

11/30/99

Introduced By: Jane Hague
Rob McKenna

TOD lease ord

Proposed No.: 1999-0674

ORDINANCE NO. 13693

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AN ORDINANCE authorizing King County executive to lease the Overlake Park and Ride property to the King County Housing Authority for Transit Oriented Development purposes to consist of the construction and operation of a structured park and ride facility and an affordable housing development for a period of fifty years, with an option to extend the lease for additional twenty-five years.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. The King County executive is hereby authorized on behalf of the county to execute a lease with the King County Housing Authority for Transit Oriented Development purposes to consist of the construction and operation of a structured park and ride facility and an affordable housing development which would be substantially consistent with the terms and conditions described in Attachment A, "Essential Terms Agreement for Lease: Overlake Park and Ride Transit Oriented Development Project", and containing the usual and customary terms for such a lease.

SECTION 2. The appropriate county officials, agents and employees are hereby authorized to take all actions necessary to implement the lease and all actions up to now taken

21 by county officials, agents and employees consistent with the terms and purposes of the lease
22 agreement are hereby ratified, confirmed and approved.

23 SECTION 3. If any one or more of the covenants or agreements provided in this
24 ordinance to be performed on the part of the county is declared by any court of competent
25 jurisdiction to be contrary to law, then such covenant or covenants, agreement or
26 agreements, are null and void and shall be deemed separable from the remaining covenants
27 and agreements of this ordinance and shall in no way affect the validity of the other
28 provisions of this ordinance or of the lease agreement.

29 INTRODUCED AND READ for the first time this 6th day of December, 1999.

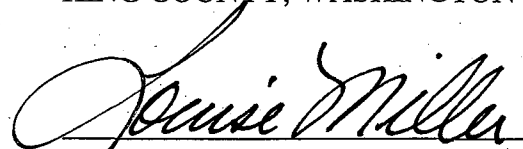
30 PASSED by a vote of 11 to 0 this 13th day of December, 1999.

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KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Chair

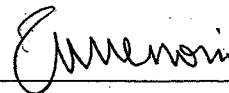
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36 ATTEST:

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Clerk of the Council

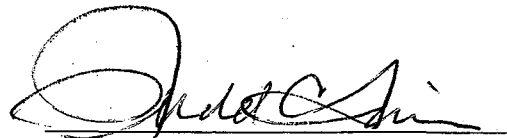
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APPROVED this 16 day of December, 1999

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King County Executive

13693

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Attachments: A. "Essential Terms Agreement for Lease: Overlake park and Ride Transit Oriented Development Project", dated (_/ _/ _).

**Essential Terms Agreement for Lease:
Overlake Park and Ride Transit Oriented Development Project**

A. PARTIES/BASIC STRUCTURE/MISCELLANEOUS

1. Lessor: King County, Washington, a municipal corporation and subdivision of the State of Washington.
2. Lessee: King County Housing Authority, a public body corporate and politic of the State of Washington. The Housing Authority will sublease and assign all of its rights and obligations to an LLC, LLP or limited partnership created by and among the Lessee, one or more tax credit investors ("Investors") and Langly Properties, LLC or an LLC created and controlled by Langly Properties, LLC specifically for the purposes of this Project ("Langly" or "Developer"). This LLC, LLP or limited partnership will enter into a development agreement with Langly to develop the Project. Further, the LLC, LLP or limited partnership (hereafter the "Sublessee") will enter into a management agreement with Langly to provide property or asset management services in connection with the housing development and parking facility during the term of the sublease. Lessor acknowledges that Lessee shall assign its duties hereunder to Sublessee throughout the term of the sublease. Lessor further agrees to pursue remedies for failure to perform these assigned duties solely against Sublessee.
3. Property: Park and Ride site located in the city of Redmond, Washington, consisting of five (5) acres, more or less, and as described in Lessor RFP P83011P.
4. Project: Construction of a two level parking facility and 300 units of housing, 100% of which will be affordable for households earning not more than 60% of median income ("Project"). The Project as originally outlined was submitted by Langly in its Overlake TOD RFP Submittal P83011P – February 11, 1999 as supplemented. This submittal was in response to King County's RFP #P83011P. The Project as modified by subsequent negotiations is described in Exhibit "A", attached.
5. Lease: Ground lease of the entire site for a term of 50 years with an option for the Lessee to extend for an additional 25 years following agreement of the parties concerning use of the improvements and their maintenance/replacement during the term of the extension. Initial term to commence upon receipt by Lessee or Sublessee of a building permit (or a clearing and grading permit if available earlier than a building permit) from the City of Redmond. Any transfer or assignment of interests under the lease, other than the sublease to Sublessee and the assignments necessary in connection with the financing for the Project contemplated herein, shall be subject to Lessor approval.
6. Title: Legal title to the underlying Property shall continue to be vested in Lessor throughout the term of the lease. Legal title to the improvements shall be vested in the Lessee. For federal tax purposes, the burdens and benefits of ownership of the improvements shall pass to the Sublessee. The terms of the Lease and Sublease will be established to ensure that the benefits and burdens of ownership do pass to the Sublessee.
7. Liens: Lessee shall keep the Property and the improvements to the Property free from any liens arising out of any work performed, materials furnished, or obligations incurred by Lessee, other than liens created by regulatory agreements or by security instruments required in connection with the financing of the Project contemplated herein, including the use of bond financing and low income housing tax credits.

