



## CITY OF KIRKLAND

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### MEMORANDUM

**To:** Kurt Triplett, City Manager

**From:** Jim Lopez, Assistant City Manager  
Kevin Raymond, City Attorney

**Date:** August 27, 2019

**Subject:** INITIATIVE WITH KIRKLAND SUSTAINABLE FOR AFFORDABLE HOUSING AND CITY EMPLOYEE RENTAL HOUSING

### RECOMMENDATION:

Following the discussion at the September 3<sup>rd</sup> Study Session, it is recommended that the City Council approves the affordable housing initiative between the City of Kirkland ("City") and two related limited liability companies, Kirkland Sustainable Investments, LLC and Sustainable Kirkland, LLC (together, "Kirkland Sustainable") for new affordable rental housing units and City (and other public sector) employee rental housing units located in Downtown Kirkland. Kirkland Sustainable owns and operates the Arete multifamily development at 450 Central Way and is nearing completion of the construction of the Plaza multifamily development at 330 4<sup>th</sup> Street, both in Kirkland.

The initiative includes amendments to the City's Multifamily Housing Property Tax Exemption ("MFTE") ordinance, Chapter 5.88 of the Kirkland Municipal Code ("KMC"), to provide for 23 new affordable rental housing units at Plaza. It also requires Council approval of the execution by the City Manager and the recording by City staff of a contract and covenant for recording related to the 23 MFTE units at Plaza. Finally, the initiative includes the execution of master lease agreements with Kirkland Sustainable providing for up to an additional 34 units of rental housing that would be set aside for City employees or other public sector employees such as employed by the Lake Washington School District or the Lake Washington Institute of Technology.

To implement the initiative, the Council must approve the attached ordinance, amending the MFTE ordinance for projects of this kind only, authorizing the execution and recording of a contract and covenant for the 23 MFTE units at Plaza, and authorizing City Manager execution of the master lease agreements for Plaza and Arete.

## **BACKGROUND DISCUSSION:**

### **MFTE Ordinance Amendments and Master Lease Agreements**

#### 1. MFTE Ordinance Amendments

Implementation of the initiative requires amendment of the City's Multifamily Housing Property Tax Exemption Ordinance, KMC 5.88, but only for projects of this kind as determined by the Council.

The initiative contemplates two amendments to the City's MFTE ordinance.

The first proposed amendment relates to the financial eligibility of MFTE unit renters at Plaza. Under the present code, and in order to qualify for MFTE property tax savings under the City's MFTE ordinance, (1) at least ten percent of the Plaza units (i.e. 11 units) would need to be made available to households with annual household income that is not in excess of 50% of the King County median household income ("AMI"), and (2) at least a second 10 percent of the units (i.e. 11 additional units for a total of 22 units) would need to be made available at no more than 80% of AMI. State law requires only that the MFTE units meet the 80% AMI standard, but allows local governments like Kirkland to impose additional requirements. Under the initiative, and in consideration for both the MFTE units and the master lease agreements described in greater detail below, the first proposed code amendment requires that all MFTE unit households associated with this project meet only the 80% AMI requirement. As drafted, this change would apply only to projects where, like here, the Council has specifically *"determined the project confers additional, substantial public benefits in the form of additional rental housing units made available for city or other public entity employees in the city and funding for housing programs to help individuals experiencing homelessness and low-income residents to successfully transition to stable, affordable housing."*

The second proposed code amendment would permit the MFTE units at Plaza to be marketed at fair market rental rates at the expiration of the 12-year MFTE property tax savings period. Under the City's MFTE ordinance, developers are required to maintain the affordable housing status of MFTE rental units "for the life of the project," which is anticipated to be longer than 12 years. As is true for the first proposed code amendment, the "life of project" is a requirement imposed by the City and is not a requirement of state law. And like the first proposed amendment, this change would apply only in the limited circumstances described above, e.g. council determination of substantial additional public benefits.

#### 2. MFTE Contract and Covenant

In order to approve the MFTE application of Kirkland Sustainable in support of the 23 MFTE units referred to above, the Council must, through the ordinance, authorize the City Manager execution of a contract and covenant, utilizing ARCH templates, for recording with King County. Importantly, this must occur in advance of the issuance of any certificate of occupancy for Plaza pursuant to KMC 5.88.040(7). The construction of Plaza is nearing completion and so the Council must make a final decision in September of this year.

#### 3. Master Lease Agreements

Two draft master lease agreements have been negotiated with Kirkland Sustainable, one each for Plaza and Arete. The agreements are complementary and virtually identical, except that the Plaza agreement includes MFTE provisions. The ordinance would authorize the City Manager to execute these agreements.

A short summary of the major terms of the master lease agreements follows:

- Twelve-year term, terminable annually by City with notice.
- Plaza agreement includes 23 MFTE units at 80% of AMI and commitment to pay City amount equal to 65% of its MFTE property tax savings each year.
- City opts for up to 34 additional units reserved for City or other public sector employees; landlord to accommodate unit type mix requested by the City based on employee preferences.
- Number of units agreed to each year for following year; no minimum number of units required.
- City can "release" units for private rental by Kirkland Sustainable but then "get them back" at end of private rental term.
- The City employees pay fair market rent, but the rent is stabilized to increase by no more than 3% per year.
- Primary contractual relationship is landlord-tenant (i.e. Kirkland Sustainable and City employees via lease).
- City responsible for unpaid rent by City employees after remedies under employee leases exhausted; City employee pays rent via automatic payroll payment;
- City employees must meet Kirkland Sustainable tenant criteria; however, City may direct Kirkland Sustainable to waive its normal tenant financial criteria on a case-by-case basis.
- Rent cannot increase more than 3% per year but is to be negotiated.
- City has right to assign some of its units to other public entities in Kirkland (e.g. Lake Washington School District or Lake Washington Institute of Technology).

### **City Employee Agreements**

While the details of the program are still being developed, initially all City employees will be eligible to participate in the program. Participation is completely voluntary. If there is more interest than available units, then income levels of employees may become a key criterion and City employees likely would be determined on a lottery basis. The details of this program are still being developed. The rationales for providing City employees with a discount on fair market rent are (1) employee recruitment and retention and (2) quicker employee response times (e.g. ability to get to City Hall during an emergency or snowstorm). City employees must be determined to be "eligible" to participate in the program and then must retain that eligibility. Each eligible City employee will sign a contract with the City including at least the following:

- City employee is and remains in good standing with the City.
- Meets Kirkland Sustainable tenant screening criteria (financial criteria can be waived at the request of the City in individual cases).
- Signs and abides by standard lease at Plaza or Arete.
- Agrees to automatic payroll payment of City employee rent.

The form of this contract is currently being developed.

### **Conclusion and Next Steps**

The Arete and Plaza units are not a housing solution for many City employees. Nor is this pilot the only affordable housing concept being explored. But City staff is excited about this initiative and has appreciated the opportunity to work with Robert Pantley and other Kirkland Sustainable representatives over the past year and more. This initiative represents not only an opportunity to gain an additional 23 MFTE units for the next 12 years without making any changes of general application to the City's MFTE ordinance; it also represents an opportunity for up to 34 City employees to live near where they work, with rent increases stabilized at no more than 3% per year for 12 years. Staff recommends Council approval of the ordinance.

ORDINANCE O-4697

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO THE MULTIFAMILY HOUSING PROPERTY TAX EXEMPTION AND PROVIDING FOR DIFFERENT REQUIREMENTS IN THE EVENT OF RENTAL UNIT PROJECTS PROVIDING SUBSTANTIAL ADDITIONAL PUBLIC BENEFITS.

1           WHEREAS, Kirkland Sustainable Investments, LLC ("KSI") is in  
2 the process of completing construction of a 111-unit multi-family project  
3 known as "Plaza" at 330 4<sup>th</sup> Street in Kirkland, across Central Way from  
4 Kirkland Urban and only several blocks from Kirkland City Hall; and

5  
6           WHEREAS, Sustainable Kirkland, LLC ("Sustainable Kirkland")  
7 previously developed the 290-unit multi-family project known as "Arete"  
8 at 450 Central Way and located immediately adjacent to Plaza; and

9  
10          WHEREAS, Robert Pantley is the managing member of the  
11 majority member of each of KSI and Sustainable Kirkland; and

12  
13          WHEREAS, KSI wishes to dedicate 23 of its Plaza units,  
14 consisting of 21 residential suites and 2 studio apartments, as affordable  
15 housing units to households whose household annual income does not  
16 exceed eighty percent (80%) of the King County median household  
17 income, adjusted for household size, for a period of at least twelve years  
18 in exchange for certain multifamily housing property tax exemption  
19 ("MFTE") savings on the value of the improvements for that same twelve  
20 year period as provided for under Chapter 84.14 RCW; and

21  
22          WHEREAS, Chapter 84.14 RCW, in "high cost areas" like  
23 Kirkland, and while authorizing local governments to include additional  
24 requirements, requires only that developers of multi-family rental  
25 developments seeking MFTE property tax savings commit to renting at  
26 least twenty percent (20%) of such rental units to low-income and  
27 moderate-income households, ranging from (1) at or below one  
28 hundred percent (100%) AMI in the case of low-income households and  
29 (2) more than one hundred percent (100%) AMI and below one hundred  
30 and fifty percent (150%) AMI in the case of moderate-income families;  
31 and

32  
33          WHEREAS, each of KSI and Sustainable Kirkland have negotiated  
34 separate master lease agreements with the City of Kirkland ("City")  
35 providing, at the option of the City, for the dedication of up to a  
36 combined total of 34 additional units, anticipated to include  
37 approximately 23 units at Plaza and 11 units at Arete, for employees of  
38 the City, and possibly other public, non-profit entities in Kirkland, such  
39 as the Lake Washington School District and the Lake Washington  
40 Institute of Technology, for a period of at least twelve years; and

41  
42          WHEREAS, the 23 MFTE rental units at Plaza are separate and  
43 distinct from the up to 34 master lease agreements units at Plaza and  
44 Arete; and

45 WHEREAS, the City believes the ability, through the master lease  
 46 agreements, to offer units in addition to the MFTE units at Plaza to City  
 47 employees will create substantial, additional public benefits by making  
 48 it easier for City employees to live near where they work, making it  
 49 easier to recruit and retain excellent employees and to provide for  
 50 quicker employee response times during events such as snow storms or  
 51 emergencies where special city resources are needed, and potentially  
 52 providing similar benefits to other public sector employers and  
 53 employees; and

54  
 55 WHEREAS, KSI has agreed to pay the City an annual amount  
 56 equal to sixty-five percent (65%) of the annual property tax savings  
 57 realized through its participation in the MFTE program at Plaza for a  
 58 period of at least twelve years, estimated to be approximately \$98,000  
 59 in first year dollars; and

60  
 61 WHEREAS, the City wishes to dedicate such annual payments  
 62 from KSI to provide housing programs for low-income residents, initially  
 63 including operational funding to the new Eastside Women and Family  
 64 Shelter in Kirkland, particularly with respect to such shelter's transitional  
 65 housing services to help individuals experiencing homelessness  
 66 successfully transition to sustainable affordable housing; and

67  
 68 WHEREAS, in consideration for the substantial, additional public  
 69 benefits associated with (1) the additional units provided for public  
 70 employee housing under the master lease agreements and (2) the  
 71 payment to the City of 65% of KSI's property tax savings for use by the  
 72 City to invest in low-income housing programs and in support of the  
 73 Eastside Women and Family Shelter, it is in the public interest to amend  
 74 KMC 5.88 to revise two of the City's MFTE requirements that exceed the  
 75 requirements of the state MFTE statute and that would otherwise apply  
 76 to the Plaza project: (1) to remove the requirement that the Plaza MFTE  
 77 units remain available on an affordable basis for the "life of the project"  
 78 in favor of a requirement that such units remain affordable for at least  
 79 as long as the multifamily housing property tax exemption period  
 80 applicable to the project; (2) to revise the requirement that at least ten  
 81 percent (10%) of the MFTE units be reserved for occupancy to  
 82 households at or below fifty percent (50%) AMI in favor of a  
 83 requirement that at least twenty percent (20%) of the MFTE units be  
 84 reserved for occupancy to households at or below eighty percent (80%)  
 85 AMI.

86  
 87 NOW, THEREFORE, the City Council of the City of Kirkland do  
 88 ordain as follows:

89  
 90 Section 1. Kirkland Municipal Code Section 5.88.020 is amended  
 91 to read as follows:

92  
 93 **5.88.020 Definitions.**

94 (a) "Affordable" means:

95 (1) For an owner-occupied dwelling unit, housing reserved for  
 96 occupancy by eligible households and affordable to households whose  
 97 household annual income does not exceed the following percentages of

98 the King County median household income, adjusted for household size,  
 99 as determined by the United States Department of Housing and Urban  
 100 Development (HUD), and where no more than thirty percent of the  
 101 monthly household income is paid for monthly housing expenses  
 102 (mortgage and mortgage insurance, property taxes, property insurance  
 103 and homeowner's dues):

104 (A) Eighty percent in zoning districts where additional building  
 105 height is allowed in exchange for the creation of affordable housing  
 106 units; or

107 (B) One hundred percent in zoning districts where additional  
 108 dwelling units are allowed in exchange for the creation of affordable  
 109 housing units.

110 (2) Except as otherwise provided for in Section 5.88.090(b)(4), for  
 111 ~~For~~ a renter-occupied dwelling unit, housing reserved for occupancy by  
 112 eligible households and affordable to households whose household  
 113 annual income does not exceed fifty percent of the King County median  
 114 household income, adjusted for household size, as determined by HUD,  
 115 and where no more than thirty percent of the monthly household income  
 116 is paid for monthly housing expenses (rent and an appropriate utility  
 117 allowance).

118 (3) For rental units for senior citizen households and assisted  
 119 living units, housing reserved for occupancy by eligible households and  
 120 affordable to households whose household annual income does not  
 121 exceed fifty percent of the King County median household income,  
 122 adjusted for household size, as determined by HUD, and where no more  
 123 than sixty percent of the monthly household income is paid for monthly  
 124 housing and service expenses (including rent and an appropriate utility  
 125 allowance, and services such as prepared daily meals, regular  
 126 housekeeping for living units, transportation, personal care, and  
 127 supportive health services). The actual percentage of monthly  
 128 household income allowed shall be determined by city staff on a case-  
 129 by-case basis following an analysis of the extent of services provided in  
 130 the rental contract. The amount shall not be less than thirty percent nor  
 131 greater than sixty percent. Assisted living facilities may satisfy this  
 132 requirement if they accept Medicaid payments as payment in full for  
 133 assisted living units. In no case shall an entrance, community or other  
 134 buy-in fee be charged as a condition of renting an affordable unit.

135 In the event that HUD no longer publishes median income figures  
 136 for King County, the city may use or determine such other method as it  
 137 may choose to determine the King County median income, adjusted for  
 138 household size.

139 (b) "Assessor" means the King County assessor.

140 (c) "Assisted living facility" means a state-licensed multi-unit  
 141 establishment which provides living quarters and a variety of limited  
 142 personal care and at least a minimal amount of supportive health care  
 143 to individuals who are unable to live independently due to infirmity of  
 144 age, physical or mental handicap, but who do not need the skilled  
 145 nursing care of a convalescent center or nursing home. Supportive  
 146 health care may include health care monitoring, such as assistance with  
 147 medication, but is limited to health care services which may be provided  
 148 by a boarding home licensed under Chapter [18.20](#) RCW. These facilities  
 149 may consist of individual dwelling units with a full kitchen, partial kitchen  
 150 or no kitchen. In addition, these facilities may have a communal dining  
 151 area, recreational facilities (library, lounge, game room, open space),

152 and/or laundry facilities. Assisted living facilities do not include adult  
153 family homes, as defined in Chapter [70.128](#) RCW.

154 (d) "Assisted living unit" means a living unit in an assisted living  
155 facility in which a resident receives medical or health care services. A  
156 bedroom is the equivalent of a unit for the purpose of calculating the  
157 number of assisted living units.

158 (e) "Director" means the director of the city's planning and  
159 building department, or any other city office, department or agency that  
160 shall succeed to its functions with respect to this chapter, or his or her  
161 authorized designee.

162 (f) "Eligible household" means one or more adults and their  
163 dependents who, as set forth in the regulatory agreement referenced in  
164 Section [5.88.040](#)(7), certify that their household annual income does  
165 not exceed the applicable percent of the median household income for  
166 King County, adjusted for household size, as determined by the United  
167 States Department of Housing and Urban Development (HUD); and who  
168 certify that they meet all qualifications for eligibility, including, if  
169 applicable, any requirements for recertification on income eligibility.

170 (g) "Household annual income" means the aggregate annual  
171 income of all persons over eighteen years of age residing within the  
172 same household for a period of at least four months.

173 (h) "Multifamily housing" means a building or townhouse project  
174 having four or more dwelling units designed for permanent residential  
175 occupancy resulting from new construction or rehabilitation or  
176 conversion of vacant, underutilized, or substandard buildings.

177 (i) "Owner" means the property owner of record.

178 (j) "Permanent residential occupancy" means multifamily housing  
179 that provides either rental or owner occupancy for a period of at least  
180 one month, and excludes hotels and motels that predominately offer  
181 rental accommodation on a daily or weekly basis.

182 (k) "Rehabilitation improvements" means:

183 (1) Modifications to an existing structure, the residential portion  
184 of which has been vacant for at least twelve months prior to application  
185 for exemption under this chapter, that are made to achieve a condition  
186 of substantial compliance with the applicable building and construction  
187 codes contained in Title [21](#); or

188 (2) Modifications to an existing occupied residential structure, or  
189 mixed use structure that contains occupied residential units, that add at  
190 least four multifamily dwelling units.

191 (l) "Rental units for senior citizen households" means dwelling  
192 units qualifying for the "Housing for Older Persons" exemption under  
193 the Fair Housing Act.

194 (m) "Residential targeted area" means an area within an urban  
195 center as defined by Chapter [84.14](#) RCW and the city that has been so  
196 designated by the city council pursuant to this chapter.

197 (n) "Substantial compliance" means compliance with the  
198 applicable building and construction codes contained in Title [21](#) that is  
199 typically required for rehabilitation as opposed to new construction.

200

201 Section 2. Kirkland Municipal Code Section 5.88.040 is amended  
202 to read as follows:

203

204 **5.88.040 Project eligibility.**

205 To be eligible for exemption from property taxation under this  
206 chapter, the property shall satisfy all of the following requirements:

207 (1) The property must be located in a residential targeted area.

208 (2) The project must be multifamily housing consisting of at least  
209 four dwelling units within a residential structure or as part of a mixed  
210 use development, in which at least fifty percent of the space within such  
211 residential structure or mixed use development is intended for  
212 permanent residential occupancy.

213 (3) For new construction, a minimum of four new dwelling units  
214 must be created; for rehabilitation or conversion of existing occupied  
215 structures, a minimum of four additional dwelling units must be added.

216 (4) Existing dwelling units proposed for rehabilitation shall have  
217 been unoccupied for a minimum of twelve months prior to submission  
218 of an application and shall fail to comply with one or more requirements  
219 of the building code as set forth in Title [21](#) of this code.

220 (5) No application may result in the net loss of existing affordable  
221 housing which receives housing assistance through federal low or  
222 moderate income housing programs (e.g., HUD Section 8 program).

223 (6) Affordable housing shall be provided in the project as  
224 described in Section [5.88.090](#).

225 (7) Prior to issuing a certificate of occupancy, an agreement in a  
226 form acceptable to the city attorney that addresses price restrictions,  
227 eligible household qualifications, long-term affordability, and any other  
228 applicable topics of the affordable housing units shall be recorded with  
229 the King County recorder's office. This agreement shall be a covenant  
230 running with the land and shall be binding on the assigns, heirs and  
231 successors of the applicant. Housing units identified for households with  
232 household annual income restrictions that are provided under this  
233 section shall continue to be made available to households with the  
234 identified household annual income restrictions for a minimum of fifty  
235 years from the date of initial owner occupancy for ownership affordable  
236 housing units and for the life of the project for rental affordable housing  
237 units; provided, however, that the requirement that such units continue  
238 to be made available to households with the identified household annual  
239 income restrictions for the life of the project for rental affordable  
240 housing units shall not apply when such units remain affordable for at  
241 least as long as the multifamily housing property tax exemption period  
242 applicable to the project and the city council has determined the project  
243 confers additional, substantial public benefits in the form of additional  
244 rental housing units made available for city or other public entity  
245 employees in the city and funding for housing programs to help  
246 individuals experiencing homelessness and low-income residents to  
247 successfully transition to stable, affordable housing.

248 (8) The mix and configuration of housing units (e.g., studio, one-  
249 bedroom, two-bedroom, etc.) used to meet the requirement for  
250 affordable units under Section [5.88.090](#) shall be substantially  
251 proportional to the mix and configuration of the total housing units in  
252 the project.

253 (9) For owner-occupied projects, the contract with the city  
254 required under Section [5.88.060](#) shall identify those units that shall be  
255 eligible per Section [5.88.090](#).

256 (10) The project shall comply with all applicable zoning  
257 requirements, land use regulations, and building and housing code  
258 requirements contained in Titles [21](#) and [23](#) of this code.



259 (11) New construction of multifamily housing and rehabilitation  
 260 improvements must be scheduled to be completed within three years  
 261 from the date of approval of the application, or within an authorized  
 262 extension of this time limit.

263  
 264 Section 3. Kirkland Municipal Code Section 5.88.090 is amended  
 265 to read as follows:

266  
 267 **5.88.090 Exemption—Duration—Affordability requirements—**  
 268 **Limits.**

269 (a) The value of all new housing construction in the YBD 1 zoning  
 270 district shall be exempt from ad valorem property taxation for eight  
 271 years if not less than twenty percent nor more than fifty percent of the  
 272 residential units in the zoning district are affordable, as defined in  
 273 subsection (a)(1) of this section. For owner-occupied projects, the  
 274 exemption shall apply only to those units that are affordable. For renter-  
 275 occupied projects, a minimum of ten percent of the total residential units  
 276 shall be affordable at a maximum of fifty percent of the King County  
 277 median household income. For renter-occupied projects, the exemption  
 278 shall extend to twelve years if at least twenty-five percent of the  
 279 residential units in the zoning district are affordable, with no less than  
 280 fifteen percent of the residential units affordable at a maximum of fifty  
 281 percent of the King County median household income. The following  
 282 standards apply to exemptions in this zoning district:

283 (1) "Affordable" means housing reserved for occupancy by eligible  
 284 households and affordable to households whose household annual  
 285 income meets the following percentages of the King County median  
 286 household income, adjusted for household size, as determined by the  
 287 United States Department of Housing and Urban Development (HUD),  
 288 and no more than thirty percent of monthly household income is paid  
 289 for monthly housing expenses:

290 (A) For renter-occupied dwelling units, not more than seventy  
 291 percent; and

292 (B) For owner-occupied dwelling units, not more than eighty  
 293 percent, or that have such other comparable level of affordability as  
 294 provided for in KZC [56.10](#). In the event that HUD no longer publishes  
 295 median income figures for King County, the city may use another  
 296 method to determine the King County median income, adjusted for  
 297 household size.

298 (2) "Monthly housing expenses" includes rent and an appropriate  
 299 utility allowance for renter-occupied dwelling units. It includes  
 300 mortgage, mortgage insurance, property taxes, property insurance and  
 301 homeowners' dues for owner-occupied dwelling units.

302 (3) If the percentage of affordable units in the project required is  
 303 a fraction, then the number of required affordable units shall be rounded  
 304 up to the next whole number (unit) if the fraction of the whole number  
 305 is at least 0.66.

306 (4) The residential units may be developed in phases and, subject  
 307 to the approval of the director, the affordable units may all be located  
 308 in one of the phases. If phasing is approved, the director may allow  
 309 separate contracts for each phase.

310 (5) The exemption begins January 1st of the year immediately  
 311 following the calendar year of issuance of the certificate.

