



## CITY OF KIRKLAND

Public Works Department  
123 Fifth Avenue, Kirkland, WA 98033 425.587.3000  
www.ci.kirkland.wa.us

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### MEMORANDUM

**To:** David Ramsay, City Manager

**From:** Daryl Grigsby, Public Works Director  
David Godfrey, Transportation Engineering Manager

**Date:** December 3, 2009

**Subject:** Dillard Property Parking Agreement

#### RECOMMENDATION:

It is recommended the City Council approve a resolution authorizing the City Manager to enter into a agreement with Ms. Marilyn Dillard in order to lease the Dillard property, previous site of the Antique Mall, for use as public parking.

#### BACKGROUND:

In order to provide more parking from which the public can benefit, discussions have been ongoing for most of 2009 concerning lease of public parking at the Dillard property located at 151 3rd Street. The Finance Committee and the Parking Advisory Board have been involved throughout the process. We now believe that an agreement which is acceptable to all parties has been developed. Attachment A contains more details about the agreement which is summarized below.

Current plans call for restriping and signing the lot to provide 93 parking stalls. Initially 30 stalls will be available for monthly lease and the remainder will operate as pay parking. Monthly lease rates will be determined jointly by the City and the property owner. Pay parking will be enforced from 9:00 AM – 9:00 PM Monday-Saturday and the rate will be \$1.00 per hour. The lot will be open to all users, including downtown employees and construction workers.

The start-up costs are approximately \$25,000 and can be funded by the available balance in the Off-Street Parking Fund. The costs include clean-up of the parking lot, striping, signage, and purchase of two pay stations. Completion of this work is scheduled to be complete in 6 to 8 weeks. The lease stalls may be able to open before the pay stalls are ready to open.

Payments from the City to the owner will be based on revenue received net of credit card charges and any applicable taxes. The owner will receive the first \$1200 of net revenue per stall per year, paid monthly. The owner will not be guaranteed any revenue nor will any payments be made prior to the City receiving revenue.

Terms of the parking agreement are for three years and either party may terminate the agreement at any time by giving sixty (60) days written notice to the other party.

The Parking Advisory Board will report to Council with an analysis of operations of the lot on a regular basis with the first report coming six months after the lot becomes operational. The report will include a formal evaluation of parking occupancy, length of stay, costs and revenue.

## **Attachment A Dillard Property Parking Agreement Summary**

This summary explains some highlights of the agreement, with emphasis on how payments are calculated. There is information in the agreement that is not covered here. Throughout this summary, net revenue refers to revenue net of credit card expenses and any applicable taxes.

### General

- 1) There are an estimated 93 total stalls available from which revenue can be derived. (see figure 1) The five handicapped accessible stalls cannot be charged hourly rates or leased.
- 2) Agreement is for 3 years, and either party can terminate with 60 day notice.
- 3) The lot will be operated to maximize revenue while keeping occupancy of the paid stalls at 85% and occupancy of the leased stalls at 100%. Changes such as the number of stalls assigned for leasing, pricing and hours of operation may be made from time to time to meet these goals, but as few changes as possible will be made and they will be made no more than quarterly. Such changes will be agreed to by the City and Ms. Dillard.
- 4) The City does not guarantee any amount of revenue to Ms. Dillard nor will the City make any payments in advance of receiving revenue.
- 5) Revenue available for payment to Ms. Dillard will be net of any credit card charges the City may incur and any applicable taxes.
- 6) The City will furnish the pay stations, signing, striping and other work necessary to operate the lot. The cost of this work is estimated at \$25,000 and will be paid from the Off-Street Parking Fund. The City will provide normal maintenance to the lot during the term of the lease.
- 7) At its discretion, the city will provide appropriate wayfinding signs to provide direction to the lot
- 8) Enforcement will be provided by the City with existing city enforcement resources.
- 9) Ms. Dillard may make stalls available for the use of a future tenant. These stalls will be removed from revenue service.

