

RESOLUTION R- 4470

A RESOLUTION OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER TO GRANT A CONDITIONAL 18- MONTH STREET END USE PERMIT TO 135 LAKE STREET ASSOCIATES LIMITED PARTNERSHIP, A WASHINGTON LIMITED PARTNERSHIP, FILE NUMBER CC-99-88.

WHEREAS, the City of Kirkland has received an application filed by 135 Lake Street Associates Limited Partnership to maintain a general moorage facility within the Second Avenue South right-of-way; and

WHEREAS, by Resolution Number R-4453, 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 September 7, 2004; and

WHEREAS, in its letter or application for the street-end use permit, West Water Real Estate Services, applicant on behalf of 135 Lake Street Associates Limited Partnership, proposed specific conditions for the 18 month term of the street-end use permit; and

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

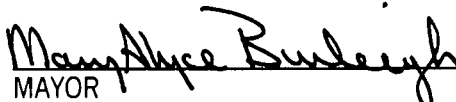
- a. NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland that the City Manager is authorized to grant an 18-month street-end use permit to 135 Lake Street Associates Limited Partnership, in the form attached as Exhibit A.

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

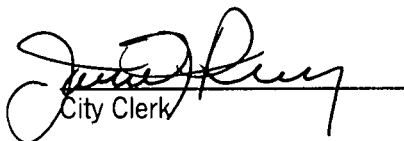
- (a) Applicant;
- (b) Department of Planning and Community Development of the City of Kirkland; and
- (c) City Clerk of the City of Kirkland.

Passed by majority vote of the Kirkland City Council in open meeting this 19th day of October, 2004.

Signed in authentication thereof this 19th day of October, 2004.

  
MAYOR

Attest:

  
City Clerk

**EXHIBIT A****CITY OF KIRKLAND  
CONDITIONAL 18-MONTH SECOND AVENUE SOUTH STREET END USE PERMIT****Article I      Recitals**

WHEREAS, the City of Kirkland ("City") granted Moss Bay Associates, a Washington Limited Partnership, 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 Associates and expires on October 20, 2004; and

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

WHEREAS, Lake Street has been granted permits by the City to remove its existing marina adjacent to the Second Avenue South right-of-way and construct a new marina and breakwater (file no. SD-IIA-99-26) ("New Marina"); and

WHEREAS, Lake Street has requested a street-end use permit for an 18 month term to allow continued use of the Second-Avenue South right-of-way, after which it shall have completed construction of the New Marina; and

WHEREAS, it is the purpose of this document to set forth the terms and provisions of the Conditional 18-Month Second Avenue South Street-End Use Permit ("Permit").

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

**Article II      Second Avenue South Conditional 18-Month Street-End Use Permit**

Section 1. The City hereby grants to 1 Lake Street the right to use and place encroachments in the portion of Second Avenue South lying westerly of the ordinary high water line of Lake Washington and easterly of the inner harbor line in Lake Washington, less the southerly 10 feet thereof ("Street End"), subject to the terms and conditions hereinafter set forth, from October 20, 2004 through April 20, 2006.

Section 2. Use of the Street End, including the placement of encroachments therein, shall be restricted to the development and uses approved by prior zoning and shoreline permits for the Street End area and the existing Moss Bay Marina issued by the City ("Prior Permits") and this Permit. Any other development or use, or any modification of such development and use, failing to meet applicable Prior Permit conditions, or restricting or limiting the public access and the public use as set forth in Prior Permits or this Permit, shall cause immediate revocation of this Permit.

Section 3. This Permit shall be deemed revoked and terminated without action by the City if permittee:

- a. Fails to submit complete development permit application(s) for necessary construction consistent with approved zoning and shoreline substantial development permits for the New Marina prior to April 20, 2005;
- b. Fails to start construction of the New Marina prior to October 20, 2005;

- c. Fails to remove the large white vessel (i.e., the former NOAA research vessel) from the City prior to October 20, 2005;
- d. Moors any vessel over 150' in length within or adjoining the existing Moss Bay Marina or within the Street End;
- e. Engages in unauthorized use of the Street End as set forth in Prior Permits or this Permit;
- f. Substantially impedes public access or use of the Street End as set forth in Prior Permits or this Permit;
- g. Violates any terms and conditions of Prior Permits or this Permit;
- h. Fails to comply with laws, regulations and rules applicable to this Permit; or
- i. Fails to pay permit fees due to the City under Section 6 of this Permit.