312 (b) In all zoning districts except YBD 1, the value of new housing  
313 construction and rehabilitation improvements qualifying under this  
314 chapter shall be exempt from ad valorem property taxation for:

315 (1) Eight successive years beginning January 1st of the year  
316 immediately following the calendar year of issuance of the certificate for  
317 rental projects where at least ten percent of the units are affordable as  
318 defined in Section [5.88.020\(a\)](#), or have such other comparable level of  
319 affordability as provided for in the city's affordable housing incentive  
320 program, as regulated through Chapter [112KZC](#). Projects where  
321 affordable units are provided through a payment to the city in lieu of  
322 construction, as allowed in Chapter [112KZC](#), are eligible to apply for an  
323 exemption. If the percentage of affordable units in the project required  
324 is a fraction, then the number of required affordable units shall be  
325 rounded up to the next whole number (unit) if the fraction of the whole  
326 number is at least 0.66. To the extent allowed by Chapter [84.14](#) RCW,  
327 the city may grant a partial exemption in zoning districts where  
328 additional building height is allowed instead of a density bonus in  
329 exchange for the creation of affordable housing units. In making its  
330 decision on the amount of the partial exemption, the city will consider  
331 the value of the height increase allowed and any fee waivers.

332 (2) Eight successive years beginning January 1st of the year  
333 immediately following the calendar year of issuance of the certificate for  
334 rental projects not subject to the affordable housing requirements of  
335 the Kirkland Zoning Code where at least ten percent of the units are  
336 affordable to households whose household annual income does not  
337 exceed eighty percent of the King County median household income,  
338 adjusted for household size, as determined by HUD, and no more than  
339 thirty percent of the monthly household income is paid for monthly  
340 housing expenses (rent and an appropriate utility allowance). In the  
341 event that HUD no longer publishes median income figures for King  
342 County, the city may use or determine such other method as it may  
343 choose to determine the King County median income, adjusted for  
344 household size. If the percentage of affordable units in the project  
345 required is a fraction, then the number of required affordable units shall  
346 be rounded up to the next whole number (unit) if the fraction of the  
347 whole number is at least 0.66. To the extent allowed by  
348 Chapter [84.14](#) RCW, the city may grant a partial exemption if a lesser  
349 amount of affordability is provided. The amount of the partial exemption  
350 shall be proportional to the amount of affordability provided relative to  
351 that required for a full exemption. (For example, if a project includes  
352 five percent of the units affordable at fifty percent of median income,  
353 the property will receive an exemption on fifty percent of the residential  
354 portion of the project.)

355 (3) Eight successive years beginning January 1st of the year  
356 immediately following the calendar year of issuance of the certificate for  
357 owner-occupied projects. The property tax exemption shall apply only  
358 to those units that are affordable as defined in Section [5.88.020\(a\)](#) or  
359 that have such other comparable level of affordability as provided for in  
360 the city's affordable housing incentive program, as regulated through  
361 Chapter [112](#) KZC.

362 (4) Twelve successive years beginning January 1st of the year  
363 immediately following the calendar year of issuance of the certificate for  
364 rental projects where at least ten percent of the units are affordable as  
365 defined in Section [5.88.020\(a\)](#) and at least an additional ten percent of

366 the units are affordable to households whose household annual income  
367 does not exceed eighty percent of the King County median household  
368 income, adjusted for household size, as determined by HUD, and no  
369 more than thirty percent of the monthly household income is paid for  
370 monthly housing expenses (rent and an appropriate utility allowance);  
371 provided, however, that rental projects determined by the city council  
372 to confer additional, substantial public benefits in the form of additional  
373 housing units for city or other public entity employees in the city and  
374 funding for housing programs to help individuals experiencing  
375 homelessness and low-income residents to successfully transition to  
376 stable, affordable housing shall meet the requirements of this  
377 subsection so long as at least twenty percent of the units are affordable  
378 to households whose annual household income does not exceed eighty  
379 percent of the King County median household income, adjusted for  
380 household size. In the event that HUD no longer publishes median  
381 income figures for King County, the city may use or determine such  
382 other method as it may choose to determine the King County median  
383 income, adjusted for household size. Projects where affordable units are  
384 provided through a payment to the city in lieu of construction, as  
385 allowed in Chapter [112](#) KZC, are eligible to apply for an exemption. If  
386 the percentage of affordable units in the project required is a fraction,  
387 then the number of required affordable units shall be rounded up to the  
388 next whole number (unit) if the fraction of the whole number is at least  
389 0.66. To the extent allowed by Chapter [84.14](#) RCW, the city may grant  
390 a partial exemption in zoning districts where additional building height  
391 is allowed instead of a density bonus in exchange for the creation of  
392 affordable housing units. In making its decision on the amount of the  
393 partial exemption, the city will consider the value of the height increase  
394 allowed and any fee waivers.

395 (5) Twelve successive years beginning January 1st of the year  
396 immediately following the calendar year of issuance of the certificate for  
397 owner-occupied projects where at least ten percent of the units are  
398 affordable as defined in Section [5.88.020](#)(a) and at least an additional  
399 ten percent of the units are affordable to households whose household  
400 annual income is no greater than thirty percentage points higher than  
401 the applicable King County median household income defined in  
402 Section [5.88.020](#)(a), adjusted for household size, as determined by  
403 HUD, and no more than thirty percent of the monthly household income  
404 is paid for monthly housing expenses. In the event that HUD no longer  
405 publishes median income figures for King County, the city may use or  
406 determine such other method as it may choose to determine the King  
407 County median income, adjusted for household size. If the percentage  
408 of affordable units in the project required is a fraction, then the number  
409 of required affordable units shall be rounded up to the next whole  
410 number (unit) if the fraction of the whole number is at least 0.66. The  
411 property tax exemption shall apply only to those units that are  
412 affordable as defined in Section [5.88.020](#)(a) or this subsection.

413 (c) The exemption does not apply to the value of land or to the  
414 value of improvements not qualifying under this chapter, to increases in  
415 assessed valuation of land and nonqualifying improvements, or to  
416 increases made by lawful order of the King County board of equalization,  
417 Washington State Department of Revenue, State Board of Tax Appeals,  
418 or King County, to a class of property throughout the county or a specific  
419 area of the county to achieve uniformity of assessment or appraisal as

420 required by law. In the case of rehabilitation of existing buildings, the  
421 exemption does not include the value of improvements constructed prior  
422 to submission of the completed application required under this chapter.

423  
424 Section 4. The City Manager is authorized and directed to  
425 execute the Master Leases with KSI and Sustainable Kirkland related to  
426 the Plaza and Arete developments, respectively, in substantially the  
427 form attached hereto as Exhibits A and B.

428  
429 Section 5. The City Manager is authorized and directed to  
430 execute the Multifamily Housing Limited Property Tax Exemption  
431 Contract and Declaration of Affordable Housing Covenants with KSI  
432 related to the Plaza development and to thereafter record such contract  
433 and covenant with the King County recorder’s office prior to the issuance  
434 of a certificate of occupancy for Plaza, which contract and covenant shall  
435 be in substantially the form attached hereto as Exhibits C and D.

436  
437 Section 6. If any provision of this ordinance or its application to  
438 any person or circumstance is held invalid, the remainder of the  
439 ordinance or the application of the provision to other persons or  
440 circumstances is not affected.

441  
442 Section 7. This ordinance shall be in force and effect five days  
443 from and after its passage by the Kirkland City Council and publication  
444 pursuant to Section 1.08.017, Kirkland Municipal Code in the summary  
445 form attached to the original of this ordinance and by this reference  
446 approved by the City Council.

447  
448 Passed by majority vote of the Kirkland City Council in open  
449 meeting this \_\_\_\_ day of \_\_\_\_\_, 2019.

450  
451 Signed in authentication thereof this \_\_\_\_ day of  
452 \_\_\_\_\_, 2019.

\_\_\_\_\_  
Penny Sweet, Mayor

Attest:

\_\_\_\_\_  
Kathi Anderson, City Clerk

Approved as to Form:

\_\_\_\_\_  
Kevin Raymond, City Attorney

PLAZA  
MASTER LEASE

BETWEEN

KIRKLAND SUSTAINABLE INVESTMENTS, LLC,  
as Lessor

and

THE CITY OF KIRKLAND,  
as Lessee

**BASIC MASTER LEASE TERMS**

**Date of Lease:** \_\_\_\_\_, 2019

**Lessor:** KIRKLAND SUSTAINABLE INVESTMENTS, LLC, a Washington limited liability company

**Lessor’s Address:** Kirkland Sustainable Investments, LLC  
450 Central Way  
Kirkland, WA 98033  
Attn: Robert Pantley

**Lessee:** The City of Kirkland, a Washington municipal corporation

**Lessee’s Address:** 123 - 5<sup>th</sup> Avenue, Kirkland, WA 98033

**Premises:** Not more than twenty-three (23) workforce housing units (each, a “**Unit**”) located in the building commonly known as Plaza (the “**Building**”), located at 330 – 4th Street, City of Kirkland, King County, Washington, 98033. The Premises and Building are situated on property legally described on Exhibit A attached hereto (the “**Property**”), and the Units are listed on Exhibit B attached hereto. The maximum number of Units shall be subject to revision from time to time as the parties may hereafter mutually agree, provided that, except to the extent the parties may otherwise agree, in no event shall the total number of Units in the Building and in the “Areté Project” defined below exceed thirty-four (34).

**Term:** One (1) year; automatically renewed for up to eleven (11) additional one (1) year terms (each, an “**Extension Term**”) unless Lessee elects not to so renew the Term.

**Commencement Date:** The last to occur of (i) receipt of a certificate of occupancy for the Building by Lessor and (ii) issuance and filing with the King County Assessor of the MFTE Certificate (as defined below) for the Building. The “**Projected Commencement Date**” is January 1, 2020. Upon occurrence of the actual Commencement Date, the parties shall cooperate to execute a written confirmation thereof consistent with terms of this Lease.

**Termination Date:** December 31, 2020 (subject to automatic annual renewal as provided below).

**Rent Due from Lessee:** As set forth in Section 7 below.

**Rent Credit For MFTE** As set forth in Section 7.4 below.

**Tax Savings:**

**Security Deposit:** None.

**Plaza MFTE Agreement:** That certain Multifamily Housing Limited Property Tax Exemption Agreement by and between Lessor and Lessee, and recorded on \_\_\_\_\_, 2019 under Auditors' File No. \_\_\_\_\_, Official Records of King County, Washington, concerning the Building. In connection with the Plaza MFTE Agreement, the Director of Lessee's Planning & Community Development Department has or will issue a final certificate of tax exemption for the Plaza Project (the "**MFTE Certificate**") pursuant to Chapter 5.88 of the Kirkland Municipal Code ("**KMC**") and Chapter 84.14 RCW.

**Areté Master Lease:** That certain Arété Master Lease Agreement of even date herewith by and between SUSTAINABLE KIRKLAND, LLC, a Washington limited liability company ("**Areté Owner**") as "Lessor" thereunder and Lessee as the "Lessee" thereunder, concerning certain existing property and improvements on property legally described in Arété Master Lease and having a street address at 450 Central Way, Kirkland, Washington 98033 (the "**Areté Project**").

This Lease is a master lease of those Units at the Premises identified on Exhibit B attached hereto by Lessor to Lessee, as Exhibit B may be modified or changed from time to time by the Lessor and Lessee.

**Exhibits:**

- |           |                                             |
|-----------|---------------------------------------------|
| Exhibit A | Legal Description of the Property           |
| Exhibit B | Schedule of Units and Rents                 |
| Exhibit C | Description of Property Management Services |
| Exhibit D | Lessor's Form Residential Lease             |

**GENERAL LEASE TERMS**

**1. Definitions.** The capitalized terms used in this Lease shall have the meanings ascribed thereto in the Basic Master Lease Terms or as otherwise specifically defined herein. Any

reference to “Units” in this Lease shall mean those residential workforce housing units located in the Premises and identified on Exhibit B attached hereto and incorporated herein, as Exhibit B may be modified or changed from time to time by the Lessor and Lessee pursuant to the procedures set forth elsewhere in this Lease (the “**Schedule of Units and Rents**”).

**2. Agreement to Lease; Condition of Units.** For and in consideration of Lessee’s performance of its covenants herein provided, Lessor does hereby master lease to Lessee, and Lessee does hereby master lease from Lessor, all of the Units. Lessee’s lease rights hereunder in and to the Units shall be limited to the right, in Lessee’s sole and absolute discretion, to identify, select and direct Qualified Residents (defined below) to Lessor, whereupon, subject to compliance with the other terms and conditions of this Lease, such Qualified Residents shall then execute direct individual residential rental agreements with Lessor on Lessor’s Form Residential Lease (as defined below) for the Units (each, a “**Unit Lease**”). The typical term of Lessor’s Form Residential Lease is one (1) year.

**3. Selection of and Changes to the Schedule of Units and Rents.**

**3.1 General.** The specific Units that are subject to this Lease shall be initially selected by the parties as described below and are subject to periodic revision by the parties not less frequently than annually as provided below.

**3.2 Initial Selection of Units.** The Schedule of Units and Rents attached hereto as Exhibit B is the initial schedule showing the initial Units subject to this Lease, which Units have been selected based on their anticipated availability as of the Projected Commencement Date. Exhibit B also sets forth the applicable Scheduled Unit Rent (defined below) payable by Qualified Residents as to each such Unit, and the Market Rent as to each such Unit.

**3.3 Annual Updates.** The Schedule of Units and Rents shall be reviewed and updated as may be necessary by the parties at least on an annual basis. Commencing in June of each calendar year during the Term, the parties shall begin exchanging information concerning the number of Units desired by the Lessee, existing and prospective new Qualified Residents and existing and prospective new Units, including consideration of changing market conditions and increases or decreases in rents, and anticipated lease expirations of current and projected future Units. The parties will use diligent, good faith efforts to negotiate and update the Schedule of Units and Rents with any changes to the Units, Scheduled Unit Rents, and Market Rents on or before September 30 of each calendar year during the Term, with such revised Schedule of Units and Rents to be effective during the next succeeding calendar year, subject to amendment as described in this Lease. If, despite diligent, good faith efforts, the parties are unable to agree to any changes to the then-current Schedule of Units and Rents, the then-current Schedule of Units and Rents shall remain in effect until December 31 of the next succeeding calendar year, except that Lessor may unilaterally change the Market Rents as to one or more Units applicable during such calendar year by not more than the average of (a) the percentage of increase in the CPI defined below during the prior calendar year, and (b) the average of the percentage increase in Market Rents for the units at the Premises not subject to this Lease, and the matter shall be subject to mediation and arbitration as set forth in Section 18.13 below. As used herein, the “**CPI**” shall mean the Revised Consumer Price Index for All Urban Consumers (CPI-U): Seattle-Tacoma-Bremerton WA Area, all items index (Reference Base 1982-84 = 100) published by the Bureau of



Labor Statistics of the United States Department of Labor. If the CPI is no longer published, it shall be replaced by a comparable index reasonably selected by Lessor. For the avoidance of doubt, any changes (i.e., increase or decrease) in the number of Units covered by any particular annual Schedule of Units and Rents shall not be binding on the parties in subsequent calendar years during the Term, and Lessee shall have the right to increase and/or decrease, on an annual basis, and from time to time as set forth in Section 3.4 and 3.5 hereof, the number of Units included within the Premises each calendar year when the Schedule of Units and Rents is next renegotiated, subject to the maximum number of Units set forth above.

**3.4 Procedures for New Units.** The parties anticipate that most Qualified Residents shall lease Units on a calendar year basis (i.e., with each Unit Lease term to commence on January 1). However, if a Unit is not available for rent to a Qualified Resident on the projected availability date for that Unit, notwithstanding such Unit's inclusion on the Schedule of Units and Rents in effect for such calendar year, Lessor shall notify Lessee when such Unit becomes available, and such Unit shall be deemed added to this Lease on the first (1<sup>st</sup>) day of the next succeeding calendar month, whether or not a Qualified Resident has been selected for or actually moves into such Unit on such date. Furthermore, with respect to any Unit that becomes vacant and thus available for lease prior to the date on which such Unit was originally scheduled to be added to the Premises hereunder, Lessor shall promptly notify Lessee of such early vacancy/availability, and with the consent of the Lessee, such Unit shall be deemed added to the Premises the first (1<sup>st</sup>) day of the next succeeding calendar month. Although Lessee may at any time request that additional Units not already appearing on the then-effective Schedule of Units and Rents be reserved for rental by Qualified Residents, Lessor shall not be obligated to provide any such additional Units.

**3.5 Procedures for Vacant Units.** If despite good faith efforts, Lessee is unable to direct Qualified Residents for all Units appearing on the then-effective Schedule of Units and Rents, Lessee may direct Lessor to lease said Unit(s) as quickly as possible to any third party on Lessor's Form Residential Lease, but otherwise on such terms and conditions (including as to rent) as Lessor may elect in its sole discretion, and in such case said Unit(s) shall be removed from the Schedule on the first (1<sup>st</sup>) day of the next succeeding calendar month. Furthermore, Lessor may at any time during the calendar year for which a Schedule of Units and Rents is then in effect (but not more frequently than once per month), elect to delete (but not add) vacant Units from the Schedule, such removal to be effective on a date chosen by Lessee during that calendar year that is the last day of a calendar month that is at least thirty (30) days after the date of Lessee's notice of deletion.

**3.6 Procedures for Surrendered Units.** With respect to Units which will not be included in the new Schedule of Units and Rents for the next succeeding calendar year, unless Lessor elects in its sole discretion to continue leasing such Unit to the then-current Qualified Resident on such terms and conditions as to which Lessor may agree, Lessee shall use reasonable efforts to cause such Qualified Resident to vacate such Unit on or before December 31 of such year, or such later date reflected as the last day of such Qualified Resident's lease term, as reflected in such Qualified Resident's Unit Lease (such later date, the "**Unit Lease Expiration Date**") and to surrender the same in the condition required by the Form Residential Lease. Lessee shall remain responsible for all Rent due under this Lease as such Unit through December 31 of such year or the Unit Lease Expiration Date, if later, regardless when the Qualified Resident actually vacates

same, unless Lessor is able to re-rent such Unit to another resident. For any portion of a Qualified Resident's Unit Lease extending beyond the Term of this Lease, Lessor shall have the right to require such Qualified Resident to pay Lessor's then-market rental amount as to the applicable Unit for the remainder of such Qualified Resident's Unit lease term.

#### **4. Selection and Qualification of Qualified Residents.**

**4.1 Qualified Resident Criteria.** Lessee shall have the right to require Lessor to rent the Units included on the Schedule only to "**Qualified Residents**", which for purposes of this Lease are prospective Unit tenants who satisfy (i) Lessor's prospective tenant criteria, to be determined and applied in Lessor's sole discretion ("**Lessor's Qualified Resident Criteria**"), including financially-related tenant selection criteria relating to creditworthiness, net worth, income, or other financial-related considerations (the "**Financial Standards**"), provided, however, that Lessor shall consider its Financial Standards with reference to such Qualified Resident's ability to pay the Scheduled Unit Rent (not the Market Rent) as to the Unit which such Qualified Resident is seeking to rent, and (ii) Lessee's prospective tenant criteria, to be determined and applied in Lessee's sole discretion ("**Lessee's Qualified Resident Criteria**"). Without limiting the generality of the foregoing, Lessee shall be solely responsible for determining the standards and criteria of Lessee's Qualified Resident Criteria, including without limitation Financial Standards that may be less stringent than the Financial Standards included in Lessor's Qualified Resident Criteria, which Lessee may alter or amend at any time in Lessee's sole discretion. Lessor shall be solely responsible for determining the standards and criteria of Lessor's Qualified Resident Criteria, including without limitation background checks, which Lessor may alter or amend at any time in Lessor's sole discretion. For the avoidance of doubt, Lessee may also at any time in its sole discretion waive any prospective Qualified Resident's compliance with Lessee's Qualified Resident Criteria but not Lessor's Qualified Resident Criteria (except as noted in Section 4.2 below), and Lessor may at any time in its sole discretion waive any prospective Qualified Resident's compliance with Lessor's Qualified Resident Criteria but not Lessee's Qualified Resident Criteria.

**4.2 Identification of Prospective Qualified Residents.** From time to time, Lessee shall identify and/or refer potential tenant applicants to Lessor who meet Lessee's Qualified Resident Criteria. Lessor shall, promptly and in good faith, confirm with Lessee whether the prospective tenant satisfies Lessor's Qualified Resident Criteria (and thus is a Qualified Resident) and may, in its discretion, impose additional commercially reasonable tenant screening and application procedures and requirements, so long as the same are consistent with prudent industry practices, including without limitation application fees, typical refundable and non-refundable deposits, and credit and background checks and otherwise consistent with Lessor's screening and application procedures and requirements for residential units at the Building. If Lessor intends to reject a proposed Qualified Resident due to its failure to satisfy Lessor's Qualified Resident Criteria, Lessor shall promptly advise Lessee of the reasons therefor, to the extent Lessor is permitted to do so pursuant to applicable Laws (as defined below). On a case-by-case basis, Lessee shall have the right to require Lessor accept a proposed Qualified Resident who meets all of Lessor's Qualified Resident Criteria except for the Financial Standards. Upon approval of such Qualified Resident by Lessor, each such Qualified Resident (but not Lessee) shall be required to execute and deliver to Lessor a Unit Lease on Lessor's standard residential apartment tenant lease form (the "**Form Residential Lease**"), the current form of which is attached hereto as Exhibit D,

prior to its entry into and occupancy of the Unit, provided that (i) the monthly rent payable by such Qualified Resident shall not exceed the Scheduled Unit Rent as to such Unit as reflected in Exhibit B, and (ii) the Qualified Resident shall pay all other fees and charges for such Unit, including without limitation any parking fees, storage unit charges, utility charges, and the like, all as may be set forth in the Form Residential Lease.

**4.3 Change in Status during Unit Lease Term.** Lessee shall promptly notify Lessor at any time it becomes aware a Qualified Resident then occupying a Unit no longer satisfies Lessee's Qualified Resident Criteria. If more than one (1) month remains on the term of such former Qualified Resident's Unit Lease, Lessor shall have the right, in its sole discretion, upon thirty (30) days' prior written notice to such former Qualified Resident, to require such Former Qualified Resident to pay Lessor's then-market rental amount as to the applicable Unit for the remainder of such Former Qualified Resident's lease term. Furthermore, if Lessor and such former Qualified Resident shall desire to renew or extend the term of such party's Unit Lease, such Unit shall thereafter no longer be considered one of the "Units" subject to the terms of this Lease, and Exhibit B shall be accordingly updated as part of the next Annual Update.

**5. Property Management.** Lessor shall either provide or contract with a third-party property manager to provide property management services to the Units as described in Exhibit C (collectively, the "**Property Management Services**") in connection with this Lease and the Unit Leases at no additional fee or charge to Lessee. Lessor shall have the right to select and change from time to time the property manager for the Building/Property, which may be affiliated with Lessor.

**6. Term; Termination; Surrender of Units.** The Lease shall be for the Term indicated in the Basic Master Lease Terms and shall automatically renew annually (each such annual extension, an "**Extension Term**") on a calendar year to calendar year basis (i.e., from January 1 to the next succeeding December 31) for up to the maximum number of Extension Terms provided in Basic Master Lease Terms, unless Lessee elects, by written notice given to Lessor on or before September 30 of any year, to not extend the Term of this Lease beyond the end of the following calendar year. Upon the expiration or earlier termination of this Lease, Lessee shall surrender possession of all of the Units to Lessor free from possessory rights of all Qualified Residents or any other third party, on a rolling basis as part of a "**Ramp Down Period**". The Ramp Down Period shall commence on the Termination Date and during the Ramp Down Period, Lessee shall surrender or cause each Qualified Resident to surrender possession of the Units to Lessor in accordance with the surrender requirements in such Qualified Resident's Unit Lease, on the later of December 31 of such year, or the Unit Lease Expiration Date, if later, as to each Unit. During the Ramp Down Period, Lessee shall continue to comply with all of the terms and conditions the Lease with respect to each Unit that Lessee has not yet surrendered possession of.

**7. Rent; Rent Credits.**

**7.1 Market Rent; Scheduled Unit Rent.** Lessee covenants and agrees to pay Lessor the Market Rents as to each Unit set forth on Exhibit B (as it may be amended from time to time pursuant to the terms of this Lease) attached hereto during the Term hereof (the fair market rent as to each specific Unit which Lessee is required to pay is sometimes referred to hereafter as the "**Market Rent**," the amount which Qualified Residents are obligated to pay as to such Unit is

sometimes referred to hereinafter as the “**Scheduled Unit Rent**”, and all amounts payable or guaranteed by Lessee to Lessor hereunder are collectively referred to as “**Rent**”), regardless of whether any such Unit is then leased or occupied; provided, that prior to Lessee paying Scheduled Unit Rent to Lessor, Lessor agrees to use good faith, commercially reasonable efforts to enforce the terms of each Qualified Resident’s Unit Lease, including attempting to collect unpaid Scheduled Unit Rent owed and promptly commencing and diligently prosecuting to conclusion unlawful detainer actions if reasonably necessary to recover possession of a Unit from defaulting Qualified Residents as soon as reasonably possible.

