of New Marina permits and the issuance of all necessary city, federal and state approvals for the proposed construction of the New Marina.

b. Prior to Buyer's acceptance of the foregoing conveyance of the Personal Property, Seller shall: (1) submit a written report on the condition of the Personal Property; (2) repair any damage to the Personal Property stated in the report; and (3) warrant the sound condition of the Personal Property for a 10-year term. Upon said acceptance, Buyer shall adequately maintain the Personal Property for the life of the property (approximately 105 years) or until Buyer abandons the Personal Property as set forth in Section 3.3 of Article III. Buyer recognizes that the Buyer's proper maintenance of the Personal Property is critical to protect the New Marina.

### **Article III Second Avenue South Street End Use Permit**

#### **Section 3.1 Property**

1. The City of Kirkland (the "City") hereby grants to Lake Street ("Permittee") the right to use the Existing Structure for support of the existing baffles and any supports thereto ("Existing Baffles"), and to construct new pilings ("New Structure"), new baffles and baffle supports ("New Baffles") west of the Existing Structure, as described in Exhibit B attached hereto and incorporated herein by reference, subject to the terms and conditions hereinafter set forth ("Permit"). The Existing Structure and New Structure shall be collectively referred to as "Structures". The Existing Baffles and New Baffles shall be collectively referred to as "Baffles". Permittee's right to construct the New Structure and New Baffles is subject to the City's issuance of a Notice of Approval of New Marina permits and the issuance of all necessary city, federal and state approvals for the proposed construction of the New Marina.

2. The portion of the Second Avenue South street end for which this Permit is issued is limited to Second 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 seven feet thereof.

#### **Section 3.2 Permit Term**

This permit shall be for a 15-year term ("Permit Term") beginning on the date that the City has issued a Notice of Approval of the New Marina and all necessary city, federal and state approvals for the proposed construction of the New Marina have been issued, with an automatic renewal for additional 15-year terms unless revoked by the City pursuant to Section 3.4. This permit will automatically terminate upon completion of the seventh Permit Term or if it is terminated pursuant to Section 3.3.

### **Section 3.3 City's Right to Abandon.**

The City may abandon the Structures at the end of any Permit Term. Upon the abandonment, Permittee shall accept ownership of the Structures and liability and responsibility therefor. Acceptance shall occur within 90 days of the declaration of abandonment by resolution of the City Council. The City's abandonment of the Structures does not revoke or terminate the Permit, which will provide Permittee with an ongoing legal right to keep in place the Structures and Baffles. The Permit may only be revoked pursuant to Section 3.4.

In the event the City elects to abandon the Structures and Permittee does not accept ownership of the Structures, the Permit shall terminate and the Permittee shall remove the Structures and the cost of such removal shall be solely that of the Permittee.

### **Section 3.4 Revocation**

1. The City may revoke this Permit as provided in Section 3.4(2) if Permittee:
  - a) Fails to remove the large white vessel (i.e., the former NOAA research vessel) moored with its bow in the Second Avenue South right-of-way upon substantial completion of the New Marina or within 18 months of the City's issuance of a Notice of Approval and the issuance of all city, state and federal permits for the proposed construction of the New Marina, whichever occurs first.
  - b) Moors vessels in violation of any permits applicable to the New Marina;
  - c) Fails to maintain the Baffles.
  - d) Engages in unauthorized use of the Second Avenue South right-of-way as set forth in this Permit;
  - e) Substantially damages the Structures;
  - f) Substantially impedes public access or use of the Structures;
  - g) Violates any zoning or permit conditions applicable to this Permit;
  - h) Fails to comply with laws, regulations and rules applicable to this Permit; or
  - i) Fails to pay permit fee due to the City under Section 3.5 of this Permit.

2. Except for Section 3.4(1)(a), the City shall give 30 days written notice of the proposed revocation to Permittee and allow Permittee an additional 60 days from said notice, if reasonably necessary, to cure the violation provided that Permittee shall be allowed additional time if it is reasonably necessary to take more than 60 days to cure the violation.

3. Upon revocation of this Permit and upon the City's request, the Structures shall be removed by Permittee and the costs of such removal shall be solely that of Permittee. Upon such removal, Permittee shall take reasonable and necessary steps to protect adjoining properties from adverse impacts of the removal.

### **Section 3.5 Permit Fee**

Permittee shall pay a permit fee for the use of the street end and the placement and use of the Baffles. The permit fee shall be annual and due on December 31, (or such other date as mutually agreed upon in writing) in an amount of ten dollars (\$10.00). The value of the Structures exceeds the value of this Permit over all seven Permit Terms. The permit fee shall be in accordance with RCW 35.23.410.

### **Section 3.6 Structures**

1. In accordance with Exhibit B, Permittee shall design and construct the New Structure beyond the Existing Structure. The New Structure shall be designed and constructed to accommodate future decking ("Decking") utilizing the New Structure, in the event the City chooses to add it, without structural additions or modifications. Permittee shall secure all necessary permits to construct the New Structure.

