



## CITY OF KIRKLAND

City Attorney's Office  
123 Fifth Avenue, Kirkland, WA 98033 425.587.3030  
www.kirklandwa.gov

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### MEMORANDUM

**To:** Kurt Triplett, City Manager

**From:** Robin S. Jenkinson, City Attorney  
Eric Shields, Planning Director

**Date:** June 5, 2013

**Subject:** PARK & RIDE, L.L.C. DEVELOPMENT AGREEMENT

### RECOMMENDATION

City Council conducts a public hearing on the attached resolution approving the Development Agreement between the City and Kirkland Park & Ride, L.L.C. The Development Agreement modifies the time of payment of certain impact fees and capital facility charges. If after the hearing, the Council determines the proposed Development Agreement is satisfactory, Council could approve the resolution authorizing the City Manager to execute the Development Agreement.

### BACKGROUND

As previously discussed with the Council, the City recently received a request to assist the developer of the "Kirkland Crossing" Transit Oriented Development (TOD), by delaying payment of the traffic and school impact fees to a date certain, as well as deferring any other charges the City was able to delay. Other potential charges that are eligible for deferral are the capital facility charges. No changes to existing codes were necessary to allow for potential capital facility charge deferrals, but changes were needed to allow deferral of the impact fees. The TOD has been a high priority for the City and was one of the 12 initiatives adopted by the Council as part of the 2011 City Work program. Therefore the Council authorized staff to take all reasonable steps necessary to make the TOD successful.

On June 4, 2013, the City Council approved Ordinance O-4411 amending the Kirkland Municipal Code provisions relating to transportation and park impact fees. The amendments allow for the modification of the timing of payment of impact fees, for mixed use buildings or developments, in a Development Agreement approved by the City Council. Deferrals of both the impact fees and the capital facilities charges have been included in the Development Agreement.

The attached resolution authorizes the City Manager to execute a Development Agreement substantially in the form attached to the resolution. In consideration of the public benefits derived from the Kirkland Crossing TOD, the proposed Development Agreement provides for the temporary return, to the developer, of the transportation and park impact fees already paid. The obligation of the developer to pay these amounts remains unchanged, but the timing of payment would be modified until October 31, 2014, or just prior to the issuance of any

certificate of occupancy for Kirkland Crossing, whichever occurs first. (Development Agreement, Section 2.1.) The proposed Development Agreement also provides for the temporary return of the water and sewer capital facility charges already paid by the developer on the same terms and conditions. (Section 2.2.) Both sections make clear that no certificate of occupancy will be issued by the City until all charges are paid in full.

Because the statute authorizing the execution of a development agreement requires, among other elements, that the development agreement set forth the development standards and other provisions that shall apply to the development, a vesting provision has been included. RCW 36.70B.170(1). The vesting provision makes clear that the zoning or other land use control ordinances in effect on the day that Kirkland Park & Ride submitted a valid and fully permit building application will govern. (Section 3.) The term of the proposed Development Agreement shall continue until Kirkland Park & Ride has satisfied its obligations to pay the impact fees and capital facility charges. (Section 16.)

#### Criteria for Future Impact Fee Deferral Requests

At the June 4 Council meeting, Council Members asked that the staff return to the June 18 Council meeting with legislation adopting criteria for deferrals. The criteria were to be based upon the rationale for approving the Kirkland Crossing impact fee deferral and would guide potential future fee deferral requests. As staff evaluated potential legislation, significant policy issues emerged that need Council deliberation and direction. In addition, there are no additional referral requests pending. Therefore staff felt it would be premature to propose legislation without further discussion with the Council. Staff is instead suggesting that the Council review preliminary proposed criteria at the June 18<sup>th</sup> meeting in order to provide input.