8. FTA Requirements: The parties to this agreement understand that the terms of the final lease agreement are subject to Federal Transit Authority guidelines for joint development projects (FTA C 9300.1A, dated 10/01/98) as they are applied to this project. Lessor agrees to use its best efforts to incorporate the terms outlined in this Essential Terms Agreement in negotiations with the FTA. Lessee agrees to cooperate and assist in said negotiations as appropriate.

9. Exhibits: There are Exhibits attached to this Essential Terms Agreement. Where referenced in the text, such Exhibits shall be deemed to be incorporated as if fully set forth herein.

B. CONSIDERATION

1. Development Obligations:

- a. The Sublessee shall construct the Project, as set forth in Exhibit "A". Commencement is projected to occur in the summer of 2000 and occupancy is projected to begin twenty three (23) months later.
- b. Lessor and Lessee acknowledge that the Project is being financed with housing tax credits and other public endowments pursuant to federal and state law which impose affordability restrictions on tenant incomes and rents. To the extent permitted under applicable federal and state law, the Lessee shall maintain residential rents at levels sufficient to maximize net operating income to meet ground rent contemplated in B.2. below, provided these residential rent levels do not result in vacancy or other economic losses exceeding 6% of scheduled gross income, in which event Lessee may reduce rents, upon mutual agreement with Lessor, to lower levels consistent with maintaining full occupancy.
- c. During the first two (2) years of occupancy, each household will receive one Bus Pass for use during its tenancy. The cost of this program will be \$140,000 to be shared equally by the Project and KCDOT. Initial cost of passes will be \$235.00 per year. This provision will be reviewed by the parties at the end of the two (2) year occupancy period.
- d. Lessor will provide up to \$750,000 of the construction contingency for the site work and parking structure portion of the Project. Lessor's obligation will be a "last dollar in" obligation as follows:

Developer will fund all construction contingency amounts for all of the Project until total construction contingency has reached \$1,019,000. At such time as the total construction contingency reaches \$1,019,000 Lessor will become obligated to reimburse construction contingency utilized for the site work and parking structure portion of the Project on a dollar-for-dollar basis up to a maximum of \$750,000. Any further construction contingency requirements will be paid by Developer.
- e. Developer will repay Lessor for site plan, predevelopment, interim facility and other expenses incurred as a result of the project, totaling \$706,000 plus interest within the term of the sublease. The sublease will remain in effect, with Developer as the guarantor, until the later of the following:

- i. the \$706,000, or such portion of said amount as has not been paid by Developer to Lessor, plus interest is fully paid;
- ii. Developer is in full receipt of developer fee; or
- iii. expiration of the tax credit compliance period.

2. Rent: Estimated rent payments during the lease term will be as set forth in the schedule and narrative attached hereto as Exhibit "B." These are estimates only and the actual payment may vary depending upon the final development and operating budget and actual operation of the Project.