2. Permittee shall use piling and baffle materials that are "ecologically friendly" in any construction of the New Structure and any maintenance or repair to the Baffles.

3. All private improvements within the Second Avenue South right-of-way currently serving the existing marina, but not necessary to the construction and maintenance of the Structures and Baffles, shall be removed by the Permittee at such time as the New Marina is permitted and substantially constructed and all costs of such removal shall be solely that of the Permittee.

4. Permittee shall install the appropriate safety lighting and warning signs on the New Structure as required by applicable laws and regulations and all conditions of city, federal and state permits or approvals. Permittee shall pay all taxes that are due for the construction of the New Structure.

5. Section 3.6(4) shall be revoked upon the City accepting ownership of the New Structure pursuant to Article III, Section 3.6(6).

6. Upon Permittee's completion of the New Structure, Permittee shall convey the New Structure, with warranty of title and free and clear of any encumbrances, to the City. Prior to the conveyance, Permittee shall warrant the sound condition of the New Structure for a 10-year

period. The City shall accept ownership of the New Structure on the day construction of the New Structure is complete. Upon acceptance, the City shall be responsible for the maintenance and repair of the New Structure and the Permittee's rights and responsibilities shall be amended accordingly. The City recognizes that the City's proper maintenance of the Structures is critical to protect the New Marina. The City, at its sole cost, shall immediately repair any physical damage to the Baffles or New Marina caused by the City's use, maintenance or repair of the Structures.

7. Upon accepting ownership of the New Structure, the City may install Decking on the extension to the New Structure and the costs of such Decking shall be solely that of the City. The City, at its sole cost, shall immediately repair any physical damage to the Baffles, Structures, or the New Marina caused by the City's installation, maintenance or repair of the Decking.

8. If more than 50% of the Structures are destroyed by fire or act of God, the City is not obligated to rebuild the Structures but Permittee has the right to rebuild the Structures.

9. Permittee may not use the Structures, except for maintenance or repair of the Baffles, without first obtaining the City's consent.

10. Permittee shall pay all taxes that are due for the Baffles.

### **Section 3.7 Moorage**

Permittee shall be prohibited from causing or authorizing any New Marina vessels to be moored or tied within the Second Avenue South street end. Permittee shall not contest or challenge the City in the event the City allows any mooring or parking of vessels at the Existing Structure, unless such mooring or parking of vessels may cause substantial physical damage to the New Marina or Baffles. The City shall be prohibited from causing or authorizing any vessels to be moored or tied to the New Structure until such a time as the City accepts ownership pursuant to Article III, Section 3.6 (6). Upon City's acceptance of such ownership, Permittee shall not contest or challenge the City in the event the City allows any mooring or parking of vessels at the New Structure, unless such mooring or parking of vessels may cause substantial physical damage to the New Marina or the Baffles.

### **Section 3.8 Transfer/Assignment**

1. This Permit shall not be transferable or assignable by the Permittee without the prior consent of the Kirkland City Council expressed by Resolution. The consent should not be unreasonably withheld or delayed.

2. Any transfer or assignment of this permit shall be in a form acceptable for recording by the King County Department of Records and Elections and shall be so recorded. Conformed copies of the recorded transfer or assignment shall be filed with the City Clerk for the City of Kirkland.

3. Permittee and any successor in interest or assignee of this Permit acknowledges that all rights under this Permit are subject to the City's regulatory authority and other police power regulations applicable to the use of the Second Avenue South right-of-way, including any improvements placed therein.

### **Section 3.9 Insurance**

Permittee shall hold and save harmless the City, its officers, agents and employees from any and all claims, real or imaginary, made or asserted against the City, its officers, agents or employees, growing out of the Permittee's construction, development, use, maintenance or repair of the New Structure, Existing Baffles or New Baffles. Permittee shall obtain, at its sole expense, comprehensive liability insurance in limits at least equal to those carried by the City 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.

City shall hold and save harmless Permittee, its officers, agents and employees from any and all claims, real or imaginary, made or asserted against Permittee, its officers, agents or employees, growing out of the City's construction, development, use, maintenance or repair of the Structures and Decking. The City shall obtain, at its sole expense, comprehensive liability insurance and shall provide Permittee with satisfactory proof of the continued insurance coverage during the life of this Permit, or any renewal thereof.

### **Article IV Final Agreement Provisions**

1. No waiver by either party of any term or condition of the 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.

2. This Agreement merges and supersedes all prior negotiations, representations and agreements between the parties hereto relating to the subject matter hereof and constitutes the entire Agreement between the City of Kirkland and Lake Street.

3. This Agreement is not intended nor shall it be construed to create any rights in third parties.

4. In addition to the remedies provided in this Agreement, and by law, this Agreement shall be specifically enforceable by either party.