Staff suggests the following initial criteria:

- Deferrals shall only be considered for projects that provide significant economic benefit and/or specific public benefit to the City.
- Deferrals shall only be considered for projects that implement the Council Goals and adopted City Work Programs.
- Only a limited number of projects will be allowed deferrals in the same time frame. Preference will be given to projects that demonstrate partnerships with other governmental agencies and private entities, and that provide multiple public policy benefits.
- Deferrals for projects that include housing of any type will only be considered if the project includes affordable housing units as defined by the Kirkland Zoning Code.
- Deferrals must not negatively impact the City's ability to carry out funded capital projects.
- Deferrals shall identify a time certain for repayment, which shall be no later than the issuance of the certificate of occupancy.
- Development Agreements for deferrals must include the strongest possible mechanisms such as property liens or withholding of certificates of occupancy to ensure that deferred

fees are paid in full. These mechanisms may be different in each agreement as each project is unique.

Once the Council has reviewed the preliminary criteria and provided final direction, staff will return with legislation at a future Council meeting.

RESOLUTION R-4985

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING A DEVELOPMENT AGREEMENT WITH KIRKLAND PARK & RIDE L.L.C., MODIFYING THE TIME OF PAYMENT OF CERTAIN IMPACT FEES AND CAPITAL FACILITY CHARGES FOR THE KIRKLAND CROSSING TRANSIT ORIENTED DEVELOPMENT.

WHEREAS, Kirkland Park & Ride, L.L.C. controls approximately 1.8 acres of real property generally located at 3801 – 108<sup>th</sup> Avenue NE (“Subject Property”); and

WHEREAS, Kirkland Park & Ride is constructing a transit oriented development (“TOD”) at the Subject Property to be completed by 2014 and known as Kirkland Crossing. The TOD will include 58 affordable housing units and 185 market rate units and ground floor commercial over a shared 287-stall parking garage. The affordable units will provide housing to households with a range of income from 30 percent to 60 percent of the area median income. The Leadership in Energy and Environmental Design (“LEED”) certified TOD improves neighborhood pedestrian and bicycle connections and provides public plaza amenities as a gateway to the new King County Metro Transit Park and Ride facility. If financial resources become available, a pedestrian and bicycle connection will be made from the TOD to the Cross Kirkland Corridor directly to the east, linking the TOD to Downtown Kirkland, Totem Lake, and regional bike routes to the north and east, and a bike route to the south associated with the State Route 520 expansion project; and

WHEREAS, the Kirkland Crossing mixed-use project being constructed by Kirkland Park & Ride is part of a larger private/public partnership between King County Metro Transit, Polygon NW and Imagine Housing (a non-profit developer of affordable housing), A Regional Coalition for Housing (“ARCH”) and local, state, and federal funding sources. King County Metro Transit is developing a new Park and Ride transit facility including improvements to transit circulation, parking lot and waiting areas and construction of a three-story, 530-stall parking structure. The combined surface parking lot and parking structure will expand the number of parking stalls, for transit users, to a total of 853; and

WHEREAS, the City’s goal is to encourage the creation of a TOD that provides a full range of social and environmental benefits, including: lowering household expenses for both transportation and housing; promoting health by encouraging walking and bicycling, cutting air pollution, and reducing motor vehicle accidents; reducing City infrastructure costs; cutting energy consumption and greenhouse

gas emissions associated with both transportation and the built environment; and

WHEREAS, in view of the public benefits to be gained by the City through construction of the TOD at the Subject Property, the City is willing to modify the timing of the payment of certain required impact fees and capital facility charges for the TOD; and

WHEREAS, the Washington State Legislature has authorized the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction (RCW 36.70B.170(1)); and

WHEREAS, a development agreement must be approved by ordinance or resolution after a public hearing; and

WHEREAS, public hearing for this Development Agreement was held on June 18, 2013;

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 a development agreement with Park & Ride, L.L.C., substantially in the form of the Development Agreement attached to this Resolution.

Passed by majority vote of the Kirkland City Council in open meeting this \_\_\_\_ day of \_\_\_\_, 2013.