### Leased stalls

- 1) Initially, 30 stalls will be available for monthly leasing. The City will manage the leasing; collect lease payments, issue permits, etc. Those who lease stalls will not be guaranteed a certain stall, but will have access to a pool of stalls signed Monthly Permit Only or other similar wording. Only people who have paid for leases will be able to legally use the leased stalls.
- 2) Payments from net revenue obtained from leased stalls will be made to Ms. Dillard no later than the 15th day of the month following the month during which revenue was received.

- 3) Monthly lease prices, the number of hours a day that leased stalls are available to lease holders and the number of stalls available for leasing may vary based on demand may be changed from time to time but not more than quarterly. Decisions on these items will be made jointly between Ms. Dillard and the City of Kirkland. ( See General 3) above).
- 4) With joint approval from the City and Ms. Dillard, the leased stalls may be opened as soon as they are prepared for operation. This may be in advance of when the pay stalls are ready for operation.
- 5) Based on revenue from the leased stalls less credit card fees from the leased stalls, Ms. Dillard will receive up to \$1200/per year per leased stall, paid monthly. The revenue received from the pay stalls has no bearing on the amounts of payments from leased stall revenue.
- 6) If the monthly per stall net lease revenue is equal to or less than \$100/month, Ms. Dillard will receive all the net revenue from the leased stalls. This would be true even if:
  - i) The number of leased stalls increased or decreased throughout the year.
  - ii) The lease price varied but stayed at or under \$100/month.
  - iii) The occupancy of the stalls reserved for leasing changed

Examples

**Scenario 1:** The net revenue from the stalls was \$80/month, and 30 stalls were rented for an entire year.

**Payments:** Ms. Dillard receives  $\$80 \times 30$  stalls = \$2400 paid monthly, for a total of \$28,800 per year.

**Scenario 2:** Thirty stalls were available for leasing for the entire year. All 30 leased at a net amount of \$70/month January through May then 20 stalls were leased at a net amount of \$80 June through August and then 25 stalls were leased at a net amount of \$75 September through December.

**Payments:** the payments would be:

Period	Net Revenue	Monthly Payment
January through May	30 stalls x \$70/stall/month = \$2100	\$2100
June through August	20 stalls x \$80/stall/month = \$1600	\$1600
September through December	25 stalls x \$75/stall/month = \$1875	\$1875

- 7) If the net per stall net revenue exceeds \$100/month, then some of the revenue may stay with the city. This is only true if the cumulative monthly per stall payments to Ms. Dillard have exceeded \$1200/year.

#### Example

**Scenario 3:** For an entire year, all thirty stalls available for leasing are leased and per stall net revenue is \$110/month.

**Payments:** Ms. Dillard would receive monthly payments of \$110/stall x 30 stalls = \$3,300. These payments would continue until the \$1200/stall /year maximum had been met. After 10 months, Ms. Dillard would have received \$3,300 x 10 = \$33,000. For the 11th month, she would receive only \$3000 because that would make the cumulative payments for the year equal \$36,000 which is the annual maximum for 30 stalls (30 stalls x \$100/stall/month x 12 month/year = \$36,000). The City would retain \$300 from the 11th month and all \$3,300 from the 12th month.

- 8) If the number of leased stalls changes during the year, the maximum cumulative payment is determined by prorating the number of stalls available during the year. The per stall cumulative annual maximum is still \$1,200.

#### Examples

**Scenario 4:** 30 stalls were available for leasing for the period January through June. During this time, only 20 stalls were leased and the net monthly revenue from each stall was \$115. During the period June through December the parking arrangements were changed and only 20 spots were available for leasing. All 20 stalls were still leased at a net revenue of \$115 per stall.

**Payments:** The maximum annual amount to be paid to Ms. Dillard would be \$100/stall x 12 months x (30 stalls x 6 months+ 20 stalls x 6 months) ÷ 12 months = \$30,000. Ms. Dillard would receive monthly payments of \$115/stall x 20 stalls =\$2300. Even after 12 months, Ms. Dillard would have received only \$2300/month x 12 months = \$27,600. Because this is less than the \$100/stall/month maximum of \$30,000 in this case, no revenue would remain with the city.