DATED at Kirkland, Washington, this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

Buyer/Permitor:  
City of Kirkland

\_\_\_\_\_  
by:

ATTEST:

\_\_\_\_\_  
City Clerk

Seller/Permitee:  
135 Lake Street Associates Limited Partnership

\_\_\_\_\_  
by:

This permit and bill of sale is authorized by Resolution No. \_\_\_\_\_,  
Adopted by the Kirkland City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2000.

ATTEST:

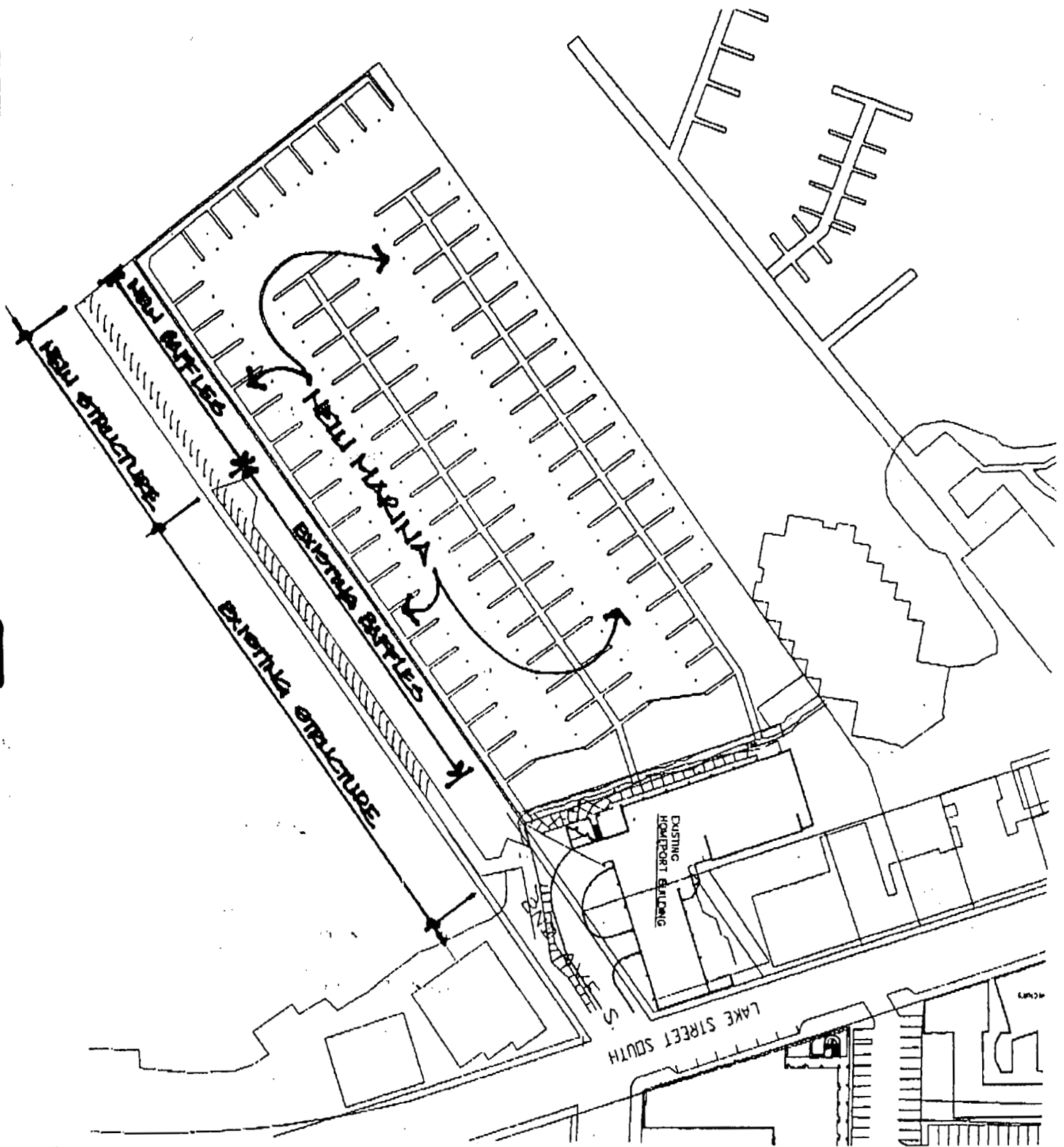
\_\_\_\_\_  
City Clerk

**EXHIBIT A**

**LIST OF PERSONAL PROPERTY**

- Existing pier located in the Second Avenue South right-of-way as depicted in Exhibit B.
- Existing pilings located in the Second Avenue South right-of-way as depicted in Exhibit B.

**EXHIBIT B**



**KIRKLAND YACHT CLUB MARINA**  
 135 LAKE STREET SOUTH  
 KIRKLAND, WA 98033

**UNIVERSITY**  
 135 LAKE STREET S. 1399  
 KIRKLAND, WA 98033