



**CITY OF KIRKLAND**  
Department of Parks and Community Services  
123 Fifth Avenue, Kirkland, WA 98033 425.587.3030  
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## **MEMORANDUM**

**To:** David Ramsay, City Manager

**From:** Jenny Schroder, Parks and Community Services Director  
Mike Metteer, Business Services Manager

**Date:** December 15, 2006

**Subject:** Second Avenue South Dock Bill of Sale and Use Permit

### **Recommendation:**

Staff recommends that the City Council authorize the City Manager to sign the following documents, copies of which are attached: (1) Bill of Sale transferring the Second Avenue South pier to the City; and (2) Second Avenue South Right of Way Use Permit allowing the Kirkland Yacht Club Marina ("KYCM") to moor boats along the southern end of its Marina.

### **Background:**

Installation of the existing Second Avenue South pier was approved in 1973. In 1974, a right of way use permit was approved by the City which allowed the permit holder to possess and moor vessels at the Second Avenue South Pier. The key provisions of the permit were as follows:

- 15 year term with renewal option
- Public access on the pier and public moorage on the south side of the Pier
- Payment to the City of 7% of the gross receipts for moorage slips in the right of way
- Option for the City to take ownership of the Second Avenue South Pier upon expiration of the Permit term

The Permit was renewed in 1989 for another 15 year term. In 2004, the Permit term was extended for an additional 18 months through April 20, 2006. Prior to April 20, 2006, the City notified KYCM that it would exercise its option to assume ownership of the improvements in the right of way (i.e., the Pier).

The attached Bill of Sale memorializes the transfer of ownership of the Pier and the other improvements in the right of way to the City. The attached Right of Way Use Permit allows KYCM to moor vessels along the southernmost portion of their Marina. Although the southernmost portion of the Marina is not in the right of way, it is very close to the northern edge of the right of way. Therefore, vessels moored along the southernmost portion of the Marina are in the right of way. The Right of Way Use Permit does not

authorize KYCM to moor vessels at the Second Avenue South Pier; it is limited to the area along the southernmost portion of the Marina. The permit area is depicted on Exhibit A to the Permit document.

The Permit term is five years with an option to renew for an additional five years. KYCM will pay the City seven percent of its gross receipts from moorage in the permit area. To ensure access, KYCM will not moor large vessels in the portion of the permit area that is opposite the Second Avenue South Pier.

The City's potential plans for the Second Avenue South Pier include the following:

- Long term monthly moorage along the north side of the Pier. The City has 10 slips for rent at \$300 per month; boats are limited to a maximum length of 25 feet.
- The City can now offer reservations to boaters who wish to reserve a spot. The City will charge a \$25 reservation fee.
- The City tour dock is only 180 feet long. The addition of the Second Avenue South Pier, which is over 400 feet long, provides capacity for multiple tour boat vessels.
- The Pier is a possible water taxi location.
- Recreational concessions are a possibility with space for "jet skis."
- Transient moorage for day use will be available.
- The Pier can be used to harbor boats and barges for events.
- The new fire boat will be moored at the Pier.

Staff has begun to implement some of these items. Staff is also working on a draft business plan for the City's Marina, which will incorporate plans for the Second Avenue South dock.

**BILL OF SALE FOR IMPROVEMENTS IN SECOND AVENUE SOUTH  
STREET END**

**Article I      Recitals**

WHEREAS, the City granted C.S. Hadley Sr. a street end use permit dated October 21, 1974 for the Second Avenue South Street End which was recorded under King County Recording No. 7411070627 (the “1974 Permit”); and

WHEREAS, pursuant to the 1974 Permit, a pier and pilings were installed in the Second Avenue South Street End; and

WHEREAS, the 1974 Permit, after several renewals and extensions, expired on October 20, 2004; and

WHEREAS, the holder of the 1974 Permit on October 20, 2004 was 135 Lake Street Associates Limited Partnership (“Lake Street”); and

WHEREAS, upon expiration of the 1974 Permit in 2004, Lake Street and the City entered into a Permit that allowed continued use of the Second Avenue South Street End by Lake Street from October 20, 2004 through April 20, 2006 (the “2004 Permit”); and

WHEREAS, Lake Street does business as the Kirkland Yacht Club Marina (“KYCM”); and

WHEREAS, under the 2004 Permit, the City may retain ownership of the improvements and encroachments in the Second Avenue South Street End upon revocation, expiration or termination of the 2004 Permit; and

WHEREAS, the 2004 Permit expired on April 20, 2006; and

WHEREAS, prior to expiration of the 2004 Permit, the City notified the KYCM that it intends to retain ownership of the improvements and encroachments in the Second Avenue South Street End; and

WHEREAS, the City and the KYCM want to memorialize the transfer of ownership of the improvements and encroachments in the Second Avenue South Street End to the City;

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

**Article II      Bill of Sale**

KYCM hereby conveys to the City of Kirkland, with warranty of title and free and clear of encumbrances, all of KYCM’s right, title and interest to all of the existing

decking, pilings and other personal property or improvements associated with the pier located in the Second Avenue South Right of Way.