**7.2 Receipt of Qualified Resident Rentals; Reconciliation Payment by Lessee.** On or before the fifth (5<sup>th</sup>) day of each calendar month throughout the Term, or as soon thereafter as reasonably possible, Lessor shall provide a detailed written statement to Lessee showing all Scheduled Unit Rent payments received from Qualified Residents of Units and reasonably allocable to such calendar month, and stating any new delinquencies for that calendar month as well as any outstanding delinquencies for prior calendar months. Within fourteen (14) days after Lessee’s receipt of such monthly statement, Lessee shall pay to Lessor an amount equal to the net positive difference (if any) between the Rent due hereunder (i.e., the sum of Market Rents as to all Units for such month, whether or not leased or vacant) and the sum of all Scheduled Unit Rent payments received by Lessor from Qualified Residents for such Units for such month. Within thirty (30) days after the end of each calendar year during the Term (including upon occurrence of the Termination Date of this Lease), or as soon thereafter as reasonably possible, Lessor shall prepare and deliver to Lessee an annual reconciliation of all such rental amounts received by Lessor from Lessee and from Qualified Residents, and within ten (10) days thereafter, Lessee shall pay any underpaid portion to Lessor or Lessor shall refund any overpayment to Lessee, as applicable. Amounts due hereunder from Lessee shall be paid to Lessor without further notice, demand, deduction or offset, in lawful money of the United States of America, at Lessor’s address listed in the Basic Master Lease Terms or such other place as Lessor may from time to time designate to Lessee in writing. Upon receipt of the foregoing payment by Lessee to Lessor, Lessor shall assign to Lessee any right Lessor may then have to collect any outstanding and then-unpaid rents or other charges owed by Qualified Residents to Lessor. Notwithstanding the foregoing, prior to making a demand to Lessee for payment of unpaid amounts, Lessor agrees to use good faith, commercially reasonable efforts to enforce the terms of each Qualified Resident’s Unit Lease, including attempting to collect unpaid Scheduled Unit Rent owed and promptly commencing and diligently prosecuting to conclusion unlawful detainer actions if reasonably necessary to recover possession of a Unit from defaulting Qualified Residents as soon as reasonably possible.

**7.3 Late Charges.** Lessee acknowledges that late payment of Rent or other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing charges and late charges which may be imposed upon Lessor by terms of any mortgage or deed of trust covering the Units. Accordingly, if any Rent shall not be received by Lessor or Lessor’s designee within thirty (30) days after it is due and after Lessor has provided written notice to a Qualified Resident and to Lessee of such failure and such failure has not been resolved within ten (10) additional days, Lessee shall pay to Lessor, on behalf of a Qualified Resident with respect to Scheduled Unit Rent and on its own behalf, a late charge equal to the amount calculated with interest on the unpaid amount at twelve percent (12%) per annum (the

“**Default Rate**”), on a daily basis based on a 365 day year, plus any attorneys’ fees incurred by Lessor by reason of Qualified Resident’s or Lessee’s failure to pay Rent or other charges when due hereunder. Such calculation for the late charge shall begin to accrue on the date immediately following the date that such Rent is due. Acceptance of late Rent without collecting a late charge shall not be a waiver of Lessor’s rights under this section.

**7.4 Rent Credit for MFTE Tax Savings.** Pursuant to the MFTE Certificate, Lessor shall receive an exemption from a portion of the real property taxes otherwise payable by Lessor as to the Property. The annual amount of the real property tax savings realized as a result of such exemption is hereinafter referred to as the “**Annual MFTE Tax Savings.**” Each calendar year throughout the Term of this Lease, Lessee shall receive an amount equal to sixty-five percent (65%) of the Annual MFTE Tax Savings (the “**MFTE Rent Credit**”) which it intends to use either (a) as a credit against all Rent payable under this Lease, as described in the following paragraph, or (b) for other purposes as determined by the City in its sole discretion and communicated in writing to Lessor.

On or before January 1, 2020, and on or before January 1 of each subsequent calendar year during the Term of this Lease, Lessor shall provide to Lessee a written estimate of the Annual MFTE Tax Savings projected to be realized by Lessor for such calendar year, and Lessee shall receive a credit on a monthly basis equal to one-twelfth (1/12th) of this estimated amount against amounts otherwise required to be paid by Lessee pursuant to Sections 7.1 and 7.2 above. On or about August 31 (for the prior time period from January 1 through and including June 1) and on or about the last day in February of the next year (for the prior time period from July 1 through and including December 31), Lessor shall notify Lessee of the actual amount of the Annual MFTE Tax Savings realized by Lessor for such portion of the year (and, with respect to the statement to be provided at the end of February, including a reconciliation for the entire prior year). If such statement shows that (i) the sum of the estimated monthly amounts credited to Lessee above during such partial year period were less than the actual MFTE Rent Credit for such partial year period, the uncredited portion thereof shall be applied against Rent next coming due, subject to the terms of the next grammatical sentence; or (ii) the sum of the estimated monthly amounts credited to Lessee above during such partial year period exceeded the actual MFTE Rent Credit for such partial year period, Lessee shall pay the amount of the deficiency within thirty (30) days thereafter. However, any portion of the MFTE Rent Credit not fully utilized by Lessee in any single calendar year (for example, due to fewer than expected Qualified Residents leasing Units from Lessor during that year, or due to lower-than-anticipated differences between Market Rents and Scheduled Unit Rents for Units leased by Lessee during that year) may be applied against Rent due and owing hereunder for only the next succeeding calendar year. Additionally, Lessor agrees to consider reasonably and in good faith any request by Lessee to amend the Schedule of Units and Rents (for example, to increase the net positive difference between Scheduled Unit Rents and Market Rents for one or more Units) in order to facilitate Lessee’s ability to realize the full benefit of the total MFTE Rent Credit for each calendar year during the Term.

## **8. Use of Units.**

**8.1 Permitted Uses.** Lessee shall take reasonable steps to advise its Qualified Residents to use the Units solely for residential uses as per Lessor’s Form Residential Lease, as

the same may be amended by Lessor from time to time in its sole discretion. Lessee shall use reasonable efforts to advise its Qualified Residents to not use and to not permit the Units to be used for any other purpose without the prior written consent of Lessor.

**8.2 Compliance with Laws.** Lessee shall comply with and shall use reasonable efforts to advise and thereby cause its Qualified Residents to comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force and with the requirements of any board of fire insurance underwriters or other similar bodies now or hereafter constituted, relating to, or affecting the condition, use or occupancy of the Units (collectively, “**Laws**”), including without limitation those relating to the Fair Housing Act of 1968, as amended, and the Washington Residential Landlord-Tenant Act, Chapter 59.18 RCW. Lessee will not ask, direct or seek Lessor to take any action or to refrain from taking any action where such action or inaction would, in Lessor’s reasonable opinion, cause it or the Property to be in violation of any applicable Laws. Furthermore, Lessee will support, and will take reasonable steps to cause all Qualified Residents to support, Lessor’s efforts to comply with applicable Laws concerning fair housing and anti-discrimination.

**9. Maintenance.** Lessor shall keep the Units and every part thereof in good condition and repair, including, without limitation, the maintenance, replacement and repair of any doors and door hardware, windows, plumbing, pipes, electrical wiring and conduits within the Units, as well as the common and public areas and facilities of the Units, water, sewer, fire protection and mechanical and electrical distribution systems and equipment serving the Units and the structural portions of the Premises, and otherwise in accordance with all applicable Laws.

**10. Insurance.** The parties acknowledge that Lessor shall require all Qualified Residents to carry Renter’s Insurance meeting Lessor’s minimum standards pursuant to Lessor’s Form Residential Lease. If any Qualified Resident fails to do so, and such failure continues for ten (10) days after notice from Lessor, then Lessor shall provide written notice thereof to Lessee and, unless Lessee causes such Qualified Resident to cure any such failure within twenty (20) days after receipt of written notice from Lessor, Lessee shall be deemed to be providing such Renter’s Insurance (provided that Lessee may self-insure for such risks in its sole discretion).

**11. Reconstruction of Damage by Casualty.**

**11.1 Damage.** If all or any portion of the Premises is damaged by fire or other insured casualty, Lessor shall repair the damage, this Lease shall remain in effect, Lessee shall pay all Rent due hereunder, subject to appropriate abatement to the extent one or more Units are not reasonably occupiable and the affected Qualified Resident does not in fact occupy such Unit, and Lessor shall continue to provide the Services as provided herein to the extent reasonably possible under the circumstances.

**11.2 Cancellation of Lease.** Notwithstanding the foregoing, if more than fifty percent (50%) of the Units then being occupied by Qualified Residents are damaged, then Lessor and Lessee both shall have the right to terminate this Lease upon notice given to the other party within thirty (30) days after the date of the damage. This Lease shall be deemed terminated thirty

(30) days after receipt of such notice of termination. If neither party elects to terminate the Lease as provided herein, then this Lease shall continue in full force and effect.

**11.3 Settlement of Insurance Claims.** Lessor shall have the exclusive right to settle and adjust all insurance claims with respect to any damage to the Units and to either retain, all such insurance proceeds and/or repair the damage, all as Lessor shall determine in Lessor's sole discretion.

**12. Eminent Domain.**

**12.1 Total Condemnation.** If the whole of the Units shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, then the term of this Lease shall terminate and cease as of the date that title or possession shall be transferred in such proceeding, whichever shall first occur, and all rent shall be paid up to that date and Lessee shall have no claim against Lessor for the value of any unexpired term of this Lease.

**12.2 Partial Condemnation.** If a portion (but less than all) of the Premises is appropriated or condemned by eminent domain, then Lessor and Lessee both shall have the right to terminate this Lease upon notice to the other party within thirty (30) days after being notified of the appropriation or condemnation. This Lease shall be deemed terminated as of the date title or possession shall be transferred to the condemning authority, whichever shall first occur. If neither party elects to terminate the Lease as provided herein, then this Lease shall continue in full force and effect.

**12.3 Lessor's Damages.** In the event of any condemnation or taking, whether whole or partial, Lessee shall not be entitled to any part of the award as damages or otherwise for such condemnation, Lessee hereby expressly waiving any claim or right to any part thereof. Lessor shall be entitled to all awards and damages in condemnation, to apply in such manner at Lessor determines in Lessor's sole discretion.

**12.4 Voluntary Sale.** A voluntary sale by Lessor to any public body or agency having the power of eminent domain, either under threat of condemnation or while condemnation proceedings are pending, shall be deemed to be a taking under the power of eminent domain.

**13. Lessee's Default.** The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Lessee:

(a) Lessee's failure to make any payment of undisputed Rent or any other payment required to be made by Lessee hereunder, as and when due, where such failure shall continue for a period of ten (10) days after written notice thereof by Lessor to Lessee.

(b) Except as provided in (a) and (c) of this section, any failure by Lessee to observe or perform any of the material covenants, conditions or provisions of this Lease to be observed or performed by Lessee where such failure shall continue for a period of sixty (60) days after written notice thereof by Lessor to Lessee; provided, however, that if the nature of Lessee's default is such that more than sixty (60) days are reasonably required for its cure, then Lessee shall

not be deemed to be in default if Lessee commences such cure within ten (10) days after Lessor's notice and thereafter diligently prosecutes such cure and it is completed within one hundred twenty (120) days thereafter.

(c) Any assignment or subletting by Lessee in violation of this Lease.

**14. Lessor's Remedies Upon Default.** In the event of any material default under or breach of this Lease by Lessee, Lessor may, at any time thereafter, with or without notice or demand and without limiting any right or remedy which Lessor may have by reason of such default or breach, exercise any of the following remedies (all of the following rights and remedies of Lessor shall be subject to the existing rights of Residents pursuant to their respective Unit Leases):

(a) Lessor may continue this Lease in full force and effect, and this Lease shall continue in full force and effect as long as Lessor does not terminate this Lease, and Lessor shall have the right to collect Rent and other amounts when due.

(b) Lessor may terminate Lessee's right to possession of the Units at any time by giving written notice to that effect. No act by Lessor other than giving written notice to Lessee shall terminate this Lease.

(c) Lessor may perform or provide a cure to such default or breach, and shall, together with the costs of such cure (the "**Cure Costs**") collect interest on such Cure Costs accruing at the lesser of (i) the Default Rate, or (ii) the maximum rate permitted by applicable Law, computed from the date of Lessor's payment of such costs to the date of reimbursement. Cure Costs shall be limited to the actual, out-of-pocket expenses incurred by Lessor in curing such default or breach, and shall not include any other related expenses, including, but not limited to, legal fees related thereto.

(d) Lessor may have a receiver appointed for Lessee to take possession of the Units and to apply any rent collected from the Units and to exercise all other rights and remedies granted to Lessor as an attorney-in-fact for Lessee.

(e) Lessor may pursue any other remedy now or hereafter available to Lessor under the laws or judicial decisions of the State of Washington. Lessor may sue periodically to recover damages as they accrue under this Lease, and no one action for accrued damages shall be a bar to a later action for damages subsequently accruing.

**15. Lessor's Default.** Lessor shall not be in default unless Lessor fails to perform material obligations required of Lessor (including without limitation such obligations arising under the Unit Leases with Qualified Residents) within a reasonable time, but in no event later than sixty (60) days after written notice by Lessee to Lessor and to the holder of any first mortgage or deed of trust covering the Building or Property whose name and address shall have theretofore been furnished to Lessee in writing and specifying how Lessor has failed to perform such obligations and the acts required to cure the same; provided, however, that if the nature of Lessor's obligation is such that more than sixty (60) days are required for performance, Lessor shall not be in default if Lessor commences performance within such sixty (60) day period and thereafter diligently



prosecutes the same to completion; subject to existing rights of Qualified Residents pursuant to their respective Unit Leases. As of the date of mutual execution hereof, Lessor's lenders' address for notices is as follows:

Washington Trust Bank  
Builder Services Western WA Region  
10500 NE 8th St, Suite 1100  
Bellevue, WA 98004  
Attn: Ken Paauw, Senior Vice President

And to:

FNMA  
c/o Hunt Mortgage  
11501 Outlook, Ste. 300  
Overland Park, KS 66211  
Attn: Hunt Servicing

**16. Lessee's Remedies Upon Default.** Lessee shall have the right to recover its actual damages caused by any default of Lessor under this Lease. In no event shall Lessee have the right to engage in self-help remedies as a result of Lessor's default. Lessee shall have the right to revoke the MFTE Certificate for Plaza in the event of a continuing event of material default by Lessor under this Lease following due notice and an opportunity to cure as set forth in Section 15.

**17. Assignment and Subletting.** Lessee shall not, without the prior written consent of Lessor, which will not be unreasonably withheld, conditioned, or delayed, assign or hypothecate this Lease or any interest herein or sublet all or substantially all of the Units, or permit the use of the Units by any party other than Lessee and Qualified Residents. Any of the foregoing acts without Lessor's prior written consent as aforesaid shall be void and shall, at the option of Lessor, terminate this Lease. This Lease shall not, nor shall any interest of Lessee herein, be assignable by operation of law without the written consent of Lessor. Notwithstanding the foregoing, (a) Lessor consents and agrees that Lessee may propose as Qualified Residents employees of the Lake Washington School District, the Lake Washington Institute of Technology and/or another public entity (the "**Approved Entities**"); and (b) any proposed assignment, subletting, or other transfer of Lessee's rights hereunder to any Approved Entities shall be subject to Lessor's reasonable prior consent (and the consent of any Lender of Lessor, as defined in Section 18.12 below) and Lessor's approval of (and execution by the applicable Approved Entities and Lessee of) commercially reasonable sublease, assignment and assumption, or other transfer documentation.

**18. General Provisions.**

**18.1 Interpretation.**

**18.1.1 Plats and Riders.** Clauses, plats, riders and addendums, if any, affixed to this Lease are a part hereof.

**18.1.2 Construction as Covenants.** Wherever in this Lease it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

**18.1.3 Section Headings.** The section headings and article titles of this Lease shall have no effect upon the construction or interpretation of any part hereof.

**18.1.4 Time of Performance.** Time is of the essence of this Lease and each and all of its provisions in which performance is a factor.

**18.1.5 Partial Invalidity.** Any provision of this Lease which is held to be invalid, void or illegal by any court of competent jurisdiction shall in no way affect, impair or invalidate any other provision hereof.

**18.1.6 United States Funds.** All sums herein mentioned shall be conclusively deemed to refer to the lawful currency of the United States.

**18.1.7 Choice of Law.** This Lease shall be governed by the Laws of the State of Washington.

## **18.2 Legal Relationships.**

**18.2.1 Authority of Parties.** Each individual executing this Lease on behalf of Lessor and Lessee represents and warrants that he or she is duly authorized to execute and deliver this Lease and that this Lease is binding upon Lessor and Lessee, as applicable, in accordance with its terms.

**18.2.2 No Partnership.** This Lease shall not be construed as establishing a partnership or joint venture between Lessor and Lessee, and neither party shall be liable for the debts or obligations of the other, except to the extent specifically and expressly agreed to herein. Except as provided herein, neither party hereto may make any representation or create any liability on behalf of the other, and no rights in any third party shall arise by virtue of these presents.

**18.2.3 Successors and Assigns.** The covenants and conditions herein contained, subject to the restrictions upon assignments, apply to and bind the heirs, successors, executors, administrators and assigns of the parties hereto.

## **18.3 Remedies and Liability.**

**18.3.1 Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies available at law or in equity.

**18.3.2 No Waivers.** No express or implied waiver by Lessor of any event of default shall in any way be or be construed to be a waiver of any future or subsequent event of default. The written waiver by Lessor of any term, covenant or condition herein contained shall

not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Lessor shall not be deemed to be a waiver of any preceding default by Lessee of any term, covenant or condition of this Lease, other than the failure of Lessee to pay the particular rental so accepted, regardless of Lessor's knowledge of such preceding default at the time of the acceptance of such rent.

**18.3.3 Inability to Perform.** Any delays in the performance of any obligation of either party under this Agreement shall be excused to the extent that such delays are caused by wars, national emergencies, natural disasters, strikes, labor disputes, utility failures, governmental regulations, riots, adverse weather, and other similar causes not within the control of such party, and any time periods required for performance shall be extended accordingly.

**18.3.4 Sale of the Building or Property.** In the event of any sale of the Building and Property by Lessor, this Lease shall remain in full force and effect according to its terms. However, in the event a condominium is established for all or any part of the Building or Property, then any Units that are to be included in any such condominium shall be released from this Lease.

**18.3.5 Limitation on Liability.** Anything in this Lease to the contrary notwithstanding, no shareholder, trustee, officer, employee or agent of Lessor shall be personally liable for any debt, claim, demand, judgment, decree, liability or obligation of any kind (in tort, contract or otherwise) of, against or with respect to Lessor arising out of any action taken or omitted to be taken for or on behalf of Lessor under and pursuant to this Lease, and resort shall be made solely to Lessor's interest in the Premises, Building and Property for the payment or performance thereof.

**18.3.6 Attorneys' Fees.** If any action or proceeding is brought by either party against the other under this Lease, each party shall bear their own costs and fees.

**18.4 Brokers.** Lessee warrants that it has had no dealings with any real estate broker or agent in connection with the negotiation of this Lease and it knows of no real estate broker or agent who is entitled to a commission in connection with this Lease. Although Robert Pantley, the Manager of the Managing Member of Lessor, is a licensed real estate broker in the State of Washington, he is not acting in any broker capacity in connection with this Lease.

**18.5 Venue.** The venue of any action brought to interpret or enforce any of the terms of this Lease or otherwise adjudicate the rights or liabilities of the parties hereto shall be laid in King County, Washington.

**18.6 Notices.** All notices and demands which may or are to be required or permitted to be given hereunder shall be in writing. All notices and demands by a party to the other shall be effective only if hand delivered, sent by recognized overnight courier service (e.g., FedEx), or sent by U.S. mail, postage prepaid, addressed to Lessor or Lessee, as applicable, at its address listed below or to such other place as such parties may from time to time designate in a written notice to the other party. The parties' initial addresses for notices shall be as stated in the Basic Master Lease Terms. Notices hand delivered or sent by overnight courier shall be effective

upon receipt or refusal to receive; notices sent by U.S. mail shall be effective on the third (3<sup>rd</sup>) day after depositing same in the U.S. mails.

**18.7 Recordation.** Notwithstanding that the Plaza MFTE Agreement itself shall be recorded, neither Lessor nor Lessee may record this Lease.

**18.8 Counterparts.** This Lease may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Lease or any counterpart may be executed and delivered by facsimile or email/.pdf transmission with an executed hard copy to follow.

**18.9 Waiver of Jury Trial.** Lessor and Lessee desire and intend that any disputes arising between them with respect to or in connection with this Lease be subject to expeditious resolution in a court trial without a jury. Therefore Lessor and Lessee each hereby waive the right to a trial by jury of any cause of action, claim, counter claim or cross complaint in any action, proceeding or other hearing brought by either Lessor against Lessee or Lessee against Lessor on any matter whatsoever arising out of, or in any way connected with, this Lease, the relationship of Lessor and Lessee concerning the subject matter of this Lease or the documents related thereto or any claim of injury or damage, or the enforcement of any remedy under any Law now or hereafter in effect concerning such agreements.

**18.10 Entire Agreement.** This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreements or understanding pertaining to any such matters shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. This Lease shall not be effective or binding upon any party until fully executed by both parties hereto.

**18.11 Termination of Plaza MFTE Agreement.** Notwithstanding anything to the contrary elsewhere herein, if the Plaza MFTE Agreement or MFTE Certificate shall expire or be terminated during the Term hereof, then, at Lessor's election, except to the extent the parties otherwise agree, this Lease shall terminate without further renewal at the end of the then-effective calendar year. In such event, with respect to all Qualified Residents then occupying Units: (a) each such Qualified Resident shall remain in possession of such Unit until the expiration of the Term as to such Qualified Resident's Unit Lease; and (b) from and after the effective date of termination of this Lease, Lessor may elect to require each such Qualified Resident to pay then-Market Rent as to such Qualified Resident's Unit.

**18.12 Estoppel Certificates.** Lessee shall, upon at least ten (10) days' prior written notice, provide to Lessor, any person or entity acquiring Lessor's interest in the Building or Property, or any lender of either (a "**Lender**"), a certificate of estoppel stating: (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified and stating the modifications); (b) the Term of the Lease including any extensions thereto; (c) the dates to which the Rent and any other charges hereunder have been paid by Lessee; (d) the amount of any security deposit (if any) delivered to Lessor; (e) whether or not, to Lessee's actual knowledge, Lessor is in default (or whether any event or condition exists which, with the passage of time, would constitute an event of default by Lessor

under this Lease; (f) the address to which notices to Lessee should be sent; and (g) any other factual information concerning this Lease or the Premises as may be reasonably required by the recipient.

### **18.13 Lender Protections.**

**18.13.1 Lender Approval.** This Lease is subject to the approval of Lessor's Lender, which Lessor shall use good faith, diligent efforts to obtain. If Lessor has not satisfied or waived the foregoing requirement within one hundred twenty (120) days after mutual execution hereof, despite Lessor's diligent, good faith efforts, then Lessor may elect to terminate this Lease by written notice to Lessee, in which event the parties shall have no further rights or obligations hereunder.

**18.13.2 Lessor's Assignment of Lease.** Lessee acknowledges that Lessor has the right to transfer all or any portion of its interest in the Property or Building and in this Lease, and Lessee agrees that in the event of any such transfer (other than a transfer solely for security purposes), Lessor shall automatically be released from all liability under this Lease and Lessee agrees to look solely to such transferee for the performance of Lessor's obligations hereunder after the date of transfer and such transferee shall be deemed to have fully assumed and be liable for all obligations of this Lease to be performed by Lessor, and Lessee shall attorn to such transferee. Lessee further acknowledges that Lessor may assign its interest in this Lease to its Lender as additional security and agrees that such an assignment shall not release Lessor from its obligations hereunder and that Lessee shall continue to look to Lessor for the performance of its obligations hereunder. Lessee hereby consents to any such assignment for security purposes and agrees to promptly execute at no cost to Lessor any additional commercially reasonable documentation required by Lessor or its Lender to document Lessee's consent to such assignment for the benefit of such lender and its assigns.