**Scenario 5:** 20 stalls were available for leasing for the period January through March. During this time, all 20 stalls were leased and the net monthly revenue from each stall was \$100. During the period April through December the parking arrangements were changed and 30 spots were now available for leasing. All 30 stalls were still leased at a net revenue of \$125 per stall.

**Payments:** The maximum annual amount to be paid to Ms. Dillard would be \$100/stall x 12 months x (20 stalls x 3 months+ 30 stalls x 9 months) ÷ 12 stall-months = \$33,000. For the first three months, Ms. Dillard would receive monthly payments of \$100/stall x 20 stalls =\$2000. For the next seven months, Ms. Dillard would received \$125/month x 30 stalls =\$3,750. After 10 months the cumulative total Ms. Dillard would have received is 3 months x \$2000 + 7 months x \$3,750 = \$32,000. In the 11th month, she would receive \$1,000. This would make the total payments reach the maximum for this scenario of \$33,000 per year. The rest of the revenue from the 11th month and all the revenue from the 12th month would remain with the city.

Pay Stalls

- 1) Electronic pay stations will be used to manage payments. These machines will be similar to those operated in other city lots. They will accept credit cards and coins. There will be 2 pay stations at the lot.
- 2) Initial rates will be \$1/hour and pay parking will be enforced from 9:00 AM to 9:00 PM. Parking will be free on Sundays and Holidays. There will be no maximum stay during pay operation. Existing city laws prohibit overnight parking.
- 3) Hourly rates, the number of hours a day for which pay stalls are charged and the number of stalls available for pay parking may vary based on demand. Decisions on these items will be made jointly between Ms. Dillard and the City of Kirkland.
- 4) Payments from pay stall revenues will be made to Ms. Dillard no later than the 30th day of the month following the month during which revenue was received.
- 5) Based on revenue from the pay stalls less credit card fees from the pay stalls, Ms. Dillard will receive up to \$1200/per year per pay stall, paid monthly. The revenue received from the leased stalls has no bearing on the amounts of payments from pay stall revenue.
- 6) If the stalls are operated 12 hrs/day, for 300 days (assuming no revenue on Sundays and Holidays) at \$1/hour with an average credit card charge of 13%, and applicable taxes of 9% an average occupancy of 43% would be necessary to generate a net per stall revenue of \$1200 per year.  
$$\$1200 / \{(12 \text{ hrs/day} \times 300 \text{ days/year} \times \$1/\text{hr}) \times 0.78\} = 43\%$$

Examples

**Scenario 6:** Consider the revenue example below

Month	No. of pay stalls	Net Revenue/per stall
January	63	\$60
February	63	\$80
March	63	\$70
April	63	\$80
May	63	\$75
June	63	\$90
July	63	\$100
August	63	\$150
September	63	\$90
October	63	\$80
November	63	\$70
December	63	\$90

**Payments:** Ms. Dillard receives various amounts each month, depending on the net revenue from the pay stalls as shown below.

Month	Pay stalls	Net Revenue per stall	Monthly payment	Cumulative monthly payments
January	63	\$60	63 x \$60 = \$3,780	\$3,780
February	63	\$80	63 x \$80 = \$5,040	\$8,820
March	63	\$70	63 x \$70 = \$4,410	\$13,230
April	63	\$80	63 x \$80 = \$5,040	\$18,270
May	63	\$75	63 x \$75 = \$4,725	\$22,995
June	63	\$90	63 x \$90 = \$5,670	\$28,665
July	63	\$100	63 x \$100 = \$6,300	\$34,965
August	63	\$150	63 x \$150 = \$9,450	\$44,415
September	63	\$90	63 x \$90 = \$5,670	\$50,085
October	63	\$80	63 x \$80 = \$5,040	\$55,125
November	63	\$70	63 x \$70 = \$4,410	\$59,535
December	63	\$90	63 x \$90 = \$5,670	\$65,205

In this case, the annual maximum cumulative payments is 63 stalls x \$1,200/stall per year = \$75,600. This maximum is not met, so the City gets no revenue.