Section 4. Upon revocation, termination or expiration of this Permit, all improvements and encroachments placed or located within the Street End shall forthwith be removed from the Street End (and in the case of the large white vessel, removed from the City) and the costs of such removal, including the costs of any legal action required to enforce same, shall be solely that of the permittee; provided, that the City may, at the time of such revocation termination or expiration, determine that the public interest would be better served by retaining the improvements and encroachments, in which case ownership of them shall revert to the City.

Section 5. 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 Street End and shall also have free moorage or tie-up privileges along the south side of the pier in the Street End ("2<sup>nd</sup> 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 provided further, 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 2<sup>nd</sup> Avenue South Pier.
- b. With prior approval by the Director of the Department of Planning and Community Development, permittee may close public access to the Street End for purposes of protecting the public from construction activities related to the development of the New Marina.
- c. Permittee shall, at his sole expense, maintain the Street End, including all encroachments and improvements placed therein, and all areas of public access.
- d. The permittee shall hold and save harmless the City, its officers, agents and employees from any and all claims, real or imaginary of whatsoever nature, made or asserted against the City, its officers, agents or employees, growing out of the construction, development, use, maintenance, repair, or occupancy of the Street End, or any encroachment placed within the Street End by permittee. The permittee shall obtain, at its 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. The insurance shall include the City 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 2<sup>nd</sup> Avenue south pier. Permittee may otherwise rent or lease moorage space within the existing 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. If the permittee during this Permit enters into a management contract or other agreement with any third party for the operation or management of the improvements within the Street End, a copy of such agreement shall be filed with the City Clerk for the City.

Section 6. Permittee shall pay for the use of the Street End, and the placement therein of the improvements and encroachments, an annual permit fee (prorated as appropriate) on December 31, 2004, December 31, 2005 and within 14 days of the expiration of this Permit, in an amount equal to 7% of the gross receipts received by permittee from all moorage piers within or which extend into Street End.

Section 7. This Permit shall not be transferable or assignable by the permittee for any reason whatsoever without the prior consent of the City Council expressed by Resolution.

Section 8. No waiver by either party of any term or condition of this Permit 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 Permit.

Section 9. This Permit merges and supersedes all prior negotiations, representations, and agreements between the parties hereto relating to the subject matter hereof and constitutes the entire Permit between the City and Lake Street concerning the right to use and to place encroachments within the Street End.

Section 10. The permittee 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 this Permit, including any improvements placed therein.

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

DATED at Kirkland, Washington this \_\_\_\_ day of \_\_\_\_\_, 2004.

Permitior:  
CITY OF KIRKLAND

\_\_\_\_\_  
City Manager

Attest:

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

Permitee:  
135 LAKE STREET ASSOICATES, LIMITED  
PARTNERSHIP

\_\_\_\_\_  
General Partner

This permit is authorized by Resolution No. R-\_\_\_\_, adopted by the Kirkland City Council on the \_\_\_\_ day of October, 2004.

ATTEST:

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

STATE OF WASHINGTON            )  
  ) ss  
COUNTY OF KING                )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument as General Partner on behalf of 135 Lake Street Associates pursuant to the provisions of the limited partnership agreement of said limited partnership, and acknowledged said instrument to be the free and voluntary act of said limited partnership for the uses and purposes mentioned in said instrument.

DATED: \_\_\_\_\_

NAME: \_\_\_\_\_  
(Print Name)

Notary Public in and for the State of Washington  
Commission Expires: \_\_\_\_\_

STATE OF WASHINGTON           )  
  ) ss  
COUNTY OF KING               )

I certify that I know or have satisfactory evidence that David Ramsay is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the City Manager of City of Kirkland to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_

NAME: \_\_\_\_\_

(Print Name)

Notary Public in and for the State of Washington

Commission Expires: \_\_\_\_\_