Signed in authentication thereof this \_\_\_\_ day of \_\_\_\_, 2013.

\_\_\_\_\_  
MAYOR

Attest:

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

After Recording, Return to:

Kirkland City Attorney's Office  
City Hall  
123 Fifth Avenue  
Kirkland, WA 98003-6189

**DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF KIRKLAND AND  
KIRKLAND PARK & RIDE, L.L.C., FOR THE KIRKLAND CROSSING TRANSIT  
ORIENTED DEVELOPMENT**

THIS DEVELOPMENT AGREEMENT ("Agreement"), is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between the CITY OF KIRKLAND ("City"), a non-charter, optional code, Washington municipal corporation, and KIRKLAND PARK & RIDE, L.L.C., a limited liability company organized under the laws of the State of Washington ("Kirkland Park & Ride").

**I. RECITALS**

WHEREAS, the Washington State Legislature has authorized the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction (RCW 36.70B.170(1)); and

WHEREAS, this Development Agreement by and between the City and Kirkland Park & Ride relates to the development known as Kirkland Crossing which is located on approximately 1.8 acres of real property owned or controlled by Kirkland Park & Ride and generally located at 3801 – 108<sup>th</sup> Avenue NE ("Subject Property"). The site is shown on the vicinity map attached as Exhibit 1 and as legally described in Exhibit 2, also attached; and

WHEREAS, Kirkland Park & Ride is constructing a transit oriented development ("TOD") at the Subject Property to be completed by 2014. The TOD will include 58 affordable housing units and 185 market rate units and ground floor commercial over a shared 287-stall parking garage. The affordable units will provide housing to households with a range of income from 30 percent to 60 percent of the area median income. The Leadership in Energy and Environmental Design ("LEED") certified TOD improves neighborhood pedestrian and bicycle connections and provides public plaza amenities as a gateway to the new King County Metro Transit Park and Ride facility. If financial resources become available, a pedestrian and bicycle connection will be made from the TOD to the Cross Kirkland Corridor directly to the east, linking the TOD to Downtown Kirkland, Totem Lake, and regional bike routes to the north and east, and a bike route to the south associated with the State Route 520 expansion project; and

WHEREAS, the Kirkland Crossing mixed-use project being constructed by Kirkland Park & Ride is part of a larger private/public partnership between King County Metro Transit, Polygon NW and Imagine Housing (a non-profit developer of affordable housing), A Regional Coalition for Housing (“ARCH”) and local, state, and federal funding sources. King County Metro Transit is developing a new Park and Ride transit facility including improvements to transit circulation, parking lot and waiting areas and construction of a three-story, 530-stall parking structure. The combined surface parking lot and parking structure will expand the number of parking stalls, for transit users, to a total of 853; and

WHEREAS, the City’s goal is to encourage the creation of a TOD that provides a full range of social and environmental benefits, including: lowering household expenses for both transportation and housing; promoting health by encouraging walking and bicycling, cutting air pollution, and reducing motor vehicle accidents; reducing City infrastructure costs; cutting energy consumption and greenhouse gas emissions associated with both transportation and the built environment; and

WHEREAS, Kirkland Park & Ride has faced challenges in securing construction lending because it is leasing the Subject Property from Metro Transit and has requested the City’s assistance in modifying the timing of payment to free up capital for construction; and

WHEREAS, in view of the public benefits to be gained by the City through construction of the TOD at the Subject Property, the City is willing to modify the timing of the payment of certain required impact fees and capital facility charges for the TOD to assist with the viability of the project; and

WHEREAS, a development agreement must be approved by ordinance or resolution after a public hearing; and

WHEREAS, public hearing for this Development Agreement was held on \_\_\_\_\_, 2013, and the City Council approved this Development Agreement by Resolution \_\_\_\_\_ on \_\_\_\_\_, 2013;