**18.13.3 Subordination, Non-Disturbance, and Attornment.** This Lease shall be subject and subordinate to all present and future ground or underlying leases of the Building or Property and to the lien of any mortgage, trust deed or other encumbrances now or hereafter in force against the Building or Property or any part thereof, if any, and to all renewals, extensions, modifications, consolidations and replacements thereof, and to all advances made or hereafter to be made upon the security of such mortgages or trust deeds (each of which, a "**Loan**"), unless the holders of such Loans or the lessors under such ground lease or underlying leases (each of whom, for purposes of this Section 18.13, shall be deemed a "**Lender**") require in writing that this Lease be superior thereto. Lessee covenants and agrees, upon written notice from Lender after the occurrence of an event of default by Lessor under such Lender's Loan, to pay all Rent payable hereunder to Lender, and acknowledges that this Lease and all rights of Lessee hereunder are expressly subordinate to the Loan. In the event any proceedings are brought for the foreclosure of any such mortgage or deed in lieu thereof (each of which, a "**Foreclosure**") (or if any such ground lease or underlying lease is terminated), to attorn, without any deductions or set-offs whatsoever, to the lienholder or purchaser or any successors thereto upon any such Foreclosure, or to the ground lessor, if applicable (each of which, a "**Purchaser**"), if so requested to do so by such Purchaser, and to recognize such Purchaser as the lessor under this Lease, provided such Purchaser shall agree to accept this Lease and not terminate this Lease or disturb Lessee's occupancy, so long as Lessee timely pays the rent and observes and performs the terms and conditions of this Lease to be observed and performed by Lessee, or except as may otherwise be provided in an executed SNDA

(described below). The foregoing attornment shall be self-executing and shall be effective upon acquisition of title to the Building or Property by Lender or such other Purchaser, provided that Lessee agrees, within fourteen (14) days after request, to execute a subordination, nondisturbance, and attornment agreement (“**SNDA**”) or such other further instruments or assurances as Lender or any Purchaser may reasonably deem necessary to evidence or confirm the subordination or superiority of this Lease to any such Loans and/or the subordination, nondisturbance, and attornment provisions set forth above.

**18.14 Mediation or Arbitration of Certain Disputes.** In the event of any dispute arising under this Lease, the parties shall make their best efforts to resolve disputes as expeditiously as possible through negotiations at the lowest possible decision-making level, and in the event such negotiations are unsuccessful, to first participate in good faith in the mediation process described below.

**18.14.1 Involvement of Mediator & Mediator’s Consultants.** In the event an issue cannot be resolved by negotiations between the parties for a period of thirty (30) days, the parties shall meet during the immediately succeeding ten (10) days to select a mediator to assist in the resolution of such dispute. If the parties cannot agree upon a mediator within such 10-day period, either party may apply to the American Arbitration Association or the Judicial Arbitration & Mediation Service for the appointment of a mediator according to the process that is established by such entity for such action. The parties shall share equally the cost charged for the mediation of any dispute. The mediator shall have the authority to engage one or more expert consultants with knowledge in the field(s) or area(s) involved in the matter(s) that are in dispute to assist the mediator and the parties to evaluate their respective claims and resolve their dispute.

**18.14.2 Continuation of Efforts in Event of Dispute; No Litigation without Mediation.** Notwithstanding the existence of any dispute between them, the parties shall continue to carry out, without unreasonable delay, all of their respective responsibilities under this Lease which are not affected by the dispute. Neither party to this Lease shall commence any litigation against the other with respect to any claim or dispute arising hereunder without first participating, in good faith, in mediation as contemplated in this Section.

**18.14.3 Binding Arbitration.** In the event of any dispute hereunder concerning the determination of Market Rents or Scheduled Unit Rents that is not satisfactorily resolved via mediation as described above, the matter will be promptly resolved through binding arbitration as follows:

(a) All disputes between the parties arising solely under this Section shall be decided by arbitration in accordance with the then applicable rules of the American Arbitration Association, unless the parties mutually agree otherwise. Notice of the demand for arbitration shall be filed in writing with the other party to this Lease and with the American Arbitration Association. The demand shall be made within a reasonable time after the dispute, or other matter in question, has arisen. This agreement to arbitrate shall be specifically enforceable under prevailing state or federal arbitration law. A single arbitrator experienced in commercial real property leases shall arbitrate the dispute, provided that in the event that the parties cannot agree on an arbitrator, each party shall select an arbitrator and the two arbitrators so selected shall select a third arbitrator. The panel of three arbitrators shall then arbitrate the dispute.

(b) Except as may be otherwise agreed by the parties to this Lease, the rules governing the issuance of subpoenas and discovery shall be those used by the United States District Courts which are commonly termed the Federal Rules of Civil Procedure. Those rules shall be reasonably adapted to a proceeding before the American Arbitration Association. Any pre-hearing disputes as to subpoenas or discovery shall be resolved by the arbitrator who is assigned to hear the claims, disputes and other matters in question. Only the arbitrator is authorized to issue subpoenas and may do so on the request of any party to the arbitration. Any award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. Venue of any arbitration conducted pursuant to the Lease shall be in King County, Washington.

(c) Notwithstanding anything to the contrary herein, no provision or, nor exercise of any rights under, the foregoing arbitration procedure shall limit the right of Lessor, and the Lessor shall have any right during any dispute to seek, use and employ ancillary or preliminary remedies, judicial or otherwise, for the purpose of preserving, protecting, or evicting Lessee or any Qualified Resident from the Premises. The institution and maintenance of any such actions, remedies, or rights or the pursuit of any such ancillary or provisional remedies or self-help shall not constitute a waiver of Lessor's right to submit a dispute to arbitration as permitted in this Section.

[Signature Page Follows.]

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first above written.

**LESSOR:**

KIRKLAND SUSTAINABLE INVESTMENTS, LLC, a Washington limited liability company

By: Green Solar Investments, LLC, a Washington limited liability company, its Manager

By: \_\_\_\_\_  
Robert Pantley, its Managing Member

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

**LESSEE:**

THE CITY OF KIRKLAND, a Washington municipal corporation

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



STATE OF WASHINGTON

ss.

COUNTY OF KING

I certify that I know or have satisfactory evidence that Robert Pantley is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the Managing Member of Green Solar Investments, LLC, a Washington limited liability company, the Manager of KIRKLAND SUSTAINABLE INVESTMENTS, LLC, a Washington limited liability company, to be the free and voluntary act of such limited liability company for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington, residing at \_\_\_\_\_

My appointment expires \_\_\_\_\_

STATE OF WASHINGTON

ss.

COUNTY OF KING

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of the City of Kirkland, a Washington municipal corporation, to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington, residing at \_\_\_\_\_

My appointment expires \_\_\_\_\_

## Exhibit A

### Legal Description of the Property (PLAZA)

#### **Parcel 1:**

Lots 1, 2, 3, 4 and 5, Block 96, Kirkland Terrace, according to the plat thereof, recorded in Volume 21 of Plats, Page(s) 42, in King County, Washington;

Together with that portion of vacated alley, which alley was vacated pursuant to City of Kirkland Ordinance No. 996, recorded under recording number 5974155, adjacent to and lying Southerly of said Lots 1, 2, 3, 4 and 5, Block 96, Kirkland Terrace, according to the plat thereof recorded in Volume 21 of Plats, Page 42, in King County, Washington, said portion more particularly described as follows:

The Northerly 2.50 feet of said vacated alley and the Southerly 2.75 feet of the Northerly 5.25 feet of the Westerly 57.60 feet of said vacated alley;

Situate in the County of King, State of Washington.

#### **Parcel 2:**

An easement for shared access and utilities as established by instrument recorded under recording number 20160811001442.

**Exhibit B**

**Schedule of Units and Rents**

*[\*note to draft: attach\*]*

**Exhibit C**

**Property Management Services**

*[\*note to draft: attach\*]*

**Exhibit D**

**Form Residential Lease**

*[\*note to draft: attach\*]*

MASTER LEASE FOR ARETÉ  
FINAL DRAFT - JUNE 13, 2019

ARETÉ

MASTER LEASE

BETWEEN

SUSTAINABLE KIRKLAND, LLC,

as Lessor

and

THE CITY OF KIRKLAND,

as Lessee

**BASIC MASTER LEASE TERMS**

**Date of Lease:** \_\_\_\_\_, 2019

**Lessor:** SUSTAINABLE KIRKLAND, LLC, a Washington limited liability company

**Lessor's Address:** Sustainable Kirkland, LLC  
450 Central Way  
Kirkland, WA 98033  
Attn: Robert Pantley

**Lessee:** The City of Kirkland, a Washington municipal corporation

**Lessee's Address:** 123 - 5<sup>th</sup> Avenue, Kirkland, WA 98033

**Premises:** Not more than eleven (11) workforce housing units (each, a “**Unit**”) located in the building commonly known as Areté (the “**Building**”), located at 450 Central Way, City of Kirkland, King County, Washington, 98033. The Premises and Building are situated on property legally described on Exhibit A attached hereto (the “**Property**”), and the Units are listed on Exhibit B attached hereto. The maximum number of Units shall be subject to revision from time to time as the parties may hereafter mutually agree, provided that, except to the extent the parties may otherwise agree, in no event shall the total number of Units in the Building and in the “Plaza Project” defined below exceed thirty-four (34).

**Term:** One (1) year; automatically renewed for up to eleven (11) additional one (1) year terms (each, an “**Extension Term**”) unless Lessee elects not to so renew the Term.

**Commencement Date:** The last to occur of (i) receipt of a certificate of occupancy for the Plaza Project (defined below) by the Plaza Owner (as defined below); and (ii) issuance and filing with the King County Assessor of the MFTE Certificate (as defined below) for the Plaza Project. The “**Projected Commencement Date**” is January 1, 2020. Upon occurrence of the actual Commencement Date, the parties shall cooperate to execute a written confirmation thereof consistent with terms of this Lease.

**Termination Date:** December 31, 2020 (subject to automatic annual renewal as provided below).

**Rent Due from Lessee:** As set forth in Section 7, below.

**Security Deposit:** None.

**Plaza MFTE Agreement:** That certain Multifamily Housing Limited Property Tax Exemption Agreement by and between KIRKLAND SUSTAINABLE INVESTMENTS, LLC, a Washington limited liability company (the “**Plaza Owner**”) and Lessee, and recorded on \_\_\_\_\_, 2019 under Auditors’ File No. \_\_\_\_\_, Official Records of King County, Washington, concerning certain property and improvements to be constructed on property legally described in the Plaza MFTE Agreement having a street address at 330 – 4<sup>th</sup> Street, Kirkland, Washington 98033 (the “**Plaza Project**”). In connection with the Plaza MFTE Agreement, the Director of Lessee’s Planning & Community Development Department has or will issue a final certificate of tax exemption for the Plaza Project (the “**MFTE Certificate**”) pursuant to Chapter 5.88 of the Kirkland Municipal Code (“**KMC**”) and Chapter 84.14 RCW.

**Plaza Master Lease:** That certain Plaza Master Lease Agreement of even date herewith by and between Plaza owner as “Lessor” thereunder and Lessee as the “Lessee” thereunder.

This Lease is a master lease of those Units at the Premises identified on Exhibit B attached hereto by Lessor to Lessee, as Exhibit B may be modified or changed from time to time by the Lessor and Lessee.

**Exhibits:**

- |           |                                             |
|-----------|---------------------------------------------|
| Exhibit A | Legal Description of the Property           |
| Exhibit B | Schedule of Units and Rents                 |
| Exhibit C | Description of Property Management Services |
| Exhibit D | Lessor’s Form Residential Lease             |

**GENERAL LEASE TERMS**

**1. Definitions.** The capitalized terms used in this Lease shall have the meanings ascribed thereto in the Basic Master Lease Terms or as otherwise specifically defined herein. Any reference to “**Units**” in this Lease shall mean those residential workforce housing units located in



the Premises and identified on Exhibit B attached hereto and incorporated herein, as Exhibit B may be modified or changed from time to time by the Lessor and Lessee pursuant to the procedures set forth elsewhere in this Lease (the “**Schedule of Units and Rents**”).

**2. Agreement to Lease; Condition of Units.** For and in consideration of Lessee’s performance of its covenants herein provided, Lessor does hereby master lease to Lessee, and Lessee does hereby master lease from Lessor, all of the Units. Lessee’s lease rights hereunder in and to the Units shall be limited to the right, in Lessee’s sole and absolute discretion, to identify, select and direct Qualified Residents (defined below) to Lessor, whereupon, subject to compliance with the other terms and conditions of this Lease, such Qualified Residents shall then execute direct individual residential rental agreements with Lessor on Lessor’s Form Residential Lease (as defined below) for the Units (each, a “**Unit Lease**”). The typical term of Lessor’s Form Residential Lease is one (1) year.

**3. Selection of and Changes to the Schedule of Units and Rents.**

**3.1 General.** The specific Units that are subject to this Lease shall be initially selected by the parties as described below and are subject to periodic revision by the parties not less frequently than annually as provided below.

**3.2 Initial Selection of Units.** The Schedule of Units and Rents attached hereto as Exhibit B is the initial schedule showing the initial Units subject to this Lease, which Units have been selected based on their anticipated availability as of the Projected Commencement Date. Exhibit B also sets forth the applicable Scheduled Unit Rent (defined below) payable by Qualified Residents as to each such Unit, and the Market Rent as to each such Unit.

**3.3 Annual Updates.** The Schedule of Units and Rents shall be reviewed and updated as may be necessary by the parties at least on an annual basis. Commencing in June of each calendar year during the Term, the parties shall begin exchanging information concerning the number of Units desired by the Lessee, existing and prospective new Qualified Residents and existing and prospective new Units, including consideration of changing market conditions and increases or decreases in rents, and anticipated lease expirations of current and projected future Units. The parties will use diligent, good faith efforts to negotiate and update the Schedule of Units and Rents with any changes to the Units, Scheduled Unit Rents, and Market Rents on or before September 30 of each calendar year during the Term, with such revised Schedule of Units and Rents to be effective during the next succeeding calendar year, subject to amendment as described in this Lease. If, despite diligent, good faith efforts, the parties are unable to agree to any changes to the then-current Schedule of Units and Rents, the then-current Schedule of Units and Rents shall remain in effect until December 31 of the next succeeding calendar year, except that Lessor may unilaterally change the Market Rents as to one or more Units applicable during such calendar year by not more than the average of (a) the percentage of increase in the CPI defined below during the prior calendar year, and (b) the average of the percentage increase in Market Rents for the units at the Premises not subject to this Lease, and the matter shall be subject to mediation and arbitration as set forth in Section 18.13 below. As used herein, the “**CPI**” shall mean the Revised Consumer Price Index for All Urban Consumers (CPI-U): Seattle-Tacoma-Bremerton WA Area, all items index (Reference Base 1982-84 = 100) published by the Bureau of Labor Statistics of the United States Department of Labor. If the CPI is no longer published, it

shall be replaced by a comparable index reasonably selected by Lessor. For the avoidance of doubt, any changes (i.e., increase or decrease) in the number of Units covered by any particular annual Schedule of Units and Rents shall not be binding on the parties in subsequent calendar years during the Term, and Lessee shall have the right to increase and/or decrease, on an annual basis, and from time to time as set forth in Section 3.4 and 3.5 hereof, the number of Units included within the Premises each calendar year when the Schedule of Units and Rents is next renegotiated, subject to the maximum number of Units set forth above.

**3.4 Procedures for New Units.** The parties anticipate that most Qualified Residents shall lease Units on a calendar year basis (i.e., with each Unit Lease term to commence on January 1). However, if a Unit is not available for rent to a Qualified Resident on the projected availability date for that Unit, notwithstanding such Unit's inclusion on the Schedule of Units and Rents in effect for such calendar year, Lessor shall notify Lessee when such Unit becomes available, and such Unit shall be deemed added to this Lease on the first (1<sup>st</sup>) day of the next succeeding calendar month, whether or not a Qualified Resident has been selected for or actually moves into such Unit on such date. Furthermore, with respect to any Unit that becomes vacant and thus available for lease prior to the date on which such Unit was originally scheduled to be added to the Premises hereunder, Lessor shall promptly notify Lessee of such early vacancy/availability, and with the consent of the Lessee, such Unit shall be deemed added to the Premises the first (1<sup>st</sup>) day of the next succeeding calendar month. Although Lessee may at any time request that additional Units not already appearing on the then-effective Schedule of Units and Rents be reserved for rental by Qualified Residents, Lessor shall not be obligated to provide any such additional Units.

**3.5 Procedures for Vacant Units.** If despite good faith efforts, Lessee is unable to direct Qualified Residents for all Units appearing on the then-effective Schedule of Units and Rents, Lessee may direct Lessor to lease said Unit(s) as quickly as possible to any third party on Lessor's Form Residential Lease, but otherwise on such terms and conditions (including as to rent) as Lessor may elect in its sole discretion, and in such case said Unit(s) shall be removed from the Schedule on the first (1<sup>st</sup>) day of the next succeeding calendar month. Furthermore, Lessor may at any time during the calendar year for which a Schedule of Units and Rents is then in effect (but not more frequently than once per month), elect to delete (but not add) vacant Units from the Schedule, such removal to be effective on a date chosen by Lessee during that calendar year that is the last day of a calendar month that is at least thirty (30) days after the date of Lessee's notice of deletion.

**3.6 Procedures for Surrendered Units.** With respect to Units which will not be included in the new Schedule of Units and Rents for the next succeeding calendar year, unless Lessor elects in its sole discretion to continue leasing such Unit to the then-current Qualified Resident on such terms and conditions as to which Lessor may agree, Lessee shall use reasonable efforts to cause such Qualified Resident to vacate such Unit on or before December 31 of such year, or such later date reflected as the last day of such Qualified Resident's lease term, as reflected in such Qualified Resident's Unit Lease (such later date, the "**Unit Lease Expiration Date**") and to surrender the same in the condition required by the Form Residential Lease. Lessee shall remain responsible for all Rent due under this Lease as such Unit through December 31 of such year or the Unit Lease Expiration Date, if later, regardless when the Qualified Resident actually vacates same, unless Lessor is able to re-rent such Unit to another resident. For any portion of a Qualified

Resident's Unit Lease extending beyond the Term of this Lease, Lessor shall have the right to require such Qualified Resident to pay Lessor's then-market rental amount as to the applicable Unit for the remainder of such Qualified Resident's Unit lease term.

#### **4. Selection and Qualification of Qualified Residents.**

**4.1 Qualified Resident Criteria.** Lessee shall have the right to require Lessor to rent the Units included on the Schedule only to "**Qualified Residents**", which for purposes of this Lease are prospective Unit tenants who satisfy (i) Lessor's prospective tenant criteria, to be determined and applied in Lessor's sole discretion ("**Lessor's Qualified Resident Criteria**"), including financially-related tenant selection criteria relating to creditworthiness, net worth, income, or other financial-related considerations (the "**Financial Standards**"), provided, however, that Lessor shall consider its Financial Standards with reference to such Qualified Resident's ability to pay the Scheduled Unit Rent (not the Market Rent) as to the Unit which such Qualified Resident is seeking to rent, and (ii) Lessee's prospective tenant criteria, to be determined and applied in Lessee's sole discretion ("**Lessee's Qualified Resident Criteria**"). Without limiting the generality of the foregoing, Lessee shall be solely responsible for determining the standards and criteria of Lessee's Qualified Resident Criteria, including without limitation Financial Standards that may be less stringent than the Financial Standards included in Lessor's Qualified Resident Criteria, which Lessee may alter or amend at any time in Lessee's sole discretion. Lessor shall be solely responsible for determining the standards and criteria of Lessor's Qualified Resident Criteria, including without limitation background checks, which Lessor may alter or amend at any time in Lessor's sole discretion. For the avoidance of doubt, Lessee may also at any time in its sole discretion waive any prospective Qualified Resident's compliance with Lessee's Qualified Resident Criteria but not Lessor's Qualified Resident Criteria (except as noted in Section 4.2 below), and Lessor may at any time in its sole discretion waive any prospective Qualified Resident's compliance with Lessor's Qualified Resident Criteria but not Lessee's Qualified Resident Criteria.

**4.2 Identification of Prospective Qualified Residents.** From time to time, Lessee shall identify and/or refer potential tenant applicants to Lessor who meet Lessee's Qualified Resident Criteria. Lessor shall, promptly and in good faith, confirm with Lessee whether the prospective tenant satisfies Lessor's Qualified Resident Criteria (and thus is a Qualified Resident) and may, in its discretion, impose additional commercially reasonable tenant screening and application procedures and requirements, so long as the same are consistent with prudent industry practices, including without limitation application fees, typical refundable and non-refundable deposits, and credit and background checks and otherwise consistent with Lessor's screening and application procedures and requirements for residential units at the Building. If Lessor intends to reject a proposed Qualified Resident due to its failure to satisfy Lessor's Qualified Resident Criteria, Lessor shall promptly advise Lessee of the reasons therefor, to the extent Lessor is permitted to do so pursuant to applicable Laws (as defined below). On a case-by-case basis, Lessee shall have the right to require Lessor accept a proposed Qualified Resident who meets all of Lessor's Qualified Resident Criteria except for the Financial Standards. Upon approval of such Qualified Resident by Lessor, each such Qualified Resident (but not Lessee) shall be required to execute and deliver to Lessor a Unit Lease on Lessor's standard residential apartment tenant lease form (the "**Form Residential Lease**"), the current form of which is attached hereto as Exhibit D, prior to its entry into and occupancy of the Unit, provided that (i) the monthly rent payable by such

Qualified Resident shall not exceed the Scheduled Unit Rent as to such Unit as reflected in Exhibit B, and (ii) the Qualified Resident shall pay all other fees and charges for such Unit, including without limitation any parking fees, storage unit charges, utility charges, and the like, all as may be set forth in the Form Residential Lease.

**4.3 Change in Status during Unit Lease Term.** Lessee shall promptly notify Lessor at any time it becomes aware a Qualified Resident then occupying a Unit no longer satisfies Lessee's Qualified Resident Criteria. If more than one (1) month remains on the term of such former Qualified Resident's Unit Lease, Lessor shall have the right, in its sole discretion, upon thirty (30) days' prior written notice to such former Qualified Resident, to require such Former Qualified Resident to pay Lessor's then-market rental amount as to the applicable Unit for the remainder of such Former Qualified Resident's lease term. Furthermore, if Lessor and such former Qualified Resident shall desire to renew or extend the term of such party's Unit Lease, such Unit shall thereafter no longer be considered one of the "Units" subject to the terms of this Lease, and Exhibit B shall be accordingly updated as part of the next Annual Update.

**5. Property Management.** Lessor shall either provide or contract with a third-party property manager to provide property management services to the Units as described in Exhibit C (collectively, the "**Property Management Services**") in connection with this Lease and the Unit Leases at no additional fee or charge to Lessee. Lessor shall have the right to select and change from time to time the property manager for the Building/Property, which may be affiliated with Lessor.

**6. Term; Termination; Surrender of Units.** The Lease shall be for the Term indicated in the Basic Master Lease Terms and shall automatically renew annually (each such annual extension, an "**Extension Term**") on a calendar year to calendar year basis (i.e., from January 1 to the next succeeding December 31) for up to the maximum number of Extension Terms provided in Basic Master Lease Terms, unless Lessee elects, by written notice given to Lessor on or before September 30 of any year, to not extend the Term of this Lease beyond the end of the following calendar year. Upon the expiration or earlier termination of this Lease, Lessee shall surrender possession of all of the Units to Lessor free from possessory rights of all Qualified Residents or any other third party, on a rolling basis as part of a "**Ramp Down Period**". The Ramp Down Period shall commence on the Termination Date and during the Ramp Down Period, Lessee shall surrender or cause each Qualified Resident to surrender possession of the Units to Lessor in accordance with the surrender requirements in such Qualified Resident's Unit Lease, on the later of December 31 of such year, or the Unit Lease Expiration Date, if later, as to each Unit. During the Ramp Down Period, Lessee shall continue to comply with all of the terms and conditions the Lease with respect to each Unit that Lessee has not yet surrendered possession of.

