



CITY OF KIRKLAND

Planning and Community Development Department
123 Fifth Avenue, Kirkland, WA 98033 425-587-3225
www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Dawn Nelson, Planning Supervisor
Robin S. Jenkinson, City Attorney

Date: October 4, 2013

Subject: KTOD LLC DEVELOPMENT AGREEMENT

RECOMMENDATION

City Council conducts a public hearing on the attached resolution approving the Development Agreement between the City and KTOD LLC. 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 should approve the resolution authorizing the City Manager to execute the Development Agreement.

BACKGROUND

The City recently received a request to assist Imagine Housing, the developer of the 58 affordable housing units at the South Kirkland Transit Oriented Development ("South Kirkland TOD"), by delaying payment of the transportation and park impact fees, as well as deferring any other charges the City is able to delay, to a date certain. Other charges that are eligible for deferral are the capital facility charges. KTOD LLC is the ownership entity for the affordable housing units to be constructed by Imagine Housing. The name of the Imagine Housing affordable housing development is "Velocity."

The South Kirkland 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 18, 2013](#), the Council approved Resolution R-4985 authorizing the City Manager to sign a development agreement for the deferral of impact fees and capital facility charges with the developer of the 185 market rate units at the South Kirkland TOD. That authorization was based on amendments approved in Ordinance [O-4411](#). Ordinance O-4411 amended Title 27 of the Kirkland Municipal Code ("KMC") to allow the timing of the payment of transportation and parks impact fees for mixed used developments to be modified in a development agreement approved by the Council. At the time those amendments were approved, the Council requested that criteria be established to guide future deferral requests.

On [October 1, 2013](#), the City Council approved Ordinance O-4419 further amending the KMC provisions relating to the modification of the timing of payment of impact fees.

Ordinance O-4419 added criteria to be met in the development agreement approved by the City Council. The following are the criteria adopted in Ordinance O-4419 for impact fee deferrals:

- Payment of impact fees may be delayed to no later than the issuance of the certificate of occupancy;
- The development agreement shall provide mechanisms, such as withholding of the certificate of occupancy and/or property liens, to assure that the city will collect the deferred fees;
- The delay shall not reduce the availability of funds to implement the city's adopted capital improvement program in a timely manner; and
- Projects must provide significant public benefit, including but not limited to:
 - Projects that implement adopted city council goals;
 - Projects with economic benefit to the City;
 - Projects that involve partnerships with other governmental agencies; and
 - Projects that include affordable housing as defined by the Kirkland Zoning Code.

The Velocity project and the attached development agreement comply with these criteria.

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 provision of affordable housing and the other public benefits provided by the South Kirkland TOD, the proposed Development Agreement provides for the deferral of the transportation and park impact fees, along with the capital facility charges. The obligation of the developer to pay these amounts remains unchanged, but the timing of payment would be modified until December 31, 2014, or prior to the issuance of any certificate of occupancy for Imagine Housing's building, whichever occurs first (Agreement, Sections 2.1 and 2.2).

The proposed Development Agreement also acknowledges that an Impact Fee Waiver may be granted for up to 80 percent of the transportation and park impact fees and that the developer will be required to pay only those impact fees that have not been waived. Imagine Housing has requested waiver of the impact fees, but staff are waiting for additional information to be submitted in order to process that request. [KMC 27.04.050](#) and [KMC 27.06.050](#) specify that 80 percent of the transportation and park impact fees can be waived for affordable housing if the established criteria are met and that the waiver decision will be made by the City Manager.

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 KTOD LLC submitted a valid and fully complete building permit application will govern (Section 3). The term of the proposed Development Agreement shall continue until KTOD LLC has satisfied its obligations to pay the impact fees and capital facility charges (Section 16).

Staff recommends authorization of the fee deferral to further the Council's Housing Goal.

RESOLUTION R-5009

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING A DEVELOPMENT AGREEMENT WITH KTOD LLC, MODIFYING THE TIMING OF PAYMENT OF CERTAIN IMPACT FEES AND CAPITAL FACILITY CHARGES FOR THE CONSTRUCTION OF 58 AFFORDABLE HOUSING UNITS AS PART OF THE SOUTH KIRKLAND TRANSIT ORIENTED DEVELOPMENT.

WHEREAS, KTOD, LLC controls approximately .4 acres of real property generally located at 10711 NE 37th Court, Kirkland, Washington ("Subject Property"); and

WHEREAS, KTOD LLC is constructing 58 affordable housing units at the Subject Property as part of a transit oriented development ("TOD") to be completed in 2014 and known as the South Kirkland Transit Oriented Development ("South Kirkland TOD"). In addition to the 58 affordable housing units to be constructed by KTOD LLC, the TOD will include 185 market rate units and ground floor commercial over a shared 287-stall parking garage. The affordable units to be constructed by KTOD LLC 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 is part of a larger private/public partnership between King County Metro Transit, Polygon NW, 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, KTOD would benefit from minimizing the construction loan and carrying costs from interest associated with the payment of the impact fees and capital facility charges early in the construction cycle and has requested the City's assistance in modifying the timing of the payment to have greater control of expenditures during construction to maximize funds to be used to provide affordable housing and other public benefits; and

WHEREAS, in view of the public benefits to be gained by the City through construction of the 58 affordable housing units at the Subject Property, the City is willing to modify the timing of the payment of certain required impact fees and capital facility charges; 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 October 15, 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 KTOD LLC, 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 October, 2013.