NOW, THEREFORE, in consideration of the mutual promises set forth here, the City and Kirkland Park & Ride agree as follows:

## II. AGREEMENT

**1. Project Description.** The transit oriented development (“TOD”) to be sited on the Subject Property in accordance with the terms and conditions of this Agreement, Building Permit Number BMU12-03727, as well as other applicable development regulations, including but not limited to Kirkland Zoning Code Chapter 56, is called “Kirkland Crossing.” As used in this Agreement, the term Kirkland Crossing or TOD means the proposed development of the Subject Property with a mixed use structure with affordable units, market rate units, commercial uses, and public amenities as described in Building Permit Number BMU 12-03727.

**2. Timing of the Payment of Impact Fees and Capital Facility Charges.**

2.1 As mitigation for the impacts of the Kirkland Crossing project, Kirkland Park & Ride is responsible for and has already paid the City the following applicable impact fees:

Transportation Impact Fee – Retail Use	\$ 30,296
Transportation Impact Fee – Multifamily Use	314,321
Park Impact Fee – Multifamily Use	<u>465,275</u>
Total	\$809,892

In consideration of the public benefits derived from Kirkland Crossing, upon approval and execution of this Agreement, the City shall temporarily return to Kirkland Park & Ride these amounts paid to the City for impact fees. Kirkland Park & Ride’s responsibility and obligation to pay these amounts for impact fees shall remain unchanged, only the time of payment is being deferred. Kirkland Park & Ride shall submit payment to the City, in full, for these impact fees, by October 31, 2014, or prior to issuance of any certificate of occupancy for Kirkland Crossing, whichever should occur first. No certificate of occupancy shall be issued without full payment of the impact fees.

2.2 As mitigation for the impacts of the Kirkland Crossing project, Kirkland Park & Ride is responsible for and has already paid the City the following applicable capital facility charges:

Water Capital Facility Charge	\$ 70,380
Sewer Capital Facility Charge	<u>361,860</u>
Total	\$432,240

In consideration of the public benefits derived from Kirkland Crossing, upon approval and execution of this Agreement, the City shall temporarily return to Kirkland Park & Ride these amounts paid to the City for capital facility charges. Kirkland Park & Ride’s responsibility and obligation to pay these amounts for capital facility charges shall remain unchanged, only the time of payment is being deferred. Kirkland Park & Ride shall submit payment to the City, in full, for these facility charges, by October 31, 2014, or prior to issuance of any certificate of occupancy for Kirkland Crossing, whichever should occur first. No certificate of occupancy shall be issued without full payment of the capacity facility charges.

**3. Vesting of Development Regulations.** The zoning or other land use control ordinances provisions of the Kirkland Municipal Code and Kirkland Zoning Code, in effect on the day that Kirkland Park & Ride submitted a valid and fully complete application for the building permit issued for Kirkland Crossings under Building Permit Number BMU 12-03727 shall apply to the development of Kirkland Crossing during the term of this Agreement. As provided by RCW

36.70B.170(4), the proposed TOD will not vest against new development regulations to the extent the new regulations are required by a serious threat to public health and safety.

4. **Kirkland Crossing Project is a Private Undertaking.** The Kirkland Crossing project is a private development and the City has no interest in the project except as authorized in the exercise of its governmental functions.

5. **Incorporation of Recitals.** The Recitals contained in this Agreement, and the Preamble paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth.

6. **Headings.** The headings in this Agreement are inserted for reference only and shall not be construed to expand, limit or otherwise modify the terms and conditions of this Agreement.

7. **Severability.** The provisions of this Agreement are separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the Agreement, or the validity of its application to other persons or circumstances.

8. **Time is of the essence.** Time is expressly made of the essence with respect to the performance by parties of each and all of their respective obligations under this Agreement.

9. **Integration.** This Agreement and its exhibits represents the entire agreement of the parties with respect to the subject matter of this Agreement. There are no other agreements, oral or written, except as expressly set forth in this Agreement and the Agreement supersedes all previous agreements, oral or written.