**7. Rent.**

**7.1 Market Rent; Scheduled Unit Rent.** Lessee covenants and agrees to pay Lessor the Market Rents as to each Unit set forth on Exhibit B (as it may be amended from time to time pursuant to the terms of this Lease) attached hereto during the Term hereof (the fair market rent as to each specific Unit which Lessee is required to pay is sometimes referred to hereafter as the "**Market Rent**," the amount which Qualified Residents are obligated to pay as to such Unit is sometimes referred to hereinafter as the "**Scheduled Unit Rent**", and all amounts payable or

guaranteed by Lessee to Lessor hereunder are collectively referred to as “**Rent**”), regardless of whether any such Unit is then leased or occupied; provided, that prior to Lessee paying Scheduled Unit Rent to Lessor, Lessor agrees to use good faith, commercially reasonable efforts to enforce the terms of each Qualified Resident’s Unit Lease, including attempting to collect unpaid Scheduled Unit Rent owed and promptly commencing and diligently prosecuting to conclusion unlawful detainer actions if reasonably necessary to recover possession of a Unit from defaulting Qualified Residents as soon as reasonably possible.

**7.2 Receipt of Qualified Resident Rentals; Reconciliation Payment by Lessee.** On or before the fifth (5<sup>th</sup>) day of each calendar month throughout the Term, or as soon thereafter as reasonably possible, Lessor shall provide a detailed written statement to Lessee showing all Scheduled Unit Rent payments received from Qualified Residents of Units and reasonably allocable to such calendar month, and stating any new delinquencies for that calendar month as well as any outstanding delinquencies for prior calendar months. Within fourteen (14) days after Lessee’s receipt of such monthly statement, Lessee shall pay to Lessor an amount equal to the net positive difference (if any) between the Rent due hereunder (i.e., the sum of Market Rents as to all Units for such month, whether or not leased or vacant) and the sum of all Scheduled Unit Rent payments received by Lessor from Qualified Residents for such Units for such month. Within thirty (30) days after the end of each calendar year during the Term (including upon occurrence of the Termination Date of this Lease), or as soon thereafter as reasonably possible, Lessor shall prepare and deliver to Lessee an annual reconciliation of all such rental amounts received by Lessor from Lessee and from Qualified Residents, and within ten (10) days thereafter, Lessee shall pay any underpaid portion to Lessor or Lessor shall refund any overpayment to Lessee, as applicable. Amounts due hereunder from Lessee shall be paid to Lessor without further notice, demand, deduction or offset, in lawful money of the United States of America, at Lessor’s address listed in the Basic Master Lease Terms or such other place as Lessor may from time to time designate to Lessee in writing. Upon receipt of the foregoing payment by Lessee to Lessor, Lessor shall assign to Lessee any right Lessor may then have to collect any outstanding and then-unpaid rents or other charges owed by Qualified Residents to Lessor. Notwithstanding the foregoing, prior to making a demand to Lessee for payment of unpaid amounts, Lessor agrees to use good faith, commercially reasonable efforts to enforce the terms of each Qualified Resident’s Unit Lease, including attempting to collect unpaid Scheduled Unit Rent owed and promptly commencing and diligently prosecuting to conclusion unlawful detainer actions if reasonably necessary to recover possession of a Unit from defaulting Qualified Residents as soon as reasonably possible.

**7.3 Late Charges.** Lessee acknowledges that late payment of Rent or other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing charges and late charges which may be imposed upon Lessor by terms of any mortgage or deed of trust covering the Units. Accordingly, if any Rent shall not be received by Lessor or Lessor’s designee within thirty (30) days after it is due and after Lessor has provided written notice to a Qualified Resident and to Lessee of such failure and such failure has not been resolved within ten (10) additional days, Lessee shall pay to Lessor, on behalf of a Qualified Resident with respect to Scheduled Unit Rent and on its own behalf, a late charge equal to the amount calculated with interest on the unpaid amount at twelve percent (12%) per annum (the “**Default Rate**”), on a daily basis based on a 365 day year, plus any attorneys’ fees incurred by

Lessor by reason of Qualified Resident's or Lessee's failure to pay Rent or other charges when due hereunder. Such calculation for the late charge shall begin to accrue on the date immediately following the date that such Rent is due. Acceptance of late Rent without collecting a late charge shall not be a waiver of Lessor's rights under this section.

**8. Use of Units.**

**8.1 Permitted Uses.** Lessee shall take reasonable steps to advise its Qualified Residents to use the Units solely for residential uses as per Lessor's Form Residential Lease, as the same may be amended by Lessor from time to time in its sole discretion. Lessee shall use reasonable efforts to advise its Qualified Residents to not use and to not permit the Units to be used for any other purpose without the prior written consent of Lessor.

**8.2 Compliance with Laws.** Lessee shall comply with and shall use reasonable efforts to advise and thereby cause its Qualified Residents to comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force and with the requirements of any board of fire insurance underwriters or other similar bodies now or hereafter constituted, relating to, or affecting the condition, use or occupancy of the Units (collectively, "**Laws**"), including without limitation those relating to the Fair Housing Act of 1968, as amended, and the Washington Residential Landlord-Tenant Act, Chapter 59.18 RCW. Lessee will not ask, direct or seek Lessor to take any action or to refrain from taking any action where such action or inaction would, in Lessor's reasonable opinion, cause it or the Property to be in violation of any applicable Laws. Furthermore, Lessee will support, and will take reasonable steps to cause all Qualified Residents to support, Lessor's efforts to comply with applicable Laws concerning fair housing and anti-discrimination.

**9. Maintenance.** Lessor shall keep the Units and every part thereof in good condition and repair, including, without limitation, the maintenance, replacement and repair of any doors and door hardware, windows, plumbing, pipes, electrical wiring and conduits within the Units, as well as the common and public areas and facilities of the Units, water, sewer, fire protection and mechanical and electrical distribution systems and equipment serving the Units and the structural portions of the Premises, and otherwise in accordance with all applicable Laws.

**10. Insurance.** The parties acknowledge that Lessor shall require all Qualified Residents to carry Renter's Insurance meeting Lessor's minimum standards pursuant to Lessor's Form Residential Lease. If any Qualified Resident fails to do so, and such failure continues for ten (10) days after notice from Lessor, then Lessor shall provide written notice thereof to Lessee and, unless Lessee causes such Qualified Resident to cure any such failure within twenty (20) days after receipt of written notice from Lessor, Lessee shall be deemed to be providing such Renter's Insurance (provided that Lessee may self-insure for such risks in its sole discretion).

**11. Reconstruction of Damage by Casualty.**

**11.1 Damage.** If all or any portion of the Premises is damaged by fire or other insured casualty, Lessor shall repair the damage, this Lease shall remain in effect, Lessee shall pay all Rent due hereunder, subject to appropriate abatement to the extent one or more Units are not

reasonably occupiable and the affected Qualified Resident does not in fact occupy such Unit, and Lessor shall continue to provide the Services as provided herein to the extent reasonably possible under the circumstances.

**11.2 Cancellation of Lease.** Notwithstanding the foregoing, if more than fifty percent (50%) of the Units then being occupied by Qualified Residents are damaged, then Lessor and Lessee both shall have the right to terminate this Lease upon notice given to the other party within thirty (30) days after the date of the damage. This Lease shall be deemed terminated thirty (30) days after receipt of such notice of termination. If neither party elects to terminate the Lease as provided herein, then this Lease shall continue in full force and effect.

**11.3 Settlement of Insurance Claims.** Lessor shall have the exclusive right to settle and adjust all insurance claims with respect to any damage to the Units and to either retain, all such insurance proceeds and/or repair the damage, all as Lessor shall determine in Lessor's sole discretion.

## **12. Eminent Domain.**

**12.1 Total Condemnation.** If the whole of the Units shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, then the term of this Lease shall terminate and cease as of the date that title or possession shall be transferred in such proceeding, whichever shall first occur, and all rent shall be paid up to that date and Lessee shall have no claim against Lessor for the value of any unexpired term of this Lease.

**12.2 Partial Condemnation.** If a portion (but less than all) of the Premises is appropriated or condemned by eminent domain, then Lessor and Lessee both shall have the right to terminate this Lease upon notice to the other party within thirty (30) days after being notified of the appropriation or condemnation. This Lease shall be deemed terminated as of the date title or possession shall be transferred to the condemning authority, whichever shall first occur. If neither party elects to terminate the Lease as provided herein, then this Lease shall continue in full force and effect.

**12.3 Lessor's Damages.** In the event of any condemnation or taking, whether whole or partial, Lessee shall not be entitled to any part of the award as damages or otherwise for such condemnation, Lessee hereby expressly waiving any claim or right to any part thereof. Lessor shall be entitled to all awards and damages in condemnation, to apply in such manner as Lessor determines in Lessor's sole discretion.

**12.4 Voluntary Sale.** A voluntary sale by Lessor to any public body or agency having the power of eminent domain, either under threat of condemnation or while condemnation proceedings are pending, shall be deemed to be a taking under the power of eminent domain.

**13. Lessee's Default.** The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Lessee:

(a) Lessee's failure to make any payment of undisputed Rent or any other payment required to be made by Lessee hereunder, as and when due, where such failure shall continue for a period of ten (10) days after written notice thereof by Lessor to Lessee.

(b) Except as provided in (a) and (c) of this section, any failure by Lessee to observe or perform any of the material covenants, conditions or provisions of this Lease to be observed or performed by Lessee where such failure shall continue for a period of sixty (60) days after written notice thereof by Lessor to Lessee; provided, however, that if the nature of Lessee's default is such that more than sixty (60) days are reasonably required for its cure, then Lessee shall not be deemed to be in default if Lessee commences such cure within ten (10) days after Lessor's notice and thereafter diligently prosecutes such cure and it is completed within one hundred twenty (120) days thereafter.

(c) Any assignment or subletting by Lessee in violation of this Lease.

**14. Lessor's Remedies Upon Default.** In the event of any material default under or breach of this Lease by Lessee, Lessor may, at any time thereafter, with or without notice or demand and without limiting any right or remedy which Lessor may have by reason of such default or breach, exercise any of the following remedies (all of the following rights and remedies of Lessor shall be subject to the existing rights of Residents pursuant to their respective Unit Leases):

(a) Lessor may continue this Lease in full force and effect, and this Lease shall continue in full force and effect as long as Lessor does not terminate this Lease, and Lessor shall have the right to collect Rent and other amounts when due.

(b) Lessor may terminate Lessee's right to possession of the Units at any time by giving written notice to that effect. No act by Lessor other than giving written notice to Lessee shall terminate this Lease.

(c) Lessor may perform or provide a cure to such default or breach, and shall, together with the costs of such cure (the "**Cure Costs**") collect interest on such Cure Costs accruing at the lesser of (i) the Default Rate, or (ii) the maximum rate permitted by applicable Law, computed from the date of Lessor's payment of such costs to the date of reimbursement. Cure Costs shall be limited to the actual, out-of-pocket expenses incurred by Lessor in curing such default or breach, and shall not include any other related expenses, including, but not limited to, legal fees related thereto.

(d) Lessor may have a receiver appointed for Lessee to take possession of the Units and to apply any rent collected from the Units and to exercise all other rights and remedies granted to Lessor as an attorney-in-fact for Lessee.

(e) Lessor may pursue any other remedy now or hereafter available to Lessor under the laws or judicial decisions of the State of Washington. Lessor may sue periodically to recover damages as they accrue under this Lease, and no one action for accrued damages shall be a bar to a later action for damages subsequently accruing.



**15. Lessor's Default.** Lessor shall not be in default unless Lessor fails to perform material obligations required of Lessor (including without limitation such obligations arising under the Unit Leases with Qualified Residents) within a reasonable time, but in no event later than sixty (60) days after written notice by Lessee to Lessor and to the holder of any first mortgage or deed of trust covering the Building or Property whose name and address shall have theretofore been furnished to Lessee in writing and specifying how Lessor has failed to perform such obligations and the acts required to cure the same; provided, however, that if the nature of Lessor's obligation is such that more than sixty (60) days are required for performance, Lessor shall not be in default if Lessor commences performance within such sixty (60) day period and thereafter diligently prosecutes the same to completion; subject to existing rights of Qualified Residents pursuant to their respective Unit Leases. As of the date of mutual execution hereof, Lessor's lenders' address for notices is as follows:

Washington Trust Bank  
Builder Services Western WA Region  
10500 NE 8th St, Suite 1100  
Bellevue, WA 98004  
Attn: Ken Paauw, Senior Vice President

And to:

FNMA  
c/o Hunt Mortgage  
11501 Outlook, Ste. 300  
Overland Park, KS 66211  
Attn: Hunt Servicing

**16. Lessee's Remedies Upon Default.** Lessee shall have the right to recover its actual damages caused by any default of Lessor under this Lease. In no event shall Lessee have the right to engage in self-help remedies as a result of Lessor's default.

**17. Assignment and Subletting.** Lessee shall not, without the prior written consent of Lessor, which will not be unreasonably withheld, conditioned, or delayed, assign or hypothecate this Lease or any interest herein or sublet all or substantially all of the Units, or permit the use of the Units by any party other than Lessee and Qualified Residents. Any of the foregoing acts without Lessor's prior written consent as aforesaid shall be void and shall, at the option of Lessor, terminate this Lease. This Lease shall not, nor shall any interest of Lessee herein, be assignable by operation of law without the written consent of Lessor. Notwithstanding the foregoing, (a) Lessor consents and agrees that Lessee may propose as Qualified Residents employees of the Lake Washington School District, the Lake Washington Institute of Technology and/or another public entity (the "**Approved Entities**"); and (b) any proposed assignment, subletting, or other transfer of Lessee's rights hereunder to any Approved Entities shall be subject to Lessor's reasonable prior consent (and the consent of any Lender of Lessor, as defined in Section 18.12 below) and Lessor's approval of (and execution by the applicable Approved Entities and Lessee of) commercially reasonable sublease, assignment and assumption, or other transfer documentation.

**18. General Provisions.**

**18.1 Interpretation.**

**18.1.1 Plats and Riders.** Clauses, plats, riders and addendums, if any, affixed to this Lease are a part hereof.

**18.1.2 Construction as Covenants.** Wherever in this Lease it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

**18.1.3 Section Headings.** The section headings and article titles of this Lease shall have no effect upon the construction or interpretation of any part hereof.

**18.1.4 Time of Performance.** Time is of the essence of this Lease and each and all of its provisions in which performance is a factor.

**18.1.5 Partial Invalidity.** Any provision of this Lease which is held to be invalid, void or illegal by any court of competent jurisdiction shall in no way affect, impair or invalidate any other provision hereof.

**18.1.6 United States Funds.** All sums herein mentioned shall be conclusively deemed to refer to the lawful currency of the United States.

**18.1.7 Choice of Law.** This Lease shall be governed by the Laws of the State of Washington.

**18.2 Legal Relationships.**

**18.2.1 Authority of Parties.** Each individual executing this Lease on behalf of Lessor and Lessee represents and warrants that he or she is duly authorized to execute and deliver this Lease and that this Lease is binding upon Lessor and Lessee, as applicable, in accordance with its terms.

**18.2.2 No Partnership.** This Lease shall not be construed as establishing a partnership or joint venture between Lessor and Lessee, and neither party shall be liable for the debts or obligations of the other, except to the extent specifically and expressly agreed to herein. Except as provided herein, neither party hereto may make any representation or create any liability on behalf of the other, and no rights in any third party shall arise by virtue of these presents.

**18.2.3 Successors and Assigns.** The covenants and conditions herein contained, subject to the restrictions upon assignments, apply to and bind the heirs, successors, executors, administrators and assigns of the parties hereto.

### **18.3 Remedies and Liability.**

**18.3.1 Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies available at law or in equity.

**18.3.2 No Waivers.** No express or implied waiver by Lessor of any event of default shall in any way be or be construed to be a waiver of any future or subsequent event of default. The written waiver by Lessor of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Lessor shall not be deemed to be a waiver of any preceding default by Lessee of any term, covenant or condition of this Lease, other than the failure of Lessee to pay the particular rental so accepted, regardless of Lessor's knowledge of such preceding default at the time of the acceptance of such rent.

**18.3.3 Inability to Perform.** Any delays in the performance of any obligation of either party under this Agreement shall be excused to the extent that such delays are caused by wars, national emergencies, natural disasters, strikes, labor disputes, utility failures, governmental regulations, riots, adverse weather, and other similar causes not within the control of such party, and any time periods required for performance shall be extended accordingly.

**18.3.4 Sale of the Building or Property.** In the event of any sale of the Building and Property by Lessor, this Lease shall remain in full force and effect according to its terms. However, in the event a condominium is established for all or any part of the Building or Property, then any Units that are to be included in any such condominium shall be released from this Lease.

**18.3.5 Limitation on Liability.** Anything in this Lease to the contrary notwithstanding, no shareholder, trustee, officer, employee or agent of Lessor shall be personally liable for any debt, claim, demand, judgment, decree, liability or obligation of any kind (in tort, contract or otherwise) of, against or with respect to Lessor arising out of any action taken or omitted to be taken for or on behalf of Lessor under and pursuant to this Lease, and resort shall be made solely to Lessor's interest in the Premises, Building and Property for the payment or performance thereof.

**18.3.6 Attorneys' Fees.** If any action or proceeding is brought by either party against the other under this Lease, each party shall bear their own costs and fees.

**18.4 Brokers.** Lessee warrants that it has had no dealings with any real estate broker or agent in connection with the negotiation of this Lease and it knows of no real estate broker or agent who is entitled to a commission in connection with this Lease. Although Robert Pantley, the Manager of the Managing Member of Lessor, is a licensed real estate broker in the State of Washington, he is not acting in any broker capacity in connection with this Lease.

**18.5 Venue.** The venue of any action brought to interpret or enforce any of the terms of this Lease or otherwise adjudicate the rights or liabilities of the parties hereto shall be laid in King County, Washington.

**18.6 Notices.** All notices and demands which may or are to be required or permitted to be given hereunder shall be in writing. All notices and demands by a party to the other shall be effective only if hand delivered, sent by recognized overnight courier service (e.g., FedEx), or sent by U.S. mail, postage prepaid, addressed to Lessor or Lessee, as applicable, at its address listed below or to such other place as such parties may from time to time designate in a written notice to the other party. The parties' initial addresses for notices shall be as stated in the Basic Master Lease Terms. Notices hand delivered or sent by overnight courier shall be effective upon receipt or refusal to receive; notices sent by U.S. mail shall be effective on the third (3<sup>rd</sup>) day after depositing same in the U.S. mails.

**18.7 Recordation.** Notwithstanding that the Plaza MFTE Agreement itself shall be recorded, neither Lessor nor Lessee may record this Lease.

**18.8 Counterparts.** This Lease may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Lease or any counterpart may be executed and delivered by facsimile or email/.pdf transmission with an executed hard copy to follow.

**18.9 Waiver of Jury Trial.** Lessor and Lessee desire and intend that any disputes arising between them with respect to or in connection with this Lease be subject to expeditious resolution in a court trial without a jury. Therefore Lessor and Lessee each hereby waive the right to a trial by jury of any cause of action, claim, counter claim or cross complaint in any action, proceeding or other hearing brought by either Lessor against Lessee or Lessee against Lessor on any matter whatsoever arising out of, or in any way connected with, this Lease, the relationship of Lessor and Lessee concerning the subject matter of this Lease or the documents related thereto or any claim of injury or damage, or the enforcement of any remedy under any Law now or hereafter in effect concerning such agreements.

**18.10 Entire Agreement.** This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreements or understanding pertaining to any such matters shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. This Lease shall not be effective or binding upon any party until fully executed by both parties hereto.

**18.11 Termination of Plaza MFTE Agreement.** Notwithstanding anything to the contrary elsewhere herein, if the Plaza MFTE Agreement or MFTE Certificate shall expire or be terminated during the Term hereof, then, at Lessor's election, except to the extent the parties otherwise agree, this Lease shall terminate without further renewal at the end of the then-effective calendar year. In such event, with respect to all Qualified Residents then occupying Units: (a) each such Qualified Resident shall remain in possession of such Unit until the expiration of the Term as to such Qualified Resident's Unit Lease; and (b) from and after the effective date of termination of this Lease, Lessor may elect to require each such Qualified Resident to pay then-Market Rent as to such Qualified Resident's Unit.

**18.12 Estoppel Certificates.** Lessee shall, upon at least ten (10) days' prior written notice, provide to Lessor, any person or entity acquiring Lessor's interest in the Building

or Property, or any lender of either (a “**Lender**”), a certificate of estoppel stating: (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified and stating the modifications); (b) the Term of the Lease including any extensions thereto; (c) the dates to which the Rent and any other charges hereunder have been paid by Lessee; (d) the amount of any security deposit (if any) delivered to Lessor; (e) whether or not, to Lessee’s actual knowledge, Lessor is in default (or whether any event or condition exists which, with the passage of time, would constitute an event of default by Lessor under this Lease; (f) the address to which notices to Lessee should be sent; and (g) any other factual information concerning this Lease or the Premises as may be reasonably required by the recipient.

### **18.13 Lender Protections.**

**18.13.1 Lender Approval.** This Lease is subject to the approval of Lessor’s Lender, which Lessor shall use good faith, diligent efforts to obtain. If Lessor has not satisfied or waived the foregoing requirement within one hundred twenty (120) days after mutual execution hereof, despite Lessor’s diligent, good faith efforts, then Lessor may elect to terminate this Lease by written notice to Lessee, in which event the parties shall have no further rights or obligations hereunder.

**18.13.2 Lessor’s Assignment of Lease.** Lessee acknowledges that Lessor has the right to transfer all or any portion of its interest in the Property or Building and in this Lease, and Lessee agrees that in the event of any such transfer (other than a transfer solely for security purposes), Lessor shall automatically be released from all liability under this Lease and Lessee agrees to look solely to such transferee for the performance of Lessor’s obligations hereunder after the date of transfer and such transferee shall be deemed to have fully assumed and be liable for all obligations of this Lease to be performed by Lessor, and Lessee shall attorn to such transferee. Lessee further acknowledges that Lessor may assign its interest in this Lease to its Lender as additional security and agrees that such an assignment shall not release Lessor from its obligations hereunder and that Lessee shall continue to look to Lessor for the performance of its obligations hereunder. Lessee hereby consents to any such assignment for security purposes and agrees to promptly execute at no cost to Lessor any additional commercially reasonable documentation required by Lessor or its Lender to document Lessee’s consent to such assignment for the benefit of such lender and its assigns.

**18.13.3 Subordination, Non-Disturbance, and Attornment.** This Lease shall be subject and subordinate to all present and future ground or underlying leases of the Building or Property and to the lien of any mortgage, trust deed or other encumbrances now or hereafter in force against the Building or Property or any part thereof, if any, and to all renewals, extensions, modifications, consolidations and replacements thereof, and to all advances made or hereafter to be made upon the security of such mortgages or trust deeds (each of which, a “**Loan**”), unless the holders of such Loans or the lessors under such ground lease or underlying leases (each of whom, for purposes of this Section 18.13, shall be deemed a “**Lender**”) require in writing that this Lease be superior thereto. Lessee covenants and agrees, upon written notice from Lender after the occurrence of an event of default by Lessor under such Lender’s Loan, to pay all Rent payable hereunder to Lender, and acknowledges that this Lease and all rights of Lessee hereunder are expressly subordinate to the Loan. In the event any proceedings are brought for the foreclosure of any such mortgage or deed in lieu thereof (each of which, a “**Foreclosure**”) (or if any such ground

lease or underlying lease is terminated), to attorn, without any deductions or set-offs whatsoever, to the lienholder or purchaser or any successors thereto upon any such Foreclosure, or to the ground lessor, if applicable (each of which, a “**Purchaser**”), if so requested to do so by such Purchaser, and to recognize such Purchaser as the lessor under this Lease, provided such Purchaser shall agree to accept this Lease and not terminate this Lease or disturb Lessee’s occupancy, so long as Lessee timely pays the rent and observes and performs the terms and conditions of this Lease to be observed and performed by Lessee, or except as may otherwise be provided in an executed SNDA (described below). The foregoing attornment shall be self-executing and shall be effective upon acquisition of title to the Building or Property by Lender or such other Purchaser, provided that Lessee agrees, within fourteen (14) days after request, to execute a subordination, nondisturbance, and attornment agreement (“**SNDA**”) or such other further instruments or assurances as Lender or any Purchaser may reasonably deem necessary to evidence or confirm the subordination or superiority of this Lease to any such Loans and/or the subordination, nondisturbance, and attornment provisions set forth above.