3. Fees and Charges: Lessor will pay any Redmond and Bellevue transportation and sewer mitigation fees and system development charges that exceed \$2000 per housing unit.

C. PARKING MANAGEMENT

1. General Requirements: All of the structured parking spaces will be shared and available both to residential and transit users. In order to assure sufficient space for transit ridership, a Parking Management Plan shall be established and incorporated into the Operating Agreement as set forth in subsection D.4. below. The Parking Management Plan shall include at least 150 stalls on the lower level of the parking structure to be available only to off site park & ride commuters for an eight (8) hour period beginning at 5:00 a.m. or later as the parties ultimately determine to be appropriate. Additional parking stalls will be available on a first-come first-served basis.

D. MANAGEMENT RESPONSIBILITIES

1. Lessee Responsibilities: Lessee will be responsible for management, operations, maintenance and repair of all improvements associated with the Project, except as set forth in subsection D.4. below. Lessee will adopt and continue in effect for the lease term a maintenance, repair and replacement schedule for the improvements that will meet all applicable standards, rules, regulations and underwriting requirements, throughout the lease term. It is the intent of the parties to maintain the improvements to a standard that continues the Project's viability for its intended purpose as an affordable residential transit oriented development throughout the lease term. If a condition involving damage to the structure or safety of the transit users arises directly involving the parking structure, which reasonably requires repair, Lessor will provide Lessee notice of such condition and a request for repair. If Lessee fails to respond or effect such repairs as will correct the condition, Lessor will have the right to effect such repairs and obtain reimbursement from Lessee for the cost of same.

2. Lessee Insurance: Lessee will maintain a policy or policies of insurance on the Project, improvements and operations as follows:

During the construction period, Lessee shall ensure that contractors provide commercial general liability, affording limits of \$1,000,000 each occurrence, and \$2,000,000 aggregate; automobile liability insurance, affording limits of \$1,000,000 each occurrence; workers compensation statutory; and stop gap insurance at \$1,000,000. The commercial general liability and automobile liability policies shall include King County, its officers, officials, agents and employees as additional insureds.

After construction, Lessee shall provide commercial general liability, affording limits of \$1,000,000 each occurrence, and \$2,000,000 aggregate; and automobile liability insurance, affording limits of \$1,000,000 each occurrence. The commercial general liability and automobile liability policies shall include King County, its officers, officials, agents and employees as additional insureds.

3. Lessee Indemnification: Except as outlined in sub-paragraph D.4. below, Lessee shall indemnify, defend and hold harmless Lessor from and against all losses, costs, damages, expenses and liabilities, including, without limitation, reasonable attorneys' fees and costs, that Lessor may incur or pay out by reason of any damage to property, or injuries to persons occurring in, on or about the leased Property during the lease term or while Lessee is otherwise occupying or improving the leased Property. The Lessee agrees that its obligations under this paragraph extend to any claim, demand and/or cause of action brought by or on behalf of any of its employees, or agents. For this purpose, the Lessee, by mutual negotiation, hereby waives, as respects the Lessor only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.
4. Lessor Responsibilities and Operating Agreement: Lessor will be responsible for maintenance, operation, and liability of the transit facilities external to the structured parking in accordance with an Operating Agreement to be established and incorporated into the final lease agreement. The specific areas of respective responsibilities for maintenance, operation and liability shall be identified in that agreement.
5. Lessor Insurance: Lessor's transit operations external to the structured parking will be included within Lessor's self insurance program.
6. Lessor's Indemnity: During the lease term, Lessor shall indemnify, defend and hold harmless Lessee and Sublessee from and against all losses, costs, damages, expenses and liabilities, including, without limitation, reasonable attorneys' fees and disbursements, that Lessee and/or Sublessee may incur or pay out by reason of any damage or injuries to persons or property occurring by reason of Lessor's negligent acts or omissions in its transit operations on those portions of the Property external to the structured parking.