10. **Modifications to Agreement.** This Agreement contains all terms, conditions and provisions agreed upon by the parties, and shall not be modified except by written amendment executed by both parties after approval by the City Council.

11. **Authority.** The parties each represent and warrant that they have full power and actual authority to enter into this Agreement and to carry out all actions required of them by this Agreement. All persons executing this Agreement in their representative capacities represent and warrant that they have full power and authority to bind their respective organizations.

12. **Governing Law and Venue.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Washington. Venue for any action shall be in King County Superior Court.

13. **Recording.** The City shall record an executed copy of this Agreement with the King County Recorder's Office as a covenant running with the land and shall be binding on Kirkland Park & Ride and their successors and assigns until this Agreement expires on its own terms pursuant to Section 16.

**14. Legal Representation.** In entering into this Agreement, Kirkland Park & Ride represents that it has been advised to seek legal advice and counsel from its attorney concerning the legal consequences of this Agreement; that it has carefully read and knows the contents of the Agreement, and signs the same of its own free act; and that it fully understands and voluntarily accepts the terms and conditions of this Agreement.

**15. Attorneys' Fees.** In any action to enforce or determine a party's rights under this Agreement, the prevailing party shall be entitled to attorneys' fees and costs.

**16. Term.** The term of this Agreement shall continue until Kirkland Park & Ride has satisfied its obligation to pay the impact fees and capital facility charges under this Agreement.

**17. No Third-Party Beneficiaries.** This Agreement is made and entered into for the benefit of the parties. No other person shall have any right or action based upon any provision of this Agreement.

**18. Notices.** All communications, notices and demands of any kind that a party under this Agreement requires or desires to give to the other party shall be in writing and either (i) delivered personally, (ii) sent by email with an additional copy mailed first class, or (iii) deposited in the U.S. mail, certified mail postage prepaid, return receipt requested and addressed as follows:

If to the City:

Attention: Kurt Triplett, City Manager  
City of Kirkland  
123 Fifth Avenue  
Kirkland, WA 98033-6189  
[ktriplett@kirklandwa.gov](mailto:ktriplett@kirklandwa.gov)

If to Kirkland Park & Ride:

Kirkland Park & Ride, LLC  
11624 SE 5<sup>th</sup> Street, Suite 200  
Bellevue, WA 98005  
Holly.Smith@Polygonhomes.com

Notice by hand delivery or email shall be effective upon receipt, provided that notice by facsimile shall be accompanied by mailed notice as set forth above and shall be evidenced by a machine-printed confirmation of successful transmission. If deposited in the mail, certified mail, return receipt requested, notice shall be deemed delivered forty-eight hours (48) hours after

deposited. Either party at any time by notice to the other party may designate a different address or person to which such notice or communications shall be given.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first appearing above.

**CITY OF KIRKLAND**, a Washington  
municipal corporation

\_\_\_\_\_  
By: Kurt Triplett, City Manager

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Robin S. Jenkinson  
Kirkland City Attorney

**KIRKLAND PARK & RIDE, L.L.C.**

\_\_\_\_\_  
By: Gary Young, Authorized Agent

Date: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
County of King )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Kurt Triplett, 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.

\_\_\_\_\_  
Name (typed or printed): \_\_\_\_\_  
NOTARY PUBLIC in and for the State of \_\_\_\_\_  
Washington Residing at \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
County of King )