**18.14 Mediation or Arbitration of Certain Disputes.** In the event of any dispute arising under this Lease, the parties shall make their best efforts to resolve disputes as expeditiously as possible through negotiations at the lowest possible decision-making level, and in the event such negotiations are unsuccessful, to first participate in good faith in the mediation process described below.

**18.14.1 Involvement of Mediator & Mediator’s Consultants.** In the event an issue cannot be resolved by negotiations between the parties for a period of thirty (30) days, the parties shall meet during the immediately succeeding ten (10) days to select a mediator to assist in the resolution of such dispute. If the parties cannot agree upon a mediator within such 10-day period, either party may apply to the American Arbitration Association or the Judicial Arbitration & Mediation Service for the appointment of a mediator according to the process that is established by such entity for such action. The parties shall share equally the cost charged for the mediation of any dispute. The mediator shall have the authority to engage one or more expert consultants with knowledge in the field(s) or area(s) involved in the matter(s) that are in dispute to assist the mediator and the parties to evaluate their respective claims and resolve their dispute.

**18.14.2 Continuation of Efforts in Event of Dispute; No Litigation without Mediation.** Notwithstanding the existence of any dispute between them, the parties shall continue to carry out, without unreasonable delay, all of their respective responsibilities under this Lease which are not affected by the dispute. Neither party to this Lease shall commence any litigation against the other with respect to any claim or dispute arising hereunder without first participating, in good faith, in mediation as contemplated in this Section.

**18.14.3 Binding Arbitration.** In the event of any dispute hereunder concerning the determination of Market Rents or Scheduled Unit Rents that is not satisfactorily resolved via mediation as described above, the matter will be promptly resolved through binding arbitration as follows:

(a) All disputes between the parties arising solely under this Section shall be decided by arbitration in accordance with the then applicable rules of the American Arbitration Association, unless the parties mutually agree otherwise. Notice of the demand for

arbitration shall be filed in writing with the other party to this Lease and with the American Arbitration Association. The demand shall be made within a reasonable time after the dispute, or other matter in question, has arisen. This agreement to arbitrate shall be specifically enforceable under prevailing state or federal arbitration law. A single arbitrator experienced in commercial real property leases shall arbitrate the dispute, provided that in the event that the parties cannot agree on an arbitrator, each party shall select an arbitrator and the two arbitrators so selected shall select a third arbitrator. The panel of three arbitrators shall then arbitrate the dispute.

(b) Except as may be otherwise agreed by the parties to this Lease, the rules governing the issuance of subpoenas and discovery shall be those used by the United States District Courts which are commonly termed the Federal Rules of Civil Procedure. Those rules shall be reasonably adapted to a proceeding before the American Arbitration Association. Any pre-hearing disputes as to subpoenas or discovery shall be resolved by the arbitrator who is assigned to hear the claims, disputes and other matters in question. Only the arbitrator is authorized to issue subpoenas and may do so on the request of any party to the arbitration. Any award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. Venue of any arbitration conducted pursuant to the Lease shall be in King County, Washington.

(c) Notwithstanding anything to the contrary herein, no provision or, nor exercise of any rights under, the foregoing arbitration procedure shall limit the right of Lessor, and the Lessor shall have any right during any dispute to seek, use and employ ancillary or preliminary remedies, judicial or otherwise, for the purpose of preserving, protecting, or evicting Lessee or any Qualified Resident from the Premises. The institution and maintenance of any such actions, remedies, or rights or the pursuit of any such ancillary or provisional remedies or self-help shall not constitute a waiver of Lessor's right to submit a dispute to arbitration as permitted in this Section.

[Signature Page Follows.]

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first above written.

**LESSOR:**

SUSTAINABLE KIRKLAND, LLC, a Washington limited liability company

By: Green Sustainable Investments, LLC, its Managing Member

By: \_\_\_\_\_  
Robert Pantley, its Manager

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

**LESSEE:**

THE CITY OF KIRKLAND, a Washington municipal corporation

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

Name: \_\_\_\_\_

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



STATE OF WASHINGTON  
COUNTY OF KING

ss.

I certify that I know or have satisfactory evidence that Robert Pantley is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the Manager of Green Sustainable Investments, LLC, a Washington limited liability company, the Managing Member of Sustainable Kirkland, LLC, a Washington limited liability company, to be the free and voluntary act of such limited liability company for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington, residing at

My appointment expires \_\_\_\_\_

STATE OF WASHINGTON  
COUNTY OF KING

ss.

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of the City of Kirkland, a Washington municipal corporation, to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington, residing at

My appointment expires \_\_\_\_\_

Exhibit A

Legal Description of the Property  
(ARETÉ)

PARCEL A:

LOTS 31, 32, 33 AND 34, BLOCK 96, KIRKLAND TERRACE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 21 OF PLATS, PAGE 42, IN KING COUNTY, WASHINGTON;

TOGETHER WITH THAT PORTION OF SOUTH HALF OF VACATED ALLEY ADJOINING, WHICH ATTACHED THERETO BY OPERATION OF LAW PURSUANT TO CITY OF KIRKLAND ORDINANCE NO. 996, RECORDED UNDER RECORDING NUMBER 5974155.

PARCEL B:

LOTS 6 THROUGH 14, BLOCK 96, KIRKLAND TERRACE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 21 OF PLATS, PAGE 42, IN KING COUNTY, WASHINGTON;

TOGETHER WITH THAT PORTION OF NORTH HALF OF VACATED ALLEY ADJOINING, WHICH ATTACHED THERETO BY OPERATION OF LAW PURSUANT TO CITY OF KIRKLAND ORDINANCE NO. 996, RECORDED UNDER RECORDING NUMBER 5974155;

TOGETHER WITH THAT PORTION OF VACATED 4TH AVENUE ADJOINING, WHICH UPON VACATION, ATTACHED TO SAID PROPERTY BY OPERATION OF LAW AS VACATED BY CITY OF KIRKLAND ORDINANCE NUMBER 2580, RECORDED UNDER RECORDING NUMBER 8410190421;

AND

LOTS 35, 36 AND 37, BLOCK 96, KIRKLAND TERRACE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 21 OF PLATS, PAGE 42, IN KING COUNTY, WASHINGTON;

TOGETHER WITH THAT PORTION OF SOUTH HALF OF VACATED ALLEY ADJOINING, WHICH ATTACHED THERETO BY OPERATION OF LAW PURSUANT TO CITY OF KIRKLAND ORDINANCE NO. 996, RECORDED UNDER RECORDING NUMBER 5974155.

EXHIBIT A

**Exhibit B**

**Schedule of Units and Rents**

*[\*note to draft: attach\*]*

**Exhibit C**

**Property Management Services**

*[\*note to draft: attach\*]*

**Exhibit D**

**Form Residential Lease**

*[\*note to draft: attach\*]*

## MULTIFAMILY HOUSING LIMITED PROPERTY TAX EXEMPTION CONTRACT

### PLAZA

THIS CONTRACT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between the City of Kirkland, a State of Washington municipal corporation ("City") and Kirkland Sustainable Investments LLC, a Washington limited liability company ("Applicant"), and incorporated attachments and exhibits, contains all terms and conditions agreed to by the City and the Applicant to undertake the activities described herein.

### RECITALS

1. Applicant has applied for a limited property tax exemption as provided for in Chapter 84.14 of the Revised Code of Washington (RCW) and Chapter 5.88 of the Kirkland Municipal Code (KMC) for multifamily residential rental housing ("Multifamily Housing") in the Central Kirkland Residential Target Area, and the City's Director of Planning and Building ("Director") has approved the application; and
2. Applicant has submitted to the City preliminary site plans and floor plans for new Multifamily Housing to be constructed as part of a 111-unit project ("Project") on property situated at 330 4th Street in Kirkland, Washington ("Property"), and as more particularly described in **Exhibit A** which is attached hereto, and incorporated by reference herein; and
3. Applicant is the owner of the Property; and
4. No existing rental housing building that contained four (4) or more occupied dwelling units was demolished on the Property within eighteen (18) months prior to Applicant's submission of its application for limited property tax exemption; and
5. The City has determined that the Multifamily Housing will, if completed, occupied, and owned as proposed, satisfy the requirements for a Final Certificate of Tax Exemption ("Final Certificate").
6. This Contract is entered into pursuant to City Council action taken on \_\_\_\_\_.

NOW, THEREFORE, in consideration of the mutual promises herein, City and Applicant do mutually agree as follows:

1. Definitions.

a. Words and terms capitalized in this Contract, unless explicitly defined in this Contract, shall have the meanings ascribed them by Chapter 5.88 KMC as of the date this Contract was executed or as they are hereafter amended.

b. "Eligible Household." One or more adults and their dependents, which adults certify that their household income does not exceed the applicable percent of the King County Median Income given in Section 4.a. of this Contract.

c. "King County Median Income." The median family income for the Seattle-Bellevue, WA HUD Metro FMR Area as most recently determined by the Secretary of Housing and Urban Development (HUD) under Section 8 of the United States Housing Act of 1937, as amended. In the event that HUD no longer publishes median family income figures for King County, the City may estimate the King County Median Income in such manner as the Director shall determine.

2. Conditional Certificate of Acceptance of Tax Exemption.

City agrees, upon execution of this Contract following approval by the City Council, to issue a Conditional Certificate of Acceptance of Tax Exemption ("Conditional Certificate"), which Conditional Certificate shall expire three (3) years from the date of approval of this Contract by the Council, unless extended by the Director as provided in KMC 5.88.070.

3. Agreement to construct Multifamily Housing.

a. Applicant agrees to construct the Project on the Property, including the Multifamily Housing, substantially as described in the site plans, floor plans, and elevations attached hereto in **Exhibit B**, subject to such modifications thereto as may be required to comply with applicable codes and ordinances, including the design review process. In no event shall Applicant provide fewer than four new dwelling units designed for permanent residential rental or ownership occupancy, nor shall permanent residential housing comprise less than fifty percent (50%) of the gross floor area of the Project constructed pursuant to this Contract.

b. Applicant agrees to construct the Project on the Property, including the Multifamily Housing, and to comply with all applicable zoning requirements, land use regulations, and building and housing code requirements contained in Titles 21, 22, 23, and 25 KMC or other applicable law. Applicant further agrees that approval of this Contract by the City Council, its execution by the Director, or issuance of a Conditional Certificate by the City pursuant to KMC 5.88.060 in no way constitutes approval of proposed improvements on the Property with respect to applicable provisions of Titles 21, 22, 23, and 25 KMC or other applicable law or obligates the City to approve proposed improvements.

c. Applicant agrees that the Multifamily Housing will be completed within three years from the date of approval of this Contract by the Council, unless extended by the Director for cause as provided in KMC 5.88.070.

4. Agreement to provide affordable housing.

Applicant agrees to provide twenty-three (23) dwelling units ("Affordable Units") for rent, reserved for occupancy by Eligible Households and having a monthly housing expense, including rent, one parking space, utilities or an applicable utility allowance, and other expenses required by the Owner as a condition of tenancy, that is no greater than thirty percent (30%) of the monthly average of the King County Median Income given in the table, adjusted for household size.

Affordability Level		Affordable Units
Income Level	Percent of King County Median Income	
Moderate Income	80%	23

5. Location and design of Affordable Units – Affordability Covenant – Conversion.

a. The Affordable Units shall be those units indicated in **Exhibit C**. The Applicant may propose to change the particular units dedicated for the Affordable Units, provided that a total of 23 units are designated for Affordable Units, and the same unit mix and minimum sizes of Affordable Units is maintained. The Applicant shall request in writing the City's approval of any proposed change to the units dedicated for the Affordable Units. The City will review the proposed changes and shall base its approval or disapproval of the proposed changes upon the criteria set forth in this section.

b. The exterior designs of the Affordable Units are to be compatible and comparable with the market rate units. The interior finish of the Affordable Units shall at a minimum include standard features and result in a totally finished and livable home.

c. Prior to issuing a certificate of occupancy, an agreement in a form acceptable to the city attorney ("Covenant") and substantially in the form of **Exhibit D** that addresses price restrictions, Eligible Household qualifications, long-term affordability, and any other applicable topics of the Affordable Units shall be recorded with the King County department of records and elections. This agreement shall be a covenant running with the land and shall be binding on the assigns, heirs and successors of the Applicant. Affordable Units that are provided under this section shall remain as affordable housing for twelve (12) years.

d. In the event the Project is proposed for conversion to condominium, owner-occupied, or non-rental residential use, the Applicant must submit to the City for its approval a plan for preserving the Affordable Units. The City can consider options which would convert the Affordable Units to owner-occupied Affordable Units. In the event a condominium conversion



occurs during the period of the property tax exemption and owner-occupied Affordable Units are provided at the affordability levels as defined in KMC 5.88.020(a) or that have such other comparable level of affordability as provided for in the city's affordable housing multifamily tax exemption incentive program, as regulated through Chapter 112 of the Kirkland Zoning Code, per Section 6 of this Contract, the Affordable Units will continue to be eligible for the property tax exemption for the balance of the exemption period or for the period of time the conversion allows, whichever is appropriate. The balance of the Project would no longer be eligible for the exemption, and City will not cancel the Final Certificate as provided in Section 11 of this Contract.

6. Agreement to Provide Additional Public Benefits.

Pursuant to KMC 5.88.040(7), Applicant agrees to provide additional, substantial public benefits in the form of additional rental housing units made available for City or other public entity employees in the city and/or funding for housing programs to help individuals experiencing homelessness and low income residents to successfully transition to stable, affordable housing, in accordance with the Master Lease between the Applicant and the City dated \_\_\_\_\_.

7. Requirements for Final Certificate of Tax Exemption.

Applicant may, upon completion of the Project and upon issuance by the City of a temporary or permanent certificate of occupancy, request a Final Certificate of Tax Exemption. The request shall be in a form approved by the City and directed to the City's Planning and Building Department and at a minimum include the following:

- a. A statement of expenditures made with respect to the overall Project and the residential and non-residential portions of the Project.
- b. A description of the completed work, including floor area of residential and non-residential area, and a statement of qualification for the exemption.
- c. Documentation that the Multifamily Housing was completed within the required three-year period or any authorized extension and in compliance with the terms of this Contract.
- d. Information regarding Applicant's compliance with the affordability requirements in KMC 5.88.090 and this Contract, which shall include the following:

- (1) Identification of all Affordable Units, whether rented or held vacant to be rented by Eligible Households, the size of the Affordable Units, and the maximum rents and household incomes for each affordable unit at time of initial leasing;
- (2) Rents (or offering rents, as applicable) for all Affordable Units;
- (3) A copy of the application and income verification form used for rental of Affordable Units; and

(4) A copy of the form of lease or rental agreement to be used for Affordable Units; and

e. Any such further information that the Director deems necessary or useful to evaluate eligibility for the Final Certificate.

8. Agreement to Issue Final Certificate.

The City agrees to issue a Final Certificate granting a limited property tax exemption for a period of twelve years, and to file said Final Certificate with the King County Assessor within forty (40) days of submission of all materials required by Paragraph 6, if Applicant has:

- a. Successfully completed the Multifamily Housing in accordance with the terms of this Contract and Chapter 5.88 KMC;
- b. Filed a request for a Final Certificate with the Director and submitted the materials described in Paragraph 6 above;
- c. Paid to the City a fee in the amount necessary to cover the Assessor's administrative costs; and
- d. Met all other requirements provided in Chapter 5.88 KMC for issuance of the Final Certificate.

9. Annual certification.

Within thirty (30) days after the first anniversary of the date the City filed the Final Certificate of Tax Exemption and each year thereafter for the term of the Covenant, Applicant agrees to file a certification or declaration with the Director, verified upon oath or affirmation, with respect to the accuracy of the information provided therein, containing at a minimum the following:

- a. A statement of the occupancy and vacancy of the Multifamily Housing units during the previous year; and
- b. A statement that the Multifamily Housing has not changed use since the date of filing of the Final Certificate; and
- c. A statement that the Multifamily Housing continues to be in compliance with this Contract and the requirements of Chapter 5.88 KMC; and
- d. A description of any improvements or changes to the Project made after the filing of the Final Certificate or the previous certification; and
- e. A statement of the change in ownership of all or any part of the property since the Final Certificate was filed; and

f. Information and documentation sufficient to demonstrate, to the satisfaction of the Director, compliance with the affordability requirements of KMC 5.88.090 and this Contract, which shall, at minimum, include the following:

(1) Identification of each Affordable Unit, and any substitution of Affordable Units during the previous year and for each Affordable Unit, the current Household Income limits and maximum allowed rent.

(2) For each Affordable Unit that was initially occupied or that had a change of tenancy during the previous year, the date of each tenant's initial occupancy, the household size and Household Income of each tenant household at initial occupancy, and the rent charged at initial occupancy.

(3) For each Affordable Unit that was occupied by the current tenant prior to the previous year, the date of each tenant's initial occupancy, the tenant's current Household Income, the tenant's Household Income at initial occupancy, and current contract rent.

g. Information and documentation sufficient to demonstrate, to the satisfaction of the Director, compliance with the agreement to provide additional, substantial public benefits set forth in Section 6, above.

10. No violations for duration of exemption.

For the duration of the exemption granted under Chapter 5.88 KMC, Applicant agrees that the Project and that portion of the Property on which the Project is constructed will have no violations of applicable zoning requirements, land use regulations, and building and housing code requirements contained in KMC Titles 21, 22, 23, and 25 or other applicable law for which the Planning and Building Department or its functional successor shall have issued a notice of violation, citation or other notification that is not resolved by a certificate of compliance, certificate of release, withdrawal, or another method that proves either compliance or that no violation existed, within the time period for compliance, if any, provided in such notice of violation, citation or other notification or any extension of the time period for compliance granted by the Director.

11. Notification of transfer of interest or change in use.

Applicant agrees to notify the Director within thirty (30) days of any transfer of Applicant's ownership interest in the Project or that portion of the Property on which the Project is constructed. Applicant further agrees to notify the Director and the King County Assessor within sixty (60) days of any change of use of any or all of the Multifamily Housing on the Property to another use. Applicant acknowledges that such a change in use may result in cancellation of the tax exemption and imposition of additional taxes, interest and penalties pursuant to State law.

12. Cancellation of exemption - Appeal.

a. The City reserves the right to cancel the Final Certificate if at any time the Multifamily Housing, the Project or that portion of the Property on which the Project is constructed no longer complies with the terms of this Contract or with the requirements of Chapter 5.88 KMC, or for any other reason no longer qualifies for an exemption.

b. If the exemption is canceled for non-compliance, Applicant acknowledges that state law requires that an additional real property tax is to be imposed in the amount of: (1) the difference between the tax paid and the tax that would have been paid if it had included the value of the non-qualifying improvements, dated back to the date that the improvements became non-qualifying; (2) a penalty of 20% of the difference calculated under paragraph (a) of this paragraph; and (3) interest at the statutory rate on delinquent property taxes and penalties, calculated from the date the tax would have been due without penalty if the improvements had been assessed without regard to the exemptions provided by Chapter 84.14 RCW and 5.88 KCW. Applicant acknowledges that, pursuant to RCW 84.14.110, any additional tax owed, together with interest and penalty, become a lien on that portion of the Property on which the Project is constructed and attach at the time the portion of the Property is removed from multifamily use or the amenities no longer meet applicable requirements, and that the lien has priority to and must be fully paid and satisfied before a recognizance, mortgage, judgment, debt, obligation, or responsibility to or with which the Property may become charged or liable. Applicant further acknowledges that RCW 84.14.110 provides that any such lien may be foreclosed in the manner provided by law for foreclosure of liens for delinquent real property taxes.

c. Upon determining that a tax exemption is to be canceled, the Director, on behalf of the City Council, shall notify the property owner by certified mail, return receipt requested. The property owner may appeal the determination in accordance with KMC 5.88.100(h).

13. Amendments.

No modification of this Contract shall be made unless mutually agreed upon by the parties in writing and unless in compliance with the provisions of KMC 5.88.065.

14. Binding effect.

The provisions, covenants, and conditions contained in this Contract are binding upon the parties hereto and their legal heirs, representatives, successors, assigns, and subsidiaries.

15. Audits and inspection of records.

Applicant understands and agrees that the City has the right to audit or review appropriate records to assure compliance with this Contract and Chapter 5.88 KMC and to perform evaluations of the effectiveness of the Multifamily Limited Property Tax Exemption program. Applicant agrees

to make appropriate records available for review or audit upon seven days' written notice by the City.

16. Notices.

All notices to be given pursuant to this Contract shall be in writing and shall be deemed given when hand-delivered within normal business hours, when actually received by facsimile transmission, or two business days after having been mailed, postage prepaid, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing.

APPLICANT: Kirkland Sustainable Investments LLC  
450 Central Way, Suite 3000  
Kirkland, WA 98033  
Attn: Angela Rozmyn

CITY: City of Kirkland  
Planning and Building Department  
City of Kirkland  
123 Fifth Avenue  
Kirkland, WA 98033  
Attn: Director

With a copy to:

A Regional Coalition for Housing (ARCH)  
16255 NE 87<sup>th</sup> Street, Suite A-3  
Redmond, WA 98052

17. Severability.

In the event that any term or clause of this Contract conflicts with applicable law, such conflict shall not affect other terms of this Contract that can be given effect without the conflicting terms or clause, and to this end, the terms of the Contract are declared to be severable. However, if the severable term prevents the City from receiving the benefits of having affordable housing as set forth in Chapter 84.14 RCW and Chapter 5.88 KMC, then this Contract shall be deemed terminated, or may be terminated, as soon as possible in compliance with any applicable law.

18. Exhibits.

The following exhibits are attached to this Contract and incorporated herein by this reference:

<b>Exhibit A</b>	<b>Legal Description</b>
<b>Exhibit B</b>	<b>Project Site Plan</b>
<b>Exhibit C</b>	<b>Designation of Affordable Units</b>
<b>Exhibit D</b>	<b>Form of Declaration of Affordable Housing Covenants</b>

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the dates indicated below.

THE CITY OF KIRKLAND

APPLICANT

---

Tracey Dunlap  
Its: Deputy City Manager

---

Angela Rozmyn  
Its: Agent

Approved as to Form

---

City Attorney

STATE OF WASHINGTON            }  
                                          }  
COUNTY OF KING                }        ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of the CITY OF KIRKLAND, who executed the foregoing document on behalf of said City, and acknowledged the said document to be the free and voluntary act and deed of said City, for the uses and purposes therein mentioned, and on oath stated that s/he was authorized to execute said document.

IN WITNESS WHEREOF I have given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Washington.  
Print Name \_\_\_\_\_  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

STATE OF WASHINGTON            }  
                                          }  
COUNTY OF KING                }        ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be the \_\_\_\_\_ of \_\_\_\_\_, corporation, who executed the foregoing instrument on behalf of the said corporation, and acknowledged the said document to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that s/he was authorized to execute said document.

IN WITNESS WHEREOF I have given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Washington.  
Print Name \_\_\_\_\_  
Residing at \_\_\_\_\_

My commission expires \_\_\_\_\_



**EXHIBIT A**

**LEGAL DESCRIPTION**

**EXHIBIT B**

**PROJECT SITE PLAN**

Attached.