**Scenario 7:** Consider the revenue example below

Month	No. of pay stalls	Net Revenue/per stall
January	63	\$80
February	63	\$90
March	63	\$100
April	63	\$110
May	63	\$120
June	63	\$100
July	63	\$130
August	63	\$150
September	63	\$125
October	63	\$90
November	63	\$90
December	63	\$100

**Payments:** Ms. Dillard receives various amounts each month, depending on the net revenue from the pay stalls as shown below.

Month	Pay stalls	Net Revenue per stall	Monthly payment	Cumulative monthly payments
January	63	\$80	63 x \$80 = \$5,040	\$5,040
February	63	\$90	63 x \$90 = \$5,670	\$10,710
March	63	\$100	63 x \$100 = \$6,300	\$17,010
April	63	\$110	63 x \$110 = \$6,930	\$23,940
May	63	\$120	63 x \$120 = \$7,560	\$31,500
June	63	\$100	63 x \$100 = \$6,300	\$37,800
July	63	\$130	63 x \$130 = \$8,190	\$45,990
August	63	\$150	63 x \$150 = \$9,450	\$55,440
September	63	\$125	63 x \$125 = \$7,875	\$63,315
October	63	\$90	63 x \$90 = \$5,670	\$68,985
November	63	\$90	63 x \$90 = \$5,670	\$74,655
December	63	\$100	63 x \$100 = \$6,300	\$80,955

In this case, the annual maximum cumulative payments is 63 stalls x \$1,200/stall per year = \$75,600. This amount is met in December. In December, Ms. Dillard would receive \$945 (\$75,600 - \$74,655 = \$945) to bring the cumulative payments to \$75,600. The City would receive the remainder of the December revenue.

- 7) If the number of pay stalls changes during the year, the maximum cumulative payment is determined by prorating the number of stalls available during the year. The per stall cumulative annual maximum is still \$1,200. Calculations similar to those in the examples under Leased Stalls scenarios 4 and 5 above would be used to calculate the total cumulative annual maximum payment.