E. PROJECT REVIEW AND APPROVAL REQUIREMENTS

1. Redmond Permit Application Package: Sublessee shall be responsible for obtaining all permits, licenses and approvals necessary to construct and occupy the Project and shall pay all fees and costs associated therewith, except as set forth in Section B.3.
2. Design and Construction Documents: Sublessee shall be responsible for completion of design and for all services required for construction of the Project. A Site Plan Review Package was submitted to the City of Redmond July 30, 1999. Lessor and Lessee agree to the Site Plan Review Package for the Project as finally accepted by the City of Redmond. The Site Plan Review Package shall be used to initiate community and environmental reviews. Modifications and refinements to the Site Plan Review Package as submitted may be made, consistent with City of Redmond development regulations, provided the key elements and assumptions of the plan are carried forward into final design. Lessor acknowledges that Sublessee is solely responsible for all aspects of the construction and design of the Project, and shall not pursue any remedies against Lessee in the event of a default by Sublessee in its obligations relating to the design and construction of the Project. In the event of any such default, Lessee will assign to Lessor all rights of Lessee under any agreements between Lessee and Sublessee relating to such design and construction.
3. Construction of Structured Parking, Transit Facilities: Lessor shall have the right to review, inspect and approve the work related to the design (at 30%, 60%, and 100% design) and construction of the transit loop and joint access roadway, external to the structured parking. Lessor agrees to conduct its review and approval within five (5) working days of receiving from Lessee and/or Sublessee the written plans, specifications and permit documents requiring review and approval. Prior to acceptance

of a contractor's work by Lessee and/or Sublessee, Lessor and Lessee shall participate jointly in periodic and final inspections of the contractor's work.

Structured Parking: Lessor shall have the right to review and comment on the work related to the design of the structured parking. Final design shall be consistent with the Site Plan Review Package, as amended per City of Redmond approval. Prior to acceptance of a contractor's work by Lessee and/or Sublessee, Lessor and Lessee shall participate jointly in periodic and final inspections of the contractor's work.

Passenger Loading Area: Maintenance and operation of the passenger loading area immediately adjacent to the structured parking and the transit loop shall be specifically addressed in the Maintenance and Operation Agreement referred to in Section D. 4. above.

4. Construction of Residential Improvements: Sublessee shall be responsible for the design and construction of the residential improvements for the Project in accordance with the Site Plan Review Package as amended per City of Redmond approval.

5. Post Construction Inspections: Beginning in the 10th year of occupancy and every 5 years thereafter during the lease term, in addition to standard lease provisions granting Lessor access to the Property for inspections and similar activities, upon reasonable notice to the Lessee and Sublessee, Lessor reserves the right to conduct a more formal inspection of the Improvements. Lessee and Sublessee will provide access to all improvements to Lessor or Lessor's designee, upon Lessor's request. The results of the inspection will be reduced to writing, with a copy to Lessee and Sublessee. If the inspection results indicate a deficiency in Lessee's or Sublessee's maintenance, repair and replacement activities or schedule, when compared to similar housing projects and structured parking garages of similar age and construction type in the Bellevue, Redmond, Kirkland market area, the parties will meet to negotiate the corrective actions to be taken by Lessee and/or Sublessee. If the parties are unable to agree on said corrective action, the matter will be submitted to non-binding arbitration, which may be initiated by either party at any time.

**KING COUNTY DEPARTMENT
OF TRANSPORTATION**

By _____
Paul Toliver, Director

Date: _____

KING COUNTY HOUSING AUTHORITY

By _____

Date: _____

Title _____

LANGLY PROPERTIES, LLC:

By _____

Date: _____

Title _____

APPROVED AS TO FORM:

By _____
King County Prosecuting Attorney

OVERLAKE PARK & RIDE TRANSIT ORIENTED DEVELOPMENT PROJECT**Essential Terms Agreement - Exhibit "A"****Housing**

- 300 new apartment units affordable to households earning 60% of median income
- 60 units will be set aside for persons with disabilities – 30 of those units will be constructed as barrier free for persons that require such facilities
- Childcare facility of approximately 2,400 square feet
- Six (6) elevators total
 - Four (4) elevators in Buildings B & C go to upper parking level
 - Two (2) elevators in Building A go to both parking levels