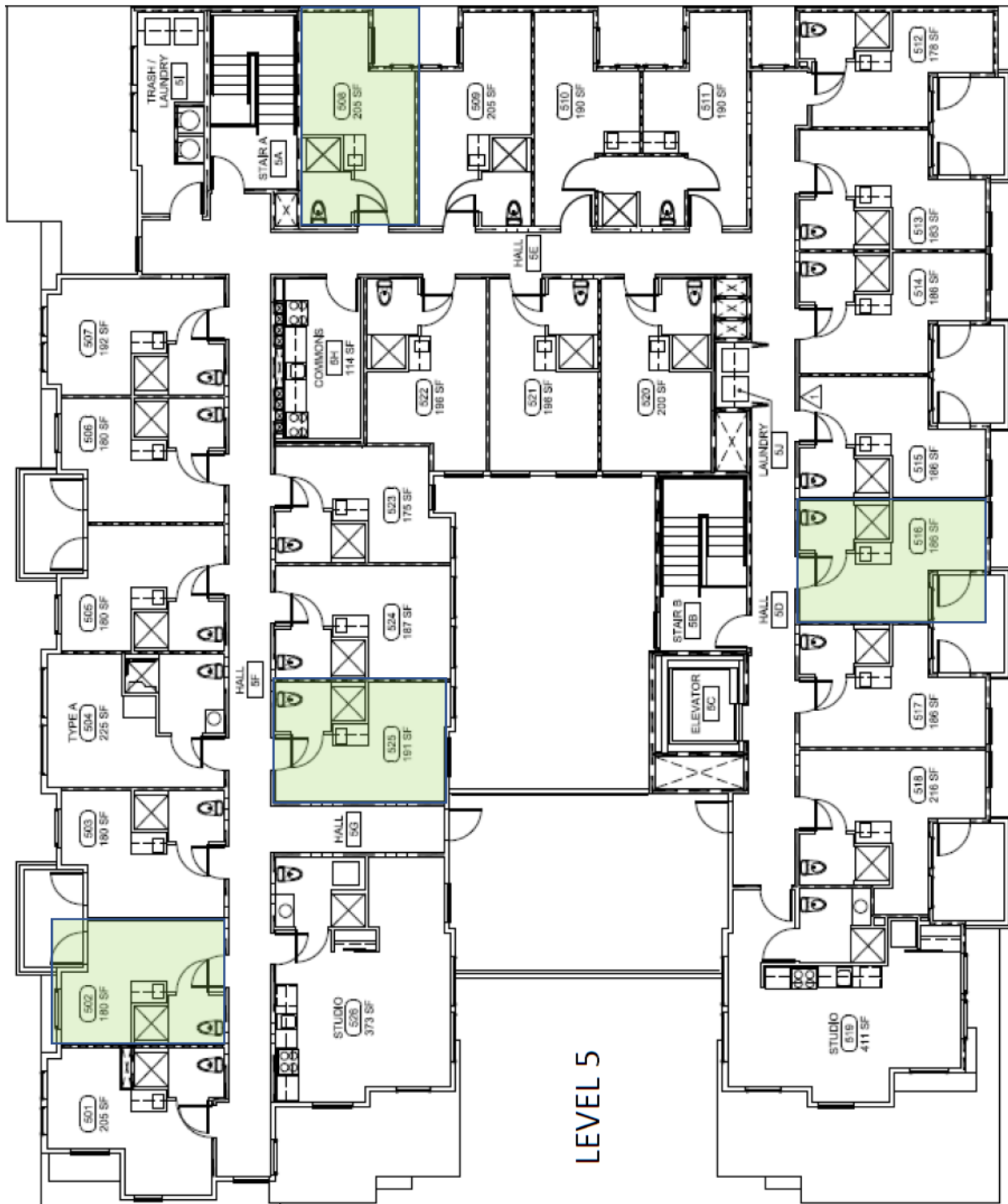


LEVEL 2



LEVEL 3





## EXHIBIT C

### DESIGNATION OF AFFORDABLE UNITS

<b>Unit Number</b>	<b>Unit Type</b>	<b>Unit Size (sq ft)</b>
204	Residential Suite	186
205	Residential Suite	207
211	Residential Suite	205
217	Residential Suite	179
219	Residential Suite	179
228	Residential Suite	182
306	Residential Suite	180
312	Residential Suite	190
316	Residential Suite	186
323	Residential Suite	196
325	Residential Suite	175
403	Residential Suite	180
407	Residential Suite	192
409	Residential Suite	205
417	Residential Suite	186
421	Residential Suite	196
425	Residential Suite	191
502	Residential Suite	180
508	Residential Suite	205
516	Residential Suite	186
525	Residential Suite	191
209	Studio	300
308	Studio	308

See attached drawing(s).





**EXHIBIT D**

**FORM OF DECLARATION OF AFFORDABLE HOUSING COVENANTS**

Attached.

WHEN RECORDED, MAIL TO:

City of Kirkland  
123 Fifth Avenue  
Kirkland, Washington 98033  
ATTN: City Clerk  
Planning Dept Housing Planner

**WASHINGTON STATE COUNTY AUDITOR/RECORDER/S INDEXING FORM**

<b>Document Title(s)</b> <i>(or transactions contained therein):</i> <b>DECLARATION OF AFFORDABLE HOUSING COVENANTS--PLAZA</b>		
<b>Grantor(s)</b> <i>(Last name first, then first name and initials):</i>  1. <u>KIRKLAND SUSTAINABLE INVESTMENTS LLC</u>  <input type="checkbox"/> Additional names on page ___ of document.		
<b>Grantee(s)</b> <i>(Last name first, then first name and initials):</i>  1. <u>CITY OF KIRKLAND</u>  <input type="checkbox"/> Additional names on page ___ of document.		
<b>Legal Description:</b> Section 5, Township 25 North, Range 5 East, Quarter Section NW <u>KIRKLAND TERRACE ADD TGW POR VAC ALLEY ADJ. PLAT BLOCK: 96. PLAT LOT: 1 THRU 5.</u>		
<b>Other Details:</b>  <input checked="" type="checkbox"/> The complete or remaining legal description is on Exhibit "A" of document.		
<b>Assessor's Property Tax Parcel Account Number(s):</b>  <u>390010-1390</u>		
<b>Reference Number(s) of Documents assigned or released:</b>  <input type="checkbox"/> Additional reference numbers on page _____ of document.		
<b>City Contact:</b> Dawn Nelson	<b>Phone:</b> 425-587-3230	<b>City I.D. #</b> 15576 <input type="checkbox"/> CAO

***The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document.***

## DECLARATION OF AFFORDABLE HOUSING COVENANTS

### PLAZA

SECTION 1 —	DEFINITIONS AND INTERPRETATION
SECTION 2 —	RESIDENTIAL RENTAL PROPERTY
SECTION 3 —	AFFORDABLE UNITS FOR ELIGIBLE HOUSEHOLDS
SECTION 4 —	REPORTING REQUIREMENTS
SECTION 5 —	SECTION 8 CERTIFICATE HOLDERS
SECTION 6 —	LEASE PROVISIONS
SECTION 7 —	SALE OR TRANSFER OF THE PROJECT
SECTION 8 —	TERM
SECTION 9 —	NO DISCRIMINATION
SECTION 10 —	COVENANTS RUN WITH LAND
SECTION 11 —	ENFORCEMENT
SECTION 12 —	SUBORDINATION, TERMINATION, RIGHTS RESERVED BY HUD
SECTION 13 —	ESTOPPEL CERTIFICATE
SECTION 14 —	AGREEMENT TO RECORD
SECTION 15 —	RELIANCE
SECTION 16 —	GOVERNING LAW
SECTION 17 —	NO CONFLICT WITH OTHER DOCUMENTS
SECTION 18 —	AMENDMENTS
SECTION 19 —	NOTICES
SECTION 20 —	MULTIFAMILY HOUSING LIMITED PROPERTY TAX EXEMPTION AGREEMENT
SECTION 21—	SEVERABILITY
SECTION 21 —	CONSTRUCTION
SECTION 22 —	TITLES AND HEADINGS

### EXHIBITS

"A"	LEGAL DESCRIPTION OF PROPERTY
"B"	DESIGNATION OF AFFORDABLE UNITS
"C"	CERTIFICATE OF HOUSEHOLD ELIGIBILITY
"D"	ANNUAL PROJECT CERTIFICATION

**DECLARATION OF AFFORDABLE HOUSING COVENANTS  
PLAZA**

THIS DECLARATION OF AFFORDABLE HOUSING COVENANTS (the "Covenant") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the CITY OF KIRKLAND, a Municipal Corporation of the State of Washington (the "City"); and KIRKLAND SUSTAINABLE INVESTMENTS LLC, a Washington limited liability company (the "Owner").

**WITNESSETH:**

This Covenant is predicated upon the following facts:

1) The Owner is the owner of property located at 330 4th Street in Kirkland, Washington. Owner intends to develop said property by constructing and renting one hundred eleven (111) dwelling units (the "Project") subject to City approval and such other approvals by State and local agencies, as required.

2) The Owner's proposed Project shall include twenty-three (23) affordable rental units for Moderate-Income Households ("Eligible Households," as the term is defined below). Such affordable rental units shall be of such bedroom quantity and quality as are in proportion to the overall proportion of bedroom quantity and quality of all of the rental units in the Project.

3) The City finds that the Project will benefit the City by providing affordable rental housing for Eligible Households.

4) The Owner has indicated its willingness to accept certain conditions affecting the use of the Property. It is the purpose of this Covenant to set forth the conditions under which the City has approved the Project and to impose enforceable restrictions on the use and occupancy of the rental portion of the Project.

5) This Covenant is entered into pursuant to Chapter 112 of the Kirkland Zoning Code, which implements the Affordable Housing policies of the City.

6) Owner has applied for a limited property tax exemption for twelve (12) years as provided for in Chapter 84.14 RCW and Chapter 5.88 KMC for multi-family residential rental housing ("Multifamily Housing") in the Central Kirkland Residential Targeted Area, and the Director of Planning and Building ("Director") has approved the application.

NOW, THEREFORE, for and in consideration of the mutual promises aforesaid and made and relied upon by the parties hereto, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner and the City agree as follows:

**SECTION 1 — DEFINITIONS AND INTERPRETATION**

Capitalized terms used herein shall have the following meanings unless the context in which they are used clearly requires otherwise.

"Affordable Rent" means a monthly housing expense, including Utilities or an applicable Utility Allowance for tenant-paid utilities and any expenses required by the Owner as a condition

of tenancy (including but not limited to renter’s insurance, pest control, and sewer system capacity charges), that is no greater than thirty percent (30%) of the monthly King County Median Income level(s) for Eligible Households, as shown in the following table, as adjusted for Household Size. If a tenant pays for Utilities separately from rent, the Affordable Rent shall be reduced by the amount of the applicable Utility Allowance.

**Affordable Rent Levels**

	<b>Percent of King County Median Income</b>
Moderate Income	80%

“Affordable Units” means the 23 units in the Project as selected by the Owner and as approved by the City or its Designee, as set forth in **Exhibit B**, and reserved for occupancy by Eligible Households pursuant to Section 3.

“City” means the City of Kirkland.

“Completion Date” means the date of the completion of the acquisition, construction, purchase, reconstruction and equipping, as the case may be, of the Project, as that date shall be certified as provided in Section 4.

“Covenant” means this Declaration of Affordable Housing Covenants between the City and the Owner.

“Designee” means A Regional Coalition for Housing (“ARCH”) or such other agency as may be designated by the City in writing to the Owner. The City shall notify the Owner of any determination not to utilize ARCH as its Designee for purposes of this designation.

“Eligible Household” means one or more adults and their dependents, which adults certify that they meet the qualifications for eligibility set forth below in this definition, in Section 3.F. of this Covenant, and as set forth in the Certificate of Household Eligibility attached hereto as Exhibit C and incorporated by reference herein, and who certify that their Household Income does not exceed the applicable percent of the King County Median Income, as set forth in this definition and Section 3.F. of this Covenant, adjusted for Household Size.

**Maximum Household Income at Initial Occupancy**

<b>Income Level</b>	<b>Percent of King County Median Income</b>
Low Income Households	50%
Moderate Income Households	80%

“Household Income” means all income from all household members over the age of 18 residing in the household. Income consists of those items listed in **Exhibit C**, Certificate of Household Eligibility (e.g. wages, interest income, etc.). Income of dependents who reside within a household for less than four (4) months of the year will not be counted toward Household Income.

"Household Size" means the average household size assumed for purposes of calculating Affordable Rents as follows:

<u>UNIT TYPE</u>	<u>AVERAGE HOUSEHOLD SIZE</u>
Studio	1 Person
1 Bedroom	1.5 Persons
2 Bedroom	3 Persons
3 Bedroom	4.5 Persons

"King County Median Income" means the median family income for the Seattle-Bellevue, WA HUD Metro FMR Area as most recently determined by the Secretary of Housing and Urban Development ("HUD") under Section 8(f)(3) of the United States Housing Act of 1937, as amended. In the event that HUD no longer publishes median family income figures for King County, the Director may estimate the King County Median Income in such manner as the Director shall determine.

"Lender" means HUD/FHA, Veterans Administration ("VA"), Federal National Mortgage Association ("FNMA"), Federal Home Loan Mortgage Corporation ("FHLMC"), or another party acquiring such loan upon foreclosure of a deed of trust or mortgage ("Deed of Trust") insured, made or held by HUD/FHA, VA, FNMA, FHLMC; or an institutional third-party lender or investor.

"Owner" means Kirkland Sustainable Investments LLC and its successors and assigns, and any surviving, resulting or transferee entity.

"Owner Representative" means the person or persons (who may be employees of the Owner) designated from time to time to act hereunder on behalf of the Owner in a written certification furnished to the City or its Designee, containing a specimen signature of such person or persons and signed by the Owner or on behalf of the Owner by a duly authorized representative of the Owner.

"Project" means the building, structures and other improvements to be constructed on the Property, and all equipment, fixtures and other property owned by the Owner and located on, or used in connection with, such buildings, structures and other improvements and all functionally related and subordinate facilities.

"Property" means the real property which will be devoted to the Project as more particularly described in Exhibit A which is attached hereto, and incorporated by reference herein, and all rights and appurtenances thereunto appertaining.

"Property Tax Exemption Agreement" means that agreement titled Multifamily Housing Limited Property Tax Exemption Agreement between the City and Owner dated \_\_\_\_\_.

"Qualified Project Period" means twelve (12) years from the Completion Date.

"Utilities" means basic residential utility services, including heat, gas, electricity, water, sewer, and solid waste and recycling services, but excluding sewer system capacity charges and telephone, internet, and television services.

"Utility Allowance" means a deduction to Affordable Rent, established by the City or its Designee, for tenant-paid Utilities.

SECTION 2 — RESIDENTIAL RENTAL PROPERTY

A. General Description. The Owner will acquire and construct the Project for purposes of providing multifamily housing, and neighborhood retail uses, and the Owner shall own, manage, and operate (or cause the management and operation of) the Project to provide multifamily housing comprising a building or structure or several inter-related buildings or structures, each consisting of more than one dwelling unit and neighborhood retail uses and facilities functionally related and subordinate thereto, and no other facilities. As used herein facilities functionally related and subordinate to the Project shall include facilities for use by the tenants, including, for example, recreational facilities, parking areas, and other facilities which are reasonably required for the Project, for example, heating and cooling equipment, trash disposal equipment, or units of resident managers or maintenance personnel. The multi-family rental housing shall be scheduled to be completed within three (3) years from the date of City approval of the application for multi-family housing property tax exemption, or within a longer period if authorized by the City.

B. Similar Quality Construction. The interior finish and quality of construction of the Affordable Units shall at a minimum be comparable to entry level rental housing in the city of Kirkland, and each dwelling unit in the Project shall contain facilities for living, sleeping, eating, cooking and sanitation for a single person or a household which are complete, separate and distinct from other dwelling units in the Project and will include a sleeping area, separate bathing facility, and a cooking range, refrigerator and sink.

C. Conversion to Condominium. In the event the Project is proposed for conversion to condominium, owner-occupied, or non-rental residential use, the Owner must submit to the City for its review a plan for preserving the Affordable Units. The City can consider options which would convert the Affordable Units to owner occupancy by Eligible Households. The Owner must receive authorization from the City prior to conversion to condominium, owner-occupied, or non-rental residential use. This section does not waive the Owner's obligations to comply with any other law or regulations pertaining to conversion to ownership use.

SECTION 3 — AFFORDABLE UNITS FOR ELIGIBLE HOUSEHOLDS

A. Number of Affordable Units. The Owner shall lease or rent, or make available for lease or rental, to the general public, all of the Affordable Units in the Project. The Owner shall designate all of the Affordable Units, reserved for occupancy by Eligible Households, as follows:

**Dwelling Units**

<b>Unit Type (Bedrooms)</b>	<b>Affordable Units</b>	<b>Total Units</b>
	Moderate-Income	
Residential Suites	21	101
Studio	2	10
Open 1-bedroom	0	0

1-bedroom	0	0
2-bedroom	0	0
Total	23	111

B. Designation/Re-designation of Affordable Units. The Owner agrees to rent the dwelling unit(s) designated in **Exhibit B** as Affordable Unit(s). Units so designated shall have substantially the same equipment and amenities as other dwelling units in the Project with the comparable number of rooms. The Affordable Unit(s) shall be intermingled with all other dwelling units and shall have a unit mix comparable to the overall mix of units in the Project. The City or its Designee shall approve or deny the proposed Affordable Units based upon the criteria set forth in this section.

The Owner, from time to time, may propose to change the particular units designated as Affordable Units, provided that at all times at least 23 of all of the residential units in the Project are designated as Affordable Units, and provided that at all times the same unit mix is retained. The Owner shall notify the City or its Designee of the proposed change in writing for the City's or its Designee's approval. The City or its Designee will review the proposed changes and shall approve or deny the proposed changes based upon the criteria set forth in this Section.

C. Affordable Units Rent Level. The monthly rent for the Affordable Units occupied by Eligible Households shall not exceed the applicable Affordable Rents, and for each specific tenant, shall be adjusted no more than once every twelve (12) months, and in no event within the first twelve months of occupancy.

D. Renting Affordable Units to Eligible Households. During the Qualified Project Period, the Owner shall rent or lease the Affordable Units to Eligible Households and, if at any time the Owner is unable to rent or lease the Affordable Units, the Affordable Units shall remain vacant pending rental or lease to Eligible Households.

E. Equal Access to Common Facilities. Tenants in the Affordable Units shall have equal access to enjoyment of all common facilities of the Project.

F. Qualifying Eligible Household Income for Affordable Units at Initial Occupancy and Recertification. Qualifying Eligible Household Income at time of occupancy may not exceed the applicable percent of King County Median Income set forth in the table below, adjusted for Household Size. At time of annual recertification, a household will remain eligible for an Affordable Unit as long as Household Income does not exceed the Maximum Recertification Income set forth in the table below, adjusted for Household Size. If at the time of recertification Household Income exceeds the Maximum Recertification Income limit for the income level initially qualified for by a household, then within 90 days either such household must either pay market rent and the next available comparable market rate unit must be rented as an Affordable Unit; or the household must vacate the unit, unless otherwise prohibited by law, to make it available for an Eligible Household.



**Maximum Permitted Income Levels**

<b>Income Level(s)</b>	<b>Maximum Income at Initial Occupancy</b>	<b>Maximum Recertification Income</b>
Moderate Income	80%	100%

G. Household Size Limits for Affordable Units. The Owner shall utilize the following occupancy standards for Affordable Units:

<u>Unit Size</u>	<u>Household Size</u>
Studio	1–2 Persons
1 Bedroom	1–2 Persons
2 Bedroom	2–4 Persons
3 Bedroom	3–6 Persons

**SECTION 4 — REPORTING REQUIREMENTS**

A. Notice of Occupancy Permit. Within thirty (30) days of issuance of any final inspection or, if applicable, occupancy permits, the Owner shall notify the City's Planning and Building Department [Attn: Housing Planner] and its Designee of receipt of the first certificate of occupancy for the Project.

B. City Mailing List. The City or its Designee maintains a mailing list of households interested in occupying Affordable Units. From time to time the City or its Designee will provide to the Owner the names of persons from the mailing list. In determining which eligible applicants shall be rented Affordable Units, the Owner shall, subject to Section 4.C. below, reasonably consider persons on the mailing list, and when they were placed on the mailing list.

C. Completion of Certificate of Household Eligibility. Prior to allowing any household to occupy any Affordable Unit, the Owner shall require the prospective tenant to complete a Certificate of Household Eligibility that shall be substantially in the form set forth in **Exhibit C**. The Owner shall also undertake a good faith effort to verify the applicant's Household Income, as reported on the completed Certificate. The Owner's obligation to verify the reported Household Income shall be limited to requesting copies of and reviewing the applicant's federal income tax returns, unless the Owner has actual knowledge, or reason to believe, that the information provided by the applicant is materially inaccurate. In the event federal income tax returns are not available, the Owner shall verify Household Income using wage or salary statements, or other income records that the City or its Designee may consider appropriate.

D. Annual Recertification of Residents. On an annual basis, the Owner shall require all households occupying Affordable Units to complete and return to the Owner an updated Certificate of Household Eligibility. The Owner shall undertake a good faith effort to verify the reported Household Income, as reported in the completed Certificate. The Owner's obligation to verify the Household Income shall be limited to obtaining a copy of and reviewing the tenant's

federal income tax returns, unless the Owner has actual knowledge or reason to believe that the information provided by the household is materially inaccurate. In the event federal income tax returns are not available, the Owner shall verify Household Income using wage or salary statements, or other income records the City or its Designee may consider appropriate.

The Owner shall file certifications with the City or its Designee, by attachment to the Annual Project Certification required pursuant to Subsection E of this Section. The City or its Designee may investigate independently to verify certifications submitted by the Owner.

E. Annual Project Certification. After the Completion Date and until 90% of the rental units are occupied, the Owner shall, on a quarterly basis, file with the City or its Designee an Annual Project Certification, in substantially the form of **Exhibit D**. Thereafter, the Owner shall file such certification annually on or before March 31<sup>st</sup>, which must set forth the required information for the preceding year.

F. Maintain Complete Records. The Owner shall maintain complete and accurate records pertaining to the Affordable Units and shall permit any duly authorized representative of the City, including, without limitation, its Designee, to inspect the books and records of the Owner pertaining to the Affordable Units, and if applicable, incomes of Eligible Households residing in the Project. The Owner's failure to maintain such records or failure to allow examination by the City or any duly authorized representative shall constitute a default hereunder.

G. Form of Certification. Notwithstanding anything in this Section to the contrary, the Owner shall submit all documentation required by this Section on the forms designated herein, which may be modified by the City or its Designee from time to time. Changes to forms by the City or its Designee shall not significantly enlarge the Owner's obligations hereunder.

H. Monitoring Fee. The City may assess, and the Owner agrees to pay fees to cover the costs of monitoring the Owner's compliance with income and affordability restrictions of this Covenant.

## SECTION 5 — SECTION 8 CERTIFICATE HOLDERS

The Owner shall accept as tenants for Affordable Units, on the same basis as all other prospective households, households who are recipients of Federal certificates for rent subsidies pursuant to the existing program under Section 8 of the United States Housing Act of 1937, as amended. The Owner shall not apply, or permit the application of, management policies or lease provisions with respect to the Project which have the effect of precluding occupancy of Units by holders of Section 8 certificates.

## SECTION 6 — LEASE PROVISIONS

A. It is the Owner's responsibility to screen and select tenants for desirability and credit worthiness. Except as restricted in this Covenant, such selection is within the Owner's discretion. If written management policies exist, or exist in the future, with respect to the Project, the City or its Designee may review such written policies and may require changes in such policies, if necessary, so that they comply with the requirements of this Covenant.

B. All leases for Affordable Units shall contain clauses wherein each individual lessee: (i) certifies the accuracy of the statements made in the Certificate of Household Eligibility, (ii) agrees that the household income and other eligibility requirements shall be deemed substantial and material obligations of the tenancy, and (iii) agrees that misrepresentation in the certification is a material breach of the lease, entitling the Owner to terminate the lease for the Affordable Unit.

#### SECTION 7 — SALE OR TRANSFER OF THE PROJECT

The Owner hereby covenants and agrees not to sell, transfer or otherwise dispose of the Project or any portion thereof without first providing a written notice from the purchaser stating that the purchaser understands, and will comply with the Owner's duties and obligations under this Covenant. Such notice must be received by the City or its Designee at least 10 days prior to the close of escrow.

#### SECTION 8 — TERM

This Covenant shall become effective upon its execution and delivery and shall continue in full force and effect throughout the Qualified Project Period, unless sooner modified or terminated in accordance with Section 12 hereof.

#### SECTION 9 — NO DISCRIMINATION

The Owner shall not discriminate on the basis of race, creed, religion, color, sex, sexual orientation, age, national origin, marital status, or presence of any mental or physical handicap as set forth in RCW 49.60.030, as now existing and as may be amended, in the lease, use, or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project.