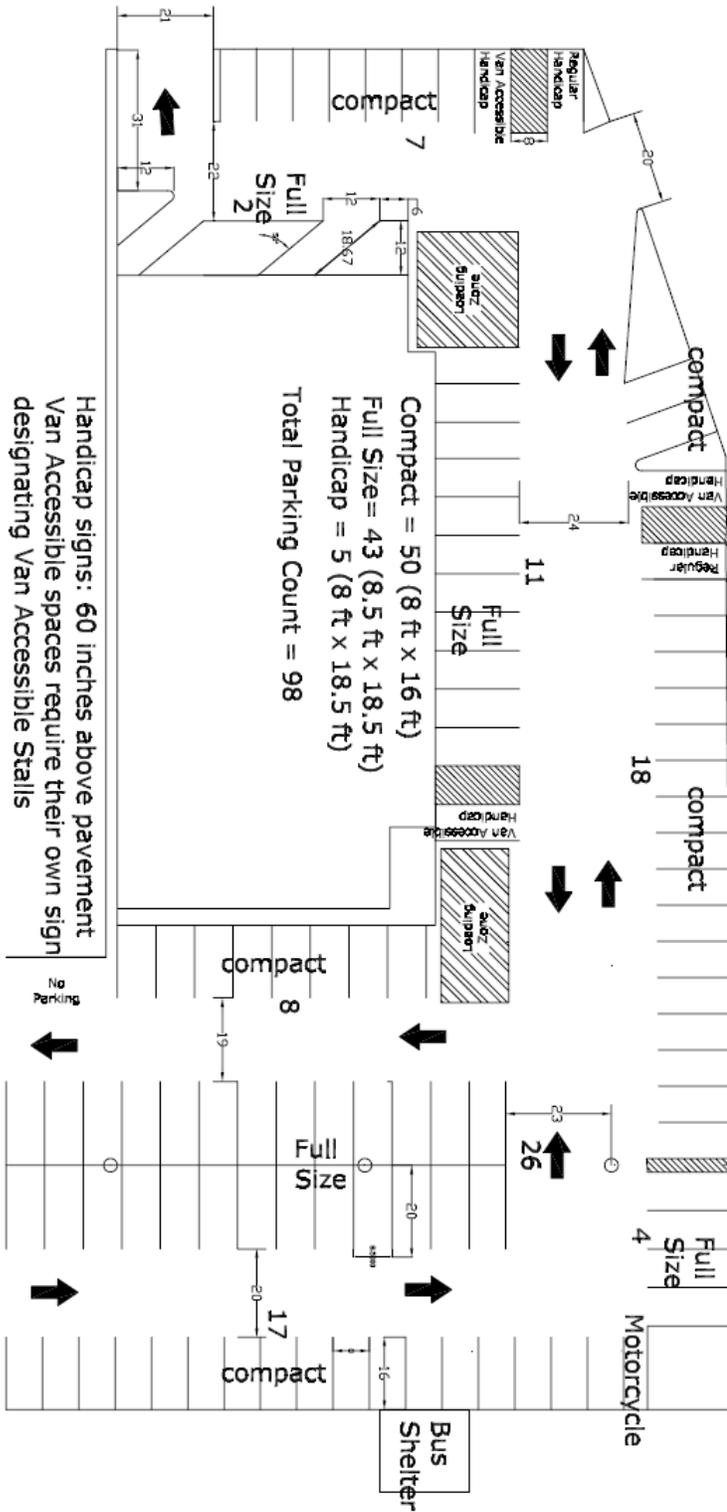


Figure 1 Proposed striping plan

RESOLUTION R-4789

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT FOR THE USE OF PORTIONS OF THE DILLARD PROPERTY AT 151 3RD STREET FOR PUBLIC PAY PARKING PURPOSES.

WHEREAS, the City of Kirkland is interested in securing additional public off-street parking to benefit commerce, activities visitors and employees in downtown Kirkland; and

WHEREAS, the owner of the former Antique Mall site at 151 3<sup>rd</sup> Street in Kirkland is interested in making portions of her property available for such public purposes; and

WHEREAS, the City of Kirkland and the property owner desire to enter into a parking agreement to provide the City with the use of a portion of the property for public pay parking.

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Manager is hereby authorized and directed to execute on behalf of the City a parking agreement substantially similar to the Agreement attached as Exhibit A.

Passed by majority vote of the Kirkland City Council in open meeting this \_\_\_\_ day of \_\_\_\_\_, 2009.

Signed in authentication thereof this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
MAYOR

Attest:

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

**Exhibit A  
PARKING AGREEMENT**

This PARKING AGREEMENT (this "Agreement"), is made and entered into on this \_\_\_\_\_ day of December, 2009, between Adrienne Alexandra LLC., a Washington limited liability company (herein referred to as "Owner") and the City of Kirkland, a municipal corporation of the State of Washington (herein referred to as "City").

**WITNESSETH**

WHEREAS, City is interested in securing additional off-street parking for business, activities and employees in downtown Kirkland; and

WHEREAS, Owner is interested in making portions of her property located at the Antique Mall site at 113 3rd Street in Kirkland, Washington (the "Property") available for such purposes; and

WHEREAS, Owner and City desire to enter into a parking agreement to provide City the use of up to 99 parking stalls at Owner's Property;

NOW THEREFORE, the parties agree as follows:

**1. Description.**

Owner hereby agrees for the term of this Agreement and subject to the conditions and provisions hereinafter set forth, to allow City the use of up to 99 parking stalls and the drive thru areas, (herein called the "Parking Lot") as shown on Attachment A. City accepts the Parking Lot in its "AS IS" condition as of the date of this Agreement, and Owner shall have no obligations to make any improvements or changes thereto, or the balance of the Property. City acknowledges this Agreement is a license to use only a portion of the Property, and that Owner shall retain the use of the building constructed thereon (the "Building") which is not the subject of this Agreement. City shall not create a nuisance, or in any way utilize the Parking Lot in such a way as to interfere with Owner's use of the Building or any parking stalls utilized by Owner after exercise of Owner's termination rights pursuant to Section 2 below. Any such interference shall be a breach under this Agreement. This Agreement does not constitute a lease or an easement for the benefit of City.