Signed in authentication thereof this ____ day of October, 2013.

MAYOR

Attest:

City Clerk

After Recording, Return to:

Kirkland City Attorney's Office
City Hall
123 Fifth Avenue
Kirkland, WA 98033-6189

**DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF KIRKLAND AND
KTOD LLC, FOR THE CONSTRUCTION OF 58 AFFORDABLE HOUSING UNITS AS
PART OF THE SOUTH KIRKLAND 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 KTOD LLC, a limited liability company organized under the laws of the State of Washington.

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 KTOD LLC relates to the development known as Velocity which is located on approximately .4 acres of real property owned or controlled by KTOD LLC and generally located at 10711 NE 37th Court, Kirkland, Washington ("Subject Property"). The site is shown on the vicinity map attached as Exhibit 1 and a legally described in Exhibit 2, also attached; and

WHEREAS, KTOD LLC is constructing 58 affordable housing units at the Subject Property as part of a transit oriented development known as the South Kirkland Transit Oriented Development ("South Kirkland TOD") to be completed by 2014. In addition to the 58 affordable housing units, the South Kirkland TOD will include 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 South Kirkland 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 South Kirkland TOD to the Cross Kirkland Corridor directly to the east, linking the South Kirkland 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 Velocity affordable housing development is being constructed as part of a larger private/public partnership between King County Metro Transit, Polygon NW, 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 transit oriented development 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, KTOD LLC would benefit from minimizing the construction loan and carrying costs from interest associated with the payment of impact fees and capital facility charges early in the construction cycle and has requested the City’s assistance in modifying the timing of payment to have greater control of expenditures during construction to maximize funds to be used to provide affordable housing and other public benefits; and

WHEREAS, in view of the public benefits to be gained by the City through construction of the affordable housing units 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 58 affordable housing units to assist with the viability of the development; 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 October 15, 2013, and the City Council approved this Development Agreement by Resolution R- ____ on October 15, 2013;

NOW, THEREFORE, in consideration of the mutual promises set forth here, the City and KTOD agree as follows:

II. AGREEMENT

1. **Project Description.** The 58 affordable housing units to be constructed on the Subject Property in accordance with the terms and conditions of this Agreement, Building Permit Number BMF12-03725, as well as other applicable development regulations, including but not limited to Kirkland Zoning Code Chapter 56, is called “Velocity.” As used in this Agreement, the term Velocity means the proposed development of the Subject Property

with 58 affordable housing units as described in Building Permit Number BMF 12-03725.

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

2.1 As mitigation for the impacts of the Velocity development, KTOD LLC, KTOD is responsible for the following applicable impact fees:

Transportation Impact Fee – Multifamily Use	87,101
Park Impact Fee – Multifamily Use	145,870
Total	\$232, 971

KTOD LLC’s responsibility and obligation to pay these amounts for impact fees shall remain unchanged, unless a waiver of part of the impact fees is separately approved pursuant to Kirkland Municipal Code (KMC) 27.04.050 and KMC 27.06.050. Only the time of payment is being deferred. KTOD LLC shall submit payment to the City, in full, for these impact fees, by December 31, 2014, or prior to issuance of any certificate of occupancy for Velocity, 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 Velocity development, KTOD is responsible for the following applicable capital facility charges:

Water Capital Facility Charge	57,868
Sewer Capital Facility Charge	113,448
Total	\$171,316

KTOD LLC’s responsibility and obligation to pay these amounts for capital facility charges shall remain unchanged, only the time of payment is being deferred. KTOD LLC shall submit payment to the City, in full, for these facility charges, by December 31, 2014, or prior to issuance of any certificate of occupancy for Velocity, 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 KTOD LLC submitted a valid and fully complete application for the building permit issued for Velocity under Building Permit Number BMF 12-0375 shall apply to the development of Velocity during the term of this Agreement. As provided by RCW 36.70B.170(4), the proposed 58 affordable housing units 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. **The Velocity Development is a Private Undertaking.** The Velocity development is a private development and the City has no interest in the development 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 represent 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 KTOD 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, KTOD LLC represents that it has been advised to seek legal advice and counsel from its attorney concerning the legal

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

KTOD LLC

By: Ann Levine, Executive Director

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.