#### SECTION 10 — COVENANTS RUN WITH LAND

The City and Owner hereby declare their understanding and intent that the covenants, conditions and restrictions set forth herein directly benefit the land (i) by enhancing and increasing the enjoyment and use of the Project by certain Eligible Households, and (ii) by furthering the public purposes of providing housing for Eligible Households.

The City and the Owner hereby declare that the covenants and conditions contained herein shall bind and the benefits shall inure to, respectively, the Owner and their successors and assigns and all subsequent owners of the Project or any interest therein, and the City and its successors and assigns, all for the Qualified Project Period. Except as provided in Section 12 of this Covenant, each and every contract, deed or other instrument hereafter executed conveying the Project or any portion thereof or interest therein shall contain an express provision making such conveyance subject to the covenants and conditions of this Covenant, provided however,

that any such contract, deed or other instrument shall conclusively be held to have been executed, delivered and accepted subject to such covenants and conditions, regardless of whether or not such covenants and conditions are set forth or incorporated by reference in such contract, deed or other instrument.

## SECTION 11 — ENFORCEMENT

A. Enforcement Provisions. The Owner shall exercise reasonable diligence to comply with the requirements of this Covenant and shall correct any such noncompliance within sixty (60) days after such noncompliance is first discovered by the Owner or would have been discovered by the exercise of reasonable diligence, or within 60 days after the Owner receives notice of such noncompliance from the City or its Designee; provided however, that such period for correction may be extended by the City if the Owner is exercising due diligence to correct the noncompliance. If such noncompliance remains uncured after such period, then the Owner shall be in default and the City on its own behalf may take any one or more of the following steps:

1) By any suit, action or proceeding at law or in equity, require the Owner to perform its obligations under this Covenant or the Property Tax Exemption Agreement, or enjoin any acts or things which may be unlawful or in violation of the rights of the City hereunder; it being recognized that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of the Owner's default;

2) Have access to, and inspect, examine and make copies of, all of the books and records of the Owner pertaining to the Project. Provided, however, the City or its Designee shall not divulge such information to any third party unless required by law or unless the same is necessary to enforce the City's rights hereunder; and

3) Take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants, conditions and agreements of the Owner under this Covenant.

4) The Owner hereby grants to the City or the Designee the option, upon Owner's default under this Covenant, for the Qualified Project Period to lease up to 23 of the units in the Project as mutually selected by the City or its Designee and the Owner for the purpose of subleasing such units to Eligible Households, but only to the extent necessary to comply with the provisions of this Covenant. The City or its Designee may lease from the Owner the units at the Affordable Rent level less a reasonable management fee to reimburse the City or its Designee for any expenses incurred in connection with such sublease. The City or its Designee may terminate its lease of the units in the Project upon determination that the Owner is no longer in default pursuant to this Covenant.

B. Hold Harmless. The Owner shall defend, indemnify, and hold the City, its officers, officials, employees, volunteers and its Designee and any other party authorized hereunder to enforce the terms of this Covenant, harmless from any and all claims, injuries, damages, losses, or suits, including attorney fees, arising out of or resulting from this Covenant.

C. No Third-Party Beneficiaries. The provisions of this Covenant and of the documents to be executed and delivered in connection herewith are and will be for the benefit of the Owner, the City and its Designee only and are not for the benefit of any third party (including, without limitation, any tenants or tenant organizations), and accordingly, no third party shall have the right to enforce the provisions of this Covenant or of the documents to be executed and delivered in connection herewith.

## SECTION 12 — SUBORDINATION, TERMINATION, RIGHTS RESERVED BY HUD

A. Notwithstanding any provision in this Covenant to the contrary, all of the provisions of this Covenant shall terminate and have no further force and effect upon the occurrence of one of the following events:

1) Foreclosure of a HUD/FHA insured loan is initiated under which the Project is held as a security.

2) Title to the Project is acquired by Lender or HUD/FHA by deed in lieu of foreclosure of the Deed of Trust.

3) Title to the Project is acquired by HUD/FHA, Veterans Administration ("VA"), Federal National Mortgage Association ("FNMA"), Federal Home Loan Mortgage Corporation ("FHLMC") or another party upon foreclosure of a deed of trust or mortgage ("Deed of Trust") insured, made or held by HUD/FHA, VA, FNMA, FHLMC; or an institutional, third-party lender or investor (collectively, "Lender").

4) The Deed of Trust, if insured by HUD/FHA, is assigned to HUD/FHA.

5) Notwithstanding anything in this Covenant to the contrary, enforcement of this Covenant shall not serve as a basis for (i) default under the Deed of Trust insured by HUD/FHA or any other Lender, or (ii) an acceleration of the loan secured by the Deed of Trust ("Loan"), or result in any claim against the Project, the Loan proceeds, any reserve or deposit required by HUD/FHA or any other Lender in connection with the Loan transaction or the rents or other income from the Project other than from available surplus cash as that term is defined by HUD/FHA or any other Lender.

B. Notwithstanding anything in this Covenant to the contrary:

1) All of the provisions of this Covenant are subordinate and subject to the Deed of Trust, the Loan, and all documents relating to the Loan ("Loan Documents"), if any, as well as all applicable HUD/FHA mortgage insurance regulations, related HUD/FHA administrative requirements, Section 8 of the U.S. Housing Act of 1937, as amended, and the regulations thereunder, as amended, and the rights of the Lender thereunder. In the event of any conflict between this Covenant and the provisions of any applicable HUD/FHA mortgage insurance regulations, related HUD/FHA administrative requirements, Section 8 of the U.S. Housing Act of 1937, as amended, and the regulations thereunder, as amended, the applicable HUD/FHA mortgage insurance regulations, related HUD/FHA administrative requirements, Section 8 of the U.S. Housing Act of 1937, as amended, and the regulations thereunder, as amended, will control.

2) Lender shall take no role in monitoring compliance with state and federal use and occupancy requirements; nor shall Lender be required to provide notice to third parties of actions under the Deed of Trust, if any.

3) No amendment to this Covenant will be effective without the prior written consent of Lender, if any.

4) The Owner, its successors or assigns, will take all steps necessary to comply with this Covenant; provided that the Owner, its successors or assigns, shall not be required to take action prohibited by, or to refrain from action required by Lender, pursuant to the National Housing Act (as amended), applicable HUD/FHA mortgage insurance regulations, related administrative requirements, Section 8 of the Housing Act of 1937, as amended, and the regulations thereunder, as amended, or the Loan and the Loan Documents.

#### SECTION 13 — ESTOPPEL CERTIFICATE

The City agrees, upon the request of the Owner or its successor in interest, to promptly execute and deliver to the Owner or its successor in interest or to any potential or actual purchaser, mortgagor or encumbrance of the Project, a written certificate stating, if such is true, that the City has no knowledge of any violation or default by the Owner of any of the covenants or conditions of this Covenant, or if there are such violations or defaults, the nature of the same.

#### SECTION 14 — AGREEMENT TO RECORD

The Owner shall cause this Covenant to be recorded in the real property records of King County, Washington. The Owner shall pay all fees and charges incurred in connection with such recording and shall provide the City or its Designee with a copy of the recorded document.

#### SECTION 15 — RELIANCE

The City and the Owner hereby recognize and agree that the representations and covenants set forth herein may be relied upon by City and the Owner. In performing its duties and obligations hereunder, the City may rely upon statements and certificates of the Owner and Eligible Households, and upon audits of the books and records of the Owner pertaining to occupancy of the Project. In performing its duties hereunder, the Owner may rely on the Certificates of Household Eligibility unless the Owner has actual knowledge or reason to believe that such Certificates are inaccurate.

#### SECTION 16 — GOVERNING LAW

This Covenant shall be governed by the laws of the State of Washington, except to the extent such laws conflict with the laws of the United States or the regulations of federally insured depository institutions or would restrict activities otherwise permitted in relation to the operation of federally insured depository institutions.

SECTION 17 — NO CONFLICT WITH OTHER DOCUMENTS

The Owner warrants that it has not executed and will not execute, any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event the requirements of this Covenant are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith except for the Multifamily Housing Limited Property Tax Exemption Agreement referenced in Section 21 herein.

SECTION 18 — AMENDMENTS

This Covenant shall be amended only by a written instrument executed by the parties hereto or their respective successors in title, and duly recorded in the real property records of King County, Washington. Amendments to **Exhibit B** shall be considered to be approved in writing when the revised **Exhibit B** is signed by the Owner and the City or its Designee without the need for a further written document attaching the revised exhibit and striking prior versions of the exhibit. In the event of conflict between versions of **Exhibits B**, the version maintained by the City or its Designee as the then-current version, signed by Owner and City or its Designee, shall prevail.

SECTION 19 — NOTICE

Any notice or communication hereunder, except legal notices, shall be in writing and may be given by registered or certified mail. The notice or communication shall be deemed to have been given and received when deposited in the United States Mail, properly addressed with postage prepaid. If given otherwise, it shall be deemed to be given when delivered to and received by the party to whom addressed. Such notices and communications shall be given to the parties hereto at their following addresses:

If to the City:	Planning Department-Housing Planner City of Kirkland 123 Fifth Avenue Kirkland, WA 98033
	With a copy to the Designee A Regional Coalition for Housing (ARCH) 16225 NE 87th Street, Suite A-3 Redmond, WA 98052 Attn: Housing Planner

If to the Owner:	Kirkland Sustainable Investments LLC 450 Central Way, Suite 3000 Kirkland, WA 98033 Attn: Angela Rozmyn
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Any party may change its address for notices upon ten (10) days prior written notice to the other parties. Legal counsel for a party may deliver notices on behalf of the represented party and such notice shall be deemed delivered by such party.

#### SECTION 20 — MULTIFAMILY HOUSING LIMITED PROPERTY TAX EXEMPTION AGREEMENT

This Covenant is subject to the terms and conditions of the Limited Property Tax Exemption Agreement. In the event of any conflict between the terms of this section and the terms of the Property Tax Exemption Agreement, the terms of the Property Tax Exemption Agreement shall control. All amounts payable hereunder shall be paid without any set-off or deduction of any nature. This provision shall survive termination of the Covenant prior to expiration of the Qualified Project Period.

#### SECTION 21 — SEVERABILITY

If any provision of this Covenant shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

#### SECTION 22 — CONSTRUCTION

Unless the context clearly requires otherwise, words of the masculine, feminine or neuter gender shall be construed to include each other gender when appropriate and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. All the terms and provisions hereof shall be construed to effectuate the purposes set forth in this Covenant and to sustain the validity hereof.

#### SECTION 23 — TITLES AND HEADINGS

The titles and headings of the sections of this Covenant have been inserted for convenience of reference only, are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof or be considered or given any effect in the construing this document or any provision hereof or in ascertaining intent, if any question of intent shall arise.

[Signature page follows.]



IN WITNESS WHEREOF, the Owner and City have each executed the Declaration of Affordable Housing Covenants on the Date first above written.

Owners:

City:

\_\_\_\_\_  
Angela Rozmyn  
Its Agent

\_\_\_\_\_  
Tracey Dunlap  
Its: Deputy City Manager

Approved as to Form:

\_\_\_\_\_  
City Attorney

STATE OF WASHINGTON            }  
                                          }  
COUNTY OF KING                }        ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of the CITY OF KIRKLAND, who executed the foregoing document on behalf of said City, and acknowledged the said document to be the free and voluntary act and deed of said City, for the uses and purposes therein mentioned, and on oath stated that s/he was authorized to execute said document.

IN WITNESS WHEREOF I have given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Washington.  
Print Name \_\_\_\_\_  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

STATE OF WASHINGTON            }  
                                          }  
COUNTY OF KING                }        ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be the \_\_\_\_\_ of \_\_\_\_\_, corporation, who executed the foregoing instrument on behalf of the said corporation, and acknowledged the said document to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that s/he was authorized to execute said document.

IN WITNESS WHEREOF I have given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Washington.  
Print Name \_\_\_\_\_  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

## EXHIBIT A

### LEGAL DESCRIPTION

Parcel 1:

Lots 1, 2, 3, 4 and 5, Block 96, Kirkland Terrace, according to the plat thereof, recorded in Volume 21 of Plats, Page(s) 42, in King County, Washington;

Together with that portion of vacated alley, which alley was vacated pursuant to City of Kirkland Ordinance No. 996, recorded under recording number 5974155, adjacent to and lying Southerly of said Lots 1, 2, 3, 4 and 5, Block 96, Kirkland Terrace, according to the plat thereof recorded in Volume 21 of Plats, Page 42, in King County, Washington, said portion more particularly described as follows:

The Northerly 2.50 feet of said vacated alley and the Southerly 2.75 feet of the Northerly 5.25 feet of the Westerly 57.60 feet of said vacated alley;

Situate in the County of King, State of Washington.

Parcel 2:

An easement for shared access and utilities as established by instrument recorded under recording number 20160811001442.

## EXHIBIT B

### DESIGNATION OF AFFORDABLE UNITS

<b>Unit Number</b>	<b>Unit Type</b>	<b>Approx. Unit Size (sq ft)</b>
204	Residential Suite	186
205	Residential Suite	207
211	Residential Suite	205
217	Residential Suite	179
219	Residential Suite	179
228	Residential Suite	182
306	Residential Suite	180
312	Residential Suite	190
316	Residential Suite	186
323	Residential Suite	196
325	Residential Suite	175
403	Residential Suite	180
407	Residential Suite	192
409	Residential Suite	205
417	Residential Suite	186
421	Residential Suite	196
425	Residential Suite	191
502	Residential Suite	180
508	Residential Suite	205
516	Residential Suite	186
525	Residential Suite	191
209	Studio	300
308	Studio	308

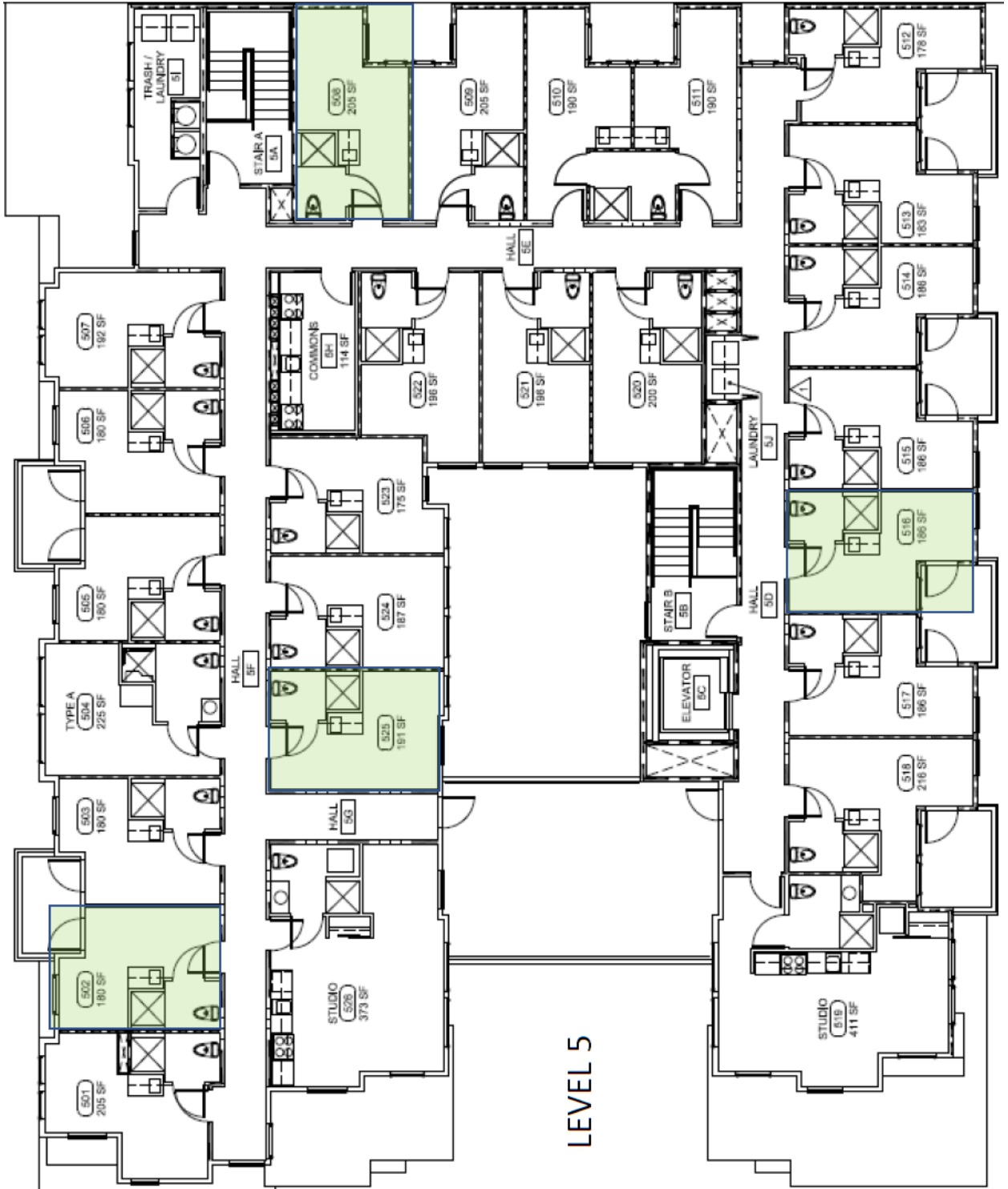
See attached diagram.











LEVEL 5

**EXHIBIT C**

**FORM OF CERTIFICATION OF HOUSEHOLD ELIGIBILITY**

**CERTIFICATION OF HOUSEHOLD ELIGIBILITY**

I, \_\_\_\_\_, and I, \_\_\_\_\_, as applicants for rental of the following Affordable Unit, do hereby represent and warrant that my/our adjusted annual income is \$\_\_\_\_\_.

Property Name: \_\_\_\_\_ Property Address: \_\_\_\_\_

Unit # \_\_\_\_\_ No. of Bedrooms: \_\_\_\_\_ Household size:\* \_\_\_\_\_

People with Disabilities: Yes / No

Names and ages of all household members:

\_\_\_\_\_, Age \_\_\_\_\_                      \_\_\_\_\_, Age \_\_\_\_\_  
\_\_\_\_\_, Age \_\_\_\_\_                      \_\_\_\_\_, Age \_\_\_\_\_  
\_\_\_\_\_, Age \_\_\_\_\_                      \_\_\_\_\_, Age \_\_\_\_\_

My/Our household income from the attached computation is \$\_\_\_\_\_, and includes all income I/we received for the date I/we execute a rental agreement for an affordable unit, or the date on which I/we will initially occupy such unit, whichever is earlier.

This affidavit is made with the knowledge that it will be relied upon by the City to determine maximum income for eligibility. I/We warrant that all information set forth in this Certification of Household Eligibility is true, correct and complete based upon information I/We deem reliable, and that the estimate contained in the preceding paragraph is reasonable and based upon such investigation as the undersigned deemed necessary. I/we will assist the Owner in obtaining any information or documents required to verify the statements made in this Certification.

I/We acknowledge that I/we have been advised that the making of any misrepresentation or misstatement in this affidavit will constitute a material breach of my/our agreement with the Owner to lease the unit and will entitle the Owner to prevent or terminate my/our occupancy of this unit by institution of an action for eviction or other appropriate proceedings.

I/We do hereby swear under penalty of perjury that the foregoing statements are true and correct.

Applicant \_\_\_\_\_ Applicant \_\_\_\_\_

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

Mailing Address \_\_\_\_\_ Phone \_\_\_\_\_

### INCOME COMPUTATION

"Household income" includes all items listed below, from all household members over the age of 18. Income of dependents over 18, who reside in the unit for less than four (4) months of the year will not be counted toward household income.

For the previous 12-month period, indicate income received from the following sources:

- a) The full amount, before any payroll deductions, of wages, salaries, overtime pay, commissions, fees, tips, bonuses and other compensation for personal services, and payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay and any earned income tax credit to the extent that it exceeds tax liability; \_\_\_\_\_
  - b) Net income from operations of a business or profession or net income of any kind from real or personal property; \_\_\_\_\_
  - c) Interest and dividends; \_\_\_\_\_
  - d) The full amount of periodic payments received from Social Security, pensions, retirement funds, annuities, insurance policies, disability or death benefits, alimony, child support, or any similar type of periodical payments, and any regular contributions or gifts from persons not residing in the unit; \_\_\_\_\_
  - e) Public assistance payments; \_\_\_\_\_
  - f) Regular and special allowances and pay of a member of the Armed Forces who is a spouse or head of the family. \_\_\_\_\_
- TOTAL \$ \_\_\_\_\_

(NOTE: The following are not considered income: occasional, infrequent gifts of money; one-time payments from insurance policies or an inheritance settlement; scholarships or student loans for tuition, fees or books; foster child care payments; the value of Food Stamp coupons; hazardous duty pay to a member of the Armed Forces; relocation payments; assistance received under the Low-Income Home Energy Assistance Program or any similar program).

**EXHIBIT D**

FORM OF ANNUAL PROJECT CERTIFICATION

**ANNUAL PROJECT CERTIFICATION**

Project: \_\_\_\_\_

Address: \_\_\_\_\_

The undersigned hereby certifies that during the annual Reporting Period ending \_\_\_\_\_, \_\_\_\_\_ units or \_\_\_\_\_ percent of the residences in the Project were utilized as Affordable housing, as required in the Regulatory Agreement, in the following manner:

- a) \_\_\_\_\_ units or \_\_\_\_\_ percent of units in the Project were rented to Tenants who did not exceed the applicable income limits of \_\_\_\_\_% or \_\_\_\_\_% of area median income;
- b) \_\_\_\_\_ units or \_\_\_\_\_ percent of units in the Project were rented to Tenants who exceeded \_\_\_\_\_% or \_\_\_\_\_% of area median income but were below \_\_\_\_\_% or \_\_\_\_\_% of area median income;
- c) \_\_\_\_\_ units or \_\_\_\_\_ percent of units in the Project were rented to Tenants who now exceed \_\_\_\_\_% or \_\_\_\_\_% of area median income, and therefore can no longer be considered eligible for Affordable units;
- d) \_\_\_\_\_ units or \_\_\_\_\_ percent of units in the Project are being held vacant for eligible Tenants.

The above information and that on the attached sheet(s) has been verified as required by the Regulatory Agreement between the City of \_\_\_\_\_ and

Owner (Company) Name: \_\_\_\_\_

\_\_\_\_\_  
Name of Owner

\_\_\_\_\_  
Signature of Owner

Date: \_\_\_\_\_, 20\_\_\_\_

## TENANT QUALIFICATION SUMMARY

# of Units	A. Low-Income: Tenants whose household incomes do not exceed _____% of the King County Median Family Income, adjusted for Household Size.
	1. Qualified during the Reporting Period;
	2. Previously qualified, and still qualifies (household income does not exceed _____% of Median Income);
	3. Overqualified (household income exceeds _____% of Median Income), and:
	a. Vacated the Affordable Unit.
	b. Tenant remains in unit, now paying Low-Moderate- or Moderate-Income rent if qualified (and another unit has been substituted as a Low-Income unit).
	B. Low-Moderate-Income: Tenants whose household income does not exceed _____% of Median Income, adjusted for Household Size.
	1. Qualified during the Reporting Period;
	2. Previously qualified, and still qualifies (household income does not exceed _____% of Median Income);
	3. Overqualified (household income exceeds _____% of Median Income), and,
	a. Vacated the Affordable Unit.
	b. Tenant remains in unit, now paying Moderate-Income rent if qualified (and another unit has been substituted as a Low-Moderate-Income unit).
	C. Moderate-Income Household: Tenants whose household income does not exceed _____% of the Median Income, adjusted for Household Size.
	1. Qualified during the Reporting Period (i.e., new tenants);
	2. Previously qualified, and still qualifies (household income does not exceed _____% of Median Income);
	3. Overqualified (household income exceeds _____% of Median Income), and vacated (or will vacate) Affordable Unit.

**ANNUAL PROJECT CERTIFICATION**

PROJECT NAME \_\_\_\_\_

REPORTING PERIOD: \_\_\_\_\_ through \_\_\_\_\_.

Does Contract Rent include:										Are residents required to buy:	
Electricity	Yes	Water &	Yes	Garbage?	Yes	Renter's	Yes	One Parking	Yes	Renter's	Yes
& Gas?	No	Sewer?	No		No	insurance?	No	Space?	No	insurance?	No
<b>For each "No" enter the Allowance or