**2. Term.**

The term of this Agreement shall commence on January 1, 2010, and shall expire December 31, 2013. Owner shall use commercially reasonable efforts to remove the fencing from the Parking Lot as soon as is reasonably possible after the commencement date. Either party may terminate all or a portion of this Agreement at any time by giving sixty (60) days written notice to the other party.

### **3. Use and Management of the Parking Lot.**

City shall use, manage and operate the Parking Lot for vehicular parking and for no other purpose and the City's use will be 24 hours a day, 7 days a week. Subject to Force Majeure, as defined below, the City will, at its expense, clean and prepare the Parking Lot for striping, stripe all of the 99 Stalls located in the Parking Lot, install the pay stations, install the signage required in Section 6 below, and will make the Parking Lot operational for use by the public on or before March 1, 2010. Owner shall be responsible for any restriping necessitated by Owner's exercise of the termination provision in Section 2 above. "Force Majeure", as used herein, shall mean war, inclement weather, natural catastrophe, contractor availability, civil disturbance, or any similar cause beyond the reasonable control of City.

Initially 93 of the 99 Stalls shall be charged on a daily/hourly basis (the "Daily Stalls") with payment made through two (2) pay stations located within the Parking Lot at mutually agreeable locations. The parties acknowledge that 6 of the parking stalls will not have any revenue as the City does not charge for the use of five (5) handicapped stalls or the one (1) motorcycle stall.

Upon mutual agreement by both parties, a portion of the Daily Stalls may be designated as monthly parking stalls (the "Monthly Stalls"). Monthly Stalls will be licensed to monthly parkers on an unassigned basis, City will designate an area within the Parking Lot for monthly parking, and City will issue monthly parking permits.

City, at its expense, will maintain normal and regular trash, debris, snow, ice and leaf removal from the Parking Lot. City shall ensure that their use of the 99 Stalls will not block any driveway, access point or drive lane located adjacent to the 99 Stalls, without approval of Owner. While using the 99 Stalls, City shall comply with all applicable federal, state and local laws, ordinances and regulations governing such use.

### **4. Rate.**

City shall pay to Owner a monthly Daily Stall Fee (the "Daily Stall Fee"). The Daily Stall Fee shall be equal to the amount of monthly revenues resulting from use of the Daily Stalls, less any sums paid by City to third parties for the ability to accept credit cards in parking pay stations and any applicable existing taxes (the "Daily Stall Net Revenue"), up to an amount equal to \$100.00 multiplied by 93 Stalls (or the total number of Daily Stalls available to the City, should Owner exercise its termination rights pursuant to Section 2 above) (the "Maximum Daily Stall Fee"). Notwithstanding the foregoing, while no monthly Daily Stall Fee shall exceed the Maximum Daily Stall Fee, to the extent a Maximum Daily Stall Fee is not paid in any given month, the unpaid portion of that Maximum Daily Stall Fee shall be added to the amount available for payment in the next succeeding month's Maximum Daily Stall Fee, with such additional amount available for payment in each subsequent month until fully paid. [For example, if the Parking Lot is operational on March 1, 2010, the Maximum Daily Stall Fee for March,

2010 will be \$9,300. Should Daily Stall Net Revenues in March, 2010 equal \$8,300; the Maximum Daily Stall Fee for April, 2011 shall be \$10,300. Should Daily Stall Net Revenues in April, 2010 equal \$8,300; the Maximum Daily Stall Fee for May 2011 shall be \$11,300.] The City shall retain the amount, if any, by which the Daily Stall Net Revenue exceeds the Maximum Daily Stall Fee.