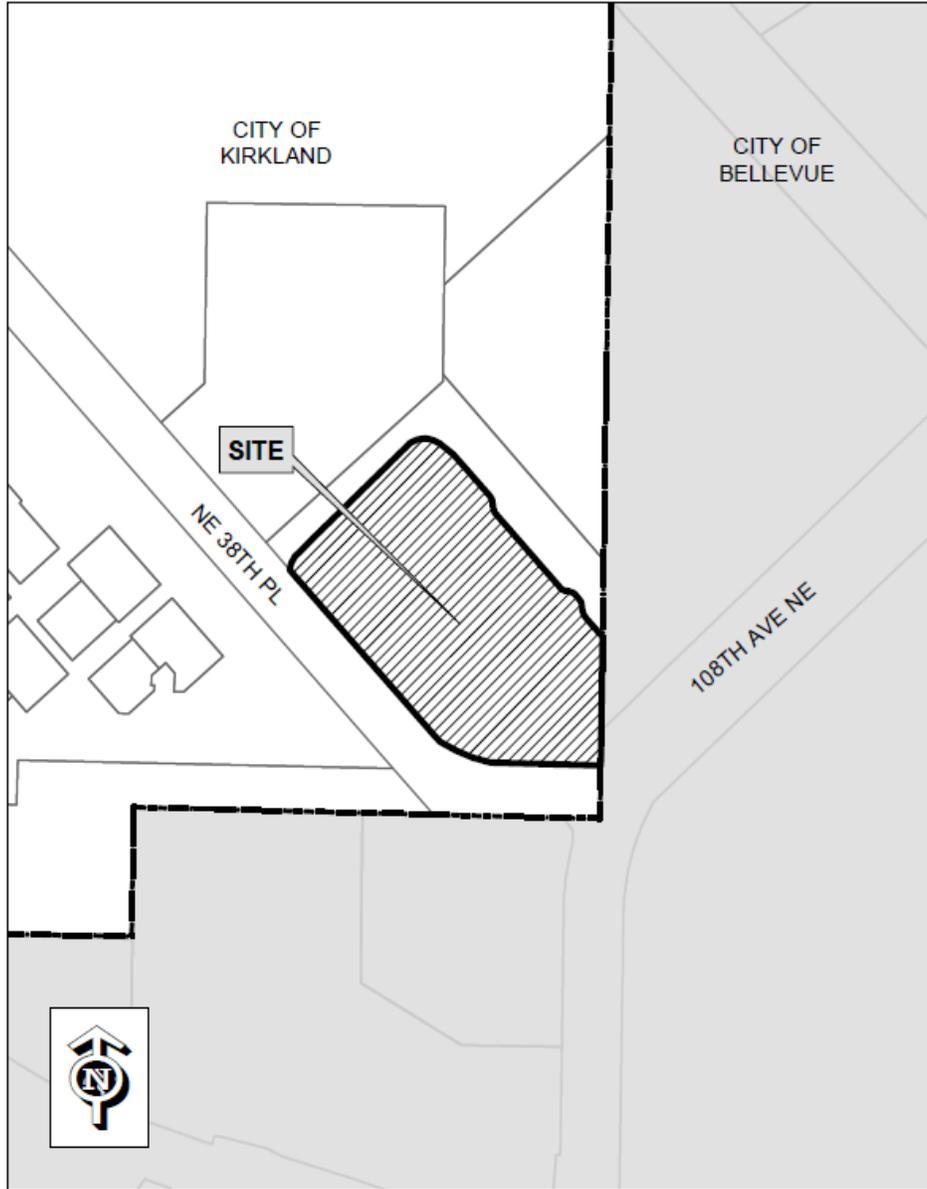
On this day, before me personally appeared \_\_\_\_\_, to me known to be the individual described herein and who executed the within and foregoing instrument, and acknowledged that \_\_\_\_\_ signed the same as \_\_\_\_\_ free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Name (typed or printed): \_\_\_\_\_  
NOTARY PUBLIC in and for the State of \_\_\_\_\_  
Washington Residing at \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

# EXHIBIT 1

## VICINITY MAP



## EXHIBIT 2

### Legal Description

Lot 1 Metro Park and Ride Short Plat as filed in Volume 290, Pages 262 through 264 under Recording No 20120828900002, Records of King County, Washington.