Transit/Park and Ride

- Two-level 540-space parking garage; approximately 250 parking spaces per floor; outside perimeter parking of approximately 40 parking spaces
- Shared parking
- Specifically identified and convenient van- and car-pool parking
- Existing transit facility to remain intact in its present location to extent possible
- New driver comfort station will be provided adjacent to parking structure
- A sloped, metal roof attached to the adjacent residential building will provide significantly increased area of weather-protected waiting area at the transit center in addition to noise and exhaust mitigation
- 300 residential flex-pass bus passes for two years
- An on-site transportation coordinator will be designated to coordinate transportation options for residents
- Participation in the Overlake Transportation Management Association
- Secured bike corrals/lockers
- On-site kiosk providing alternative transportation opportunities and service information
- Identify on-site residential demand levels with major employers in the Overlake area to determine potential for employer shuttle service to and from site
- Evaluate effectiveness of car-sharing at the site

Building and Site Design

- In compliance with City of Redmond development standards

OVERLAKE PARK & RIDE TRANSIT ORIENTED DEVELOPMENT PROJECT

Essential Terms Agreement - Exhibit "B"

It is the intent of the parties to develop and operate the Project in a manner that produces sufficient net operating income to insure payment of all financial obligations including debt obligations and ground rent as described below. The parties acknowledge that these payment projections are based on preliminary cash flow estimates and the timing, priority, and amount of the actual payments are subject to change depending on the final development and operating budgets, actual financing and development costs, and actual operation of the project. It is further acknowledged that the timing, priority, and amount of the payments are subject to the legal and financing requirements of the firms or agencies providing debt and equity financing for the Project and that the terms of payment may be necessarily modified by mutual agreement of the parties to secure sufficient debt and equity financing for the Project.

1. The project is projected to create a financial return. The total financial return of the project will be comprised of each year's Cash Available as described below.
2. The Cash Available each year is based upon the following general formula and computation:

	Effective Gross Income
less:	Operating Expenses
less:	Debt Service
less:	Extraordinary or Capital Expenses
equals:	Cash Available*

* The precise definition of Cash Available or its components may be modified to conform to Bond and Tax Credit Investor requirements.

3. The Cash Available shall be used to make payments in accordance with the following cash payment priorities.

A. Developer's Fee:

1. Equivalent to \$3,100,000 in 1999 dollars
2. Developer to receive \$1,000,000 in monthly payments of \$30,421.94 per month over a 36-month development period beginning May, 1999. Developer will receive first payment when the bond transaction closes, that first payment includes all monthly payments accruing prior to the bond closing date. By way of example, if the bond closing date is June 15, 2000, then the Developer would receive payment for 14 months (May, 1999 through June 2000). Thereafter, Developer receives a monthly payment each month through April, 2002.

3. Projected Deferred Development Fee of \$2,100,000 to be paid as follows:

- Deferred Development Fee will be reduced to a note accruing 6% interest to be paid over ten years, commencing when the bond transaction closes.
- By way of example, if the Deferred Development Fee is exactly \$2,100,000, then annual payments would be \$285,322.71.
- The annual payment can be increased or decreased as necessary based upon the Cash Available in any given year. Under such circumstance, a new amortization schedule will be created for the following years.

B. KCDOT Repayment:

1. \$406,000 shall be reduced to a note accruing interest at 6%.
2. Note payable from Cash Available after all Deferred Development Fees are paid in full, including accrued interest
3. To be repaid before Developer is released from sublease responsibilities.

C. Cash Available Thereafter for King County Rent:

1. KCDOT and Developer share Cash Available 50/50 until the end of the term of sublease
2. KCDOT and Lessee share Cash Available 50/50 thereafter, except as provided below.

In event Developer must advance additional funds (up to \$1,500,000) for the Project, this advance of funds will be debt and will be reduced to a note with an interest rate of 6%. Payment of these funds will be prioritized after payment of Developer's Projected Deferred Development Fee of \$2,100,000 and ahead of KCDOT's \$406,000, which will thereby be delayed into future. In such event and if necessary, at the end of the tax credit compliance period, Lessee and Developer will share cash available 50/50 until Developer's debt is repaid, at which time KCDOT will thereafter receive Developer's portion of Cash Available.