City shall pay to Owner a monthly Monthly Stall Fee (the "Monthly Stall Fee"). The Monthly Stall Fee shall be equal to the amount of monthly revenues resulting from use of the Monthly Stalls, less any applicable existing taxes (the "Monthly Stall Net Revenue"), up to an amount equal to \$100.00 multiplied by the number of Monthly Stalls (the "Maximum Monthly Stall Fee"). In no event shall the City charge less than \$110 per month for any Monthly Stall. Notwithstanding the foregoing, while no Monthly Stall Fee shall exceed the Maximum Monthly Stall Fee, to the extent a Maximum Monthly Stall Fee is not paid in any given month, the unpaid portion of that Maximum Monthly Stall Fee shall be added to the amount available for payment in the next succeeding month's Maximum Monthly Stall Fee, with such additional amount available for payment in each subsequent month until fully disbursed. [For example, should the City and Owner designate 10 Monthly Stalls; the Maximum Monthly Stall Fee shall be \$1,000. Should Monthly Stall Net Revenues in March, 2011 equal \$900; the Maximum Monthly Stall Fee for April, 2011 shall be \$1,100. Should Monthly Stall Net Revenues in April, 2011 equal \$900; the Maximum Monthly Stall Fee for May 2011 shall be \$1,200. In this example, the Daily Stalls would then be reduced to 83 Stalls in calculating the Daily Stalls Maximum Fee in those months.] City shall retain the amount, if any, by which the Monthly Stall Net Revenue exceeds the Maximum Monthly Stall Fee.

## **5. Payments.**

For Daily Stalls, City agrees to pay Owner, without invoice, at 2053 Minor Ave. E., Seattle, WA 98102, or such other person or entity as directed in writing by Owner, the Daily Stall Fee payable on or before the thirtieth day following the month for which payment is due. All past due Daily Stall Fee payments shall be assessed a \$100 late payment charge and the late payment charge and outstanding Daily Stall Fees shall accrue interest at 12% per annum. Failure to pay the Daily Stall Fee by the 35<sup>th</sup> day following the month for which payment is due shall be a breach under this Agreement.

For Monthly Stalls, City agrees to pay Owner, as above, except that the Monthly Stall Fee shall be payable on or before the fifteenth day following the month for which payment is due. Failure to pay the Monthly Stall Fee by the 20<sup>th</sup> day following the month for which payment is due shall be a breach under this Agreement.

## **6. Signage.**

City, at its expense, shall install and maintain public parking signage at location(s) to be mutually agreed by both parties. Owner shall be responsible for any relocation of signage necessitated by Owner's exercise of the termination provision in Section 2.

**7. Assignment.** It is agreed that this Agreement is personal to the City, and that City may not assign its rights under this Agreement to any other party without the prior written consent of Owner, which consent may be withheld in Owner's sole discretion.

**8. Enforcement.**

City reserves the right to determine and enforce applicable parking restrictions and to have any vehicle towed from the 99 Stalls that does not comply with parking restrictions, handicap permit, or display the monthly parking permit, if applicable.

**9. Hold Harmless Agreement.**

Owner shall not be liable to City for injury to any person, or for the loss of or damage to any property (including, but not limited to, the property of City) occurring in or about the 99 Stalls (or however many parking stalls the City is then using in the Parking Lot), the Parking Lot, or the Property from any cause whatsoever, unless caused by the sole negligence of Owner. City hereby releases, and agrees to indemnify, defend and hold Owner and the Other Users harmless from, any and all loss, claims, injuries, charges, liabilities, obligations, penalties, causes of action, liens, damages, costs and expenses (including attorneys' fees and costs) claimed, charged, incurred or arising from City's use of the 99 Stalls (or however many parking stalls the City is then using in the Parking Lot), the Parking Lot or the Property, unless caused by the sole negligence of Owner. City shall defend Owner and the Other Users from the same at City's expense by counsel reasonably satisfactory to both Owner and the Other Users. This Section shall survive any termination or expiration of this Agreement. City shall give prompt notice to Owner in the case of casualty or accidents on or about the 99 Stalls (or however many parking stalls the City is then using in the Parking Lot), the Parking Lot, or the Property.

**10. Insurance.**

City shall maintain liability coverage via City's membership in the Washington Cities Insurance Authority, a municipal insurance pool, for liabilities contractually assumed by City in this Agreement, and, arising out of the activities pertaining to this Agreement.

By requiring such liability coverage, Owner shall not be deemed to, or construed to, have assessed the risks that may be applicable to City in this Agreement. City shall assess its own risks and, if it deems appropriate and or/prudent, maintain greater limits or broader coverage than is herein specified.

