

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 – 108th 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 18th day of June, 2013.

Signed in authentication thereof this 18th day of June, 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 – 108th 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

If to Kirkland Park & Ride:

Kirkland Park & Ride, LLC
11624 SE 5th 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)
)
County of King) ss.

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)
)
County of King) ss.

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

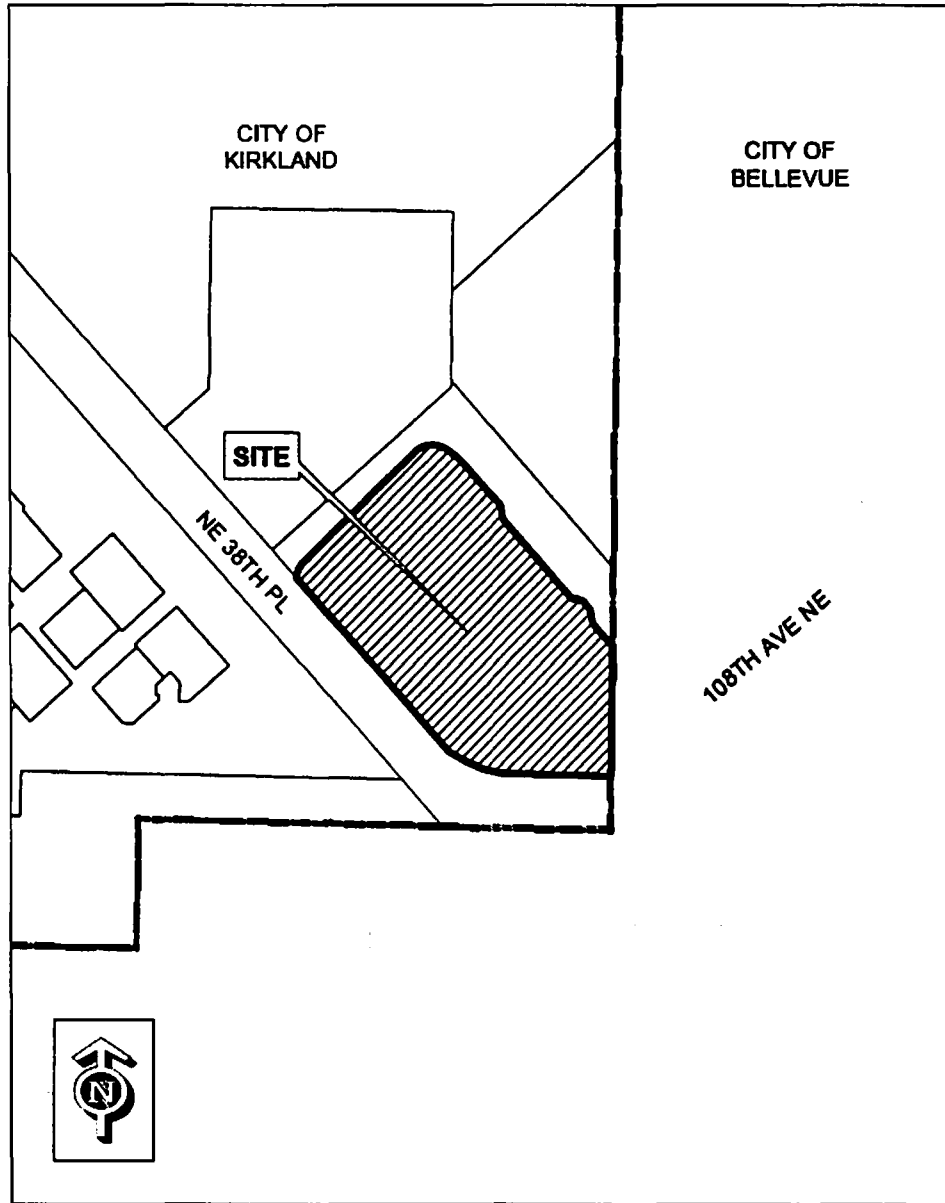


EXHIBIT 2

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.