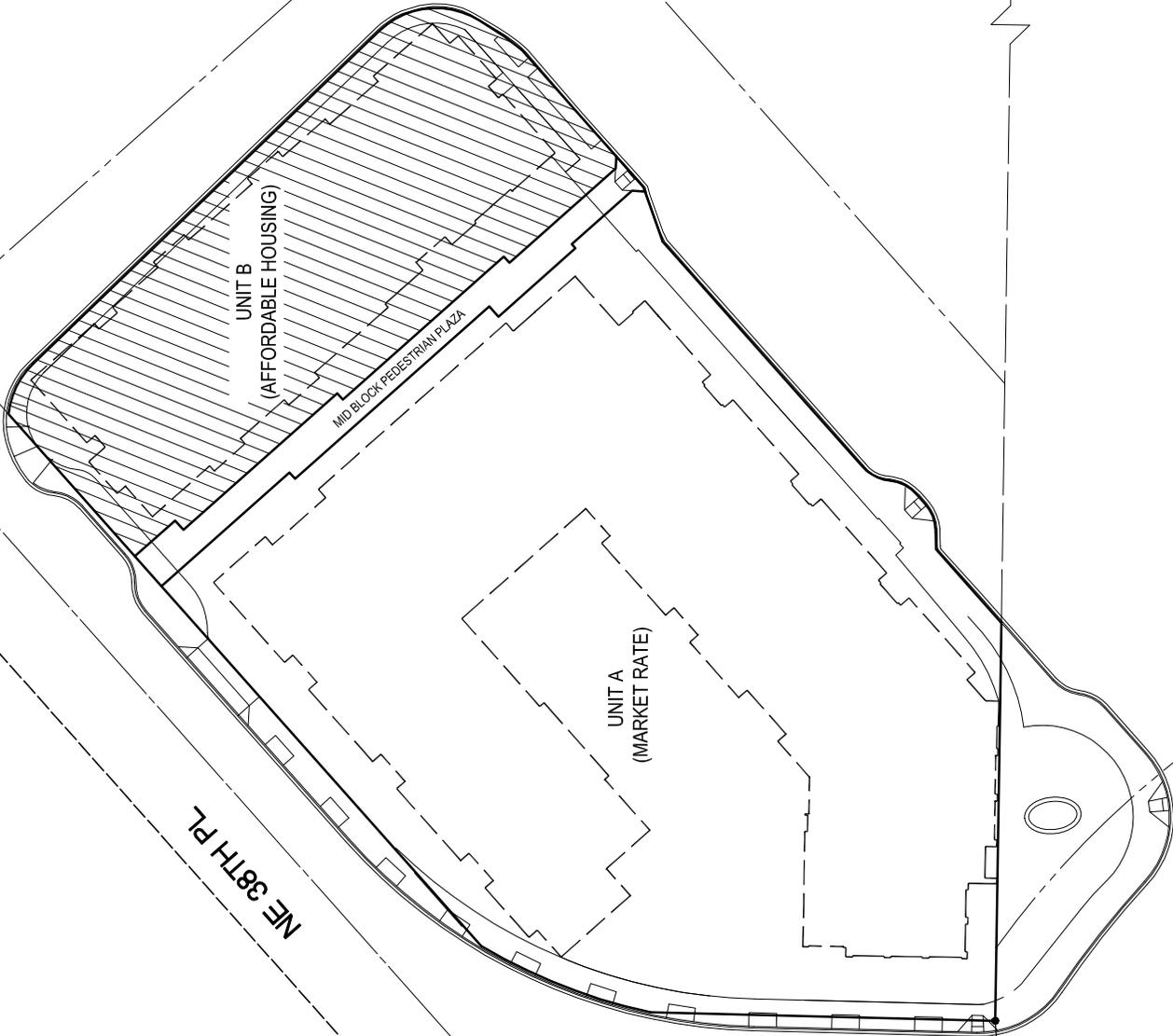
GIVEN under my hand and official seal this _____ day of _____, 2013.

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

PORTION OF THE NW 1/4, NE 1/4 AND THE NE 1/4 OF THE NW 1/4, SECTION 20, T 25 N, R 5 E, W.M.
KING COUNTY, WASHINGTON



S KIRKLAND
PARK AND RIDE



UNIT B
KTOD, A CONDOMINIUM
PODIUM LEVEL AND AIRSPACE UNITS
PORTION OF THE NW1/4, NE1/4 AND THE NE1/4, NW1/4, SEC 20, T 25 N, R 5 E, W.M.
CITY OF KIRKLAND, KING COUNTY, WASHINGTON



**DAVID EVANS
AND ASSOCIATES
INC.**
415 - 118th Avenue SE
Bellevue Washington 98005-3518
Phone: 425.519.6500

SHEET 1 OF 1
SCALE NTS
SURVEYED _____
FIELD BOOK _____
DRAWN _____
CHECKED _____
FILE _____

LEGAL DESCRIPTION

UNIT B, KTOD, A CONDOMINIUM, SURVEY MAPS AND PLANS RECORDED IN VOLUME ___ OF
CONDOMINIUMS, PAGES ___ THROUGH ___ ; CONDOMINIUM DECLARATION FILED UNDER
RECORDING NO. _____, RECORDS OF KING COUNTY, WASHINGTON.