Coverage shall be at least as broad as Commercial General Liability with a limit of not less than: \$2,000,000 combined single limit per occurrence, \$3,000,000 aggregate. The coverage agreement shall include, but not be limited to coverage for premises and operations, contractual liability (including specifically liability assumed herein), and

Employers Liability or "Stop-Gap" coverage.

To the extent of City's negligence as herein assumed, City's liability coverage shall be primary coverage as respects Owner, its officers, officials, employees, and agents. Any insurance and/or self-insurance maintained by Owner, its officers, officials, employees, and agents shall not contribute with City's coverage or benefit City in any way.

Coverage shall not be suspended, voided, canceled, materially reduced in coverage or in limits except by the reduction of the applicable aggregate limit by claims paid, until thirty (30) days prior written notice to the Owner.

City shall furnish Owner with Evidence of Coverage, evidencing general liability coverage, to be received and accepted by Owner prior to the commencement of activities associated with this Agreement.

#### **11. Surrender.**

Upon termination of this Agreement, City shall at its sole cost and expense remove any and all fencing; materials, equipment or other items stored or left on the 99 Stalls (or however many parking stalls the City is then using in the Parking Lot) and shall return said stalls to Owner in the same or better condition they were in on the commencement date of this Agreement. Further, City shall be responsible for repairing and or replacing, if necessary any damage to the 99 Stalls (or however many parking stalls the City is then using in the Parking Lot), the Parking Lot, or the Property.

#### **12. Defaults.**

Neither party shall be deemed to be in Default under this Agreement unless the other party provides it with a written notice of a specific breach thereof, and unless the failure to comply with any monetary obligation is not cured within ten (10) days after such notice or the failure to comply with any nonmonetary obligation is not cured within thirty (30) days after such notice.

#### **13. Waiver of Breach.**

No waiver of any breach of any covenant or condition herein contained shall operate as a waiver of any subsequent breach of the same or any other covenant or condition.

#### **14. Notices.**

All notices, demands, and requests to be given by either party to the other shall be in writing. All notices, demands and requests by City to Owner shall be sent by United States registered or certified mail, postage prepaid, addressed to Marilyn Dillard, 2053 Minor Avenue E, Seattle, WA 98102, or at such other place as Owner may from time to time designate by notice to City. All notices, demands, and requests by Owner shall be sent by United States registered or certified mail, postage prepaid address to

City at City of Kirkland, Parking Coordinator, City Hall, 123 Fifth Avenue, Kirkland, WA 98033-6189, or at such other place as City may from time to time designate by notice to Owner.

**15. Interpretation and Venue.**

Washington law shall govern the interpretation of this Agreement. King County shall be the venue of any mediation, arbitration, or lawsuit arising out of this Agreement.

**16. Time of Performance.** Time is of the essence in the performance of each obligation set forth in this Agreement.

**17. Successors.** The covenants and conditions herein contained shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

**18. Counterparts.** This Agreement may be executed in counterparts, each of which shall be considered an original and but one and the same contract.

**19. Severability.**

If one or more clauses of this Agreement is found to be unenforceable, illegal, or contrary to public policy, the Agreement will remain in full force and effect except for the clauses that are unenforceable, illegal or contrary to public policy.

**20. Legal Expenses.**

If any litigation in connection with this Agreement (including an injunction, assertion of any counterclaim or cross-claim instituted by a party hereto or by others), the substantially prevailing party shall recover the costs and expenses, including reasonable attorneys' fees, which it incurred in connection with such proceeding, including those on any appeal therefrom.

**21. Entire Agreement.**

This Agreement constitutes the complete and final agreement of the parties, replaces and supersedes all oral and/or written proposals and agreements heretofore made on the subject matter, and may be modified only by a writing signed by both parties.

**IN WITNESS WHEREOF**, the parties hereto have executed this document as of the day and year first above written.

CITY OF KIRKLAND

ADRIENNE ALEXANDRA LLC

By: \_\_\_\_\_  
David Ramsay  
City Manager

By: \_\_\_\_\_  
Marilyn D. Dillard  
Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Kirkland City Attorney