**Article III Maintenance of Baffles**

The City and KYCM understand and acknowledge that there are baffles located under the pier in the Second Avenue South Street End. The baffles were installed by KYCM's predecessor in order to protect its marina to the North, and the vessels moored there, from severe wave action. In the meantime, KYCM has renovated the Marina and installed a breakwater which is designed to protect the Marina from severe wave action. Accordingly, KYCM and the City agree that the City is not required to maintain or retain the baffles in the Second Avenue South Street End.

DATED THIS \_\_\_\_ day of \_\_\_\_\_, 2007.

**135 LAKE STREET ASSOCIATES LIMITED PARTNERSHIP**

**By: Westwater Development, Inc.**

**Its: Manager**

By: \_\_\_\_\_  
Its \_\_\_\_\_

**CITY OF KIRKLAND**

By: \_\_\_\_\_  
Its \_\_\_\_\_

Approved as to form:

\_\_\_\_\_

## SECOND AVENUE SOUTH RIGHT OF WAY USE PERMIT

This Second Avenue South Right of Way Use Permit is entered into by and between **135 Lake Street Associates Limited Partnership doing business as Kirkland Yacht Club Marina** (“KYCM”) and the City of Kirkland (“City”).

### RECITALS

A. The Second Avenue South Right of Way (“Right of Way”) is City right of way that extends into Lake Washington.

B. KYCM owns and operates the Kirkland Yacht Club Marina (“Marina”) which is in Lake Washington and is adjacent to and North of the Right of Way.

C. The South portion of the Marina is located very close to the Second Avenue South Right of Way, such that boats moored along the Southernmost portion of the Marina are in the Right of Way.

D. The KYCM is currently allowed to moor vessels along the Southernmost portion of the Marina pursuant to a short term Right of Way Use Permit and the City and KYCM wish to enter into a long term permit.

NOW, THEREFORE, the City and KYCM agree as follows:

**1. Scope of Permit.** KYCM is authorized to moor boats along the south side of its Marina, which is located north of the Right of Way. A diagram or depiction of the area of the Right of Way in which KYCM is authorized to moor boats is attached hereto as Exhibit A (the “Permit Area”). This Permit does not authorize KYCM to moor boats in any other portion of the Right of Way, including but not limited to the Second Avenue South pier.

**2. Term of Permit.** The initial term of this Permit shall be for five (5) years, commencing on January 1, 2007. This Permit may be renewed for one additional five (5) year term upon the written consent of the City and KYCM.

**3. Permit Fee.** KYCM shall pay an amount equal to 7% of the gross receipts received by KYCM from all moorage in the Permit Area. KYCM shall pay the permit fee to the City on a yearly basis for each calendar year. KYCM shall pay the permit fee for each calendar year no later than January 31 of the following year. Upon the City’s request, KYCM shall allow the City to review KYCM’s business records that pertain to gross receipts received from the Permit Area or calculation of the permit fee.

**4. Restriction on Vessel Size.** In the portion of the Permit Area that is 10 feet in width (as depicted on Exhibit A), KYCM shall not moor vessels with a beam in excess of nine feet. The City shall not moor vessels with a beam in excess of nine feet along the north side of the Second Street South Pier except for County or City fireboats. In the

portion of the Permit Area that is 20 feet in width (as depicted on Exhibit A), KYCM shall not allow moorage of vessels greater than 20 feet in width or 70 feet in length.

**5. Insurance.** KYCM shall obtain at its sole expense, comprehensive liability insurance in the amount of \$2,000,000, and shall, upon request, provide the City with satisfactory proof of the continued insurance coverage during the life of this Permit or any renewal or extension thereof.

**6. Hold Harmless.** KYCM shall indemnify, defend and hold harmless the City, its officers, agents and employees, from any and all claims made against the City, its officers, agents or employees, arising out of the use or occupancy of the Right of Way by KYCM.

**7. Assignment and Transfer.** This Permit and all rights hereunder shall not be assigned or transferred by KYCM for any reason whatsoever without the prior consent of the City.

**8. Termination.** In the event the City determines that KYCM has breached a provision of this Permit or violated an applicable law or ordinance with respect to its use of the Second Avenue South right of way, it shall provide KYCM with a written notice describing the breach or violation. KYCM shall have 10 days from its receipt of the written notice to cure the breach or violation. In the event KYCM does not cure the breach or violation within the 10 day period, the City may terminate this permit; provided that in the event of termination, KYCM shall remain responsible for payment of any permit fees due under Section 3 of this Permit.

IN WITNESS WHEREOF, the parties hereto have signed this Permit as of the \_\_\_\_ day of \_\_\_\_\_, 2007.

CITY OF KIRKLAND

By: \_\_\_\_\_  
Its \_\_\_\_\_

135 LAKE STREET ASSOCIATED LIMITED PARTNERSHIP  
By: Westwater Development, Inc  
Its: Manager

By: \_\_\_\_\_  
Its \_\_\_\_\_

262.1

60'

The permit area be 10 feet wide from slips 1 through 32 and 20 feet wide from slips 32 and up.

655'

1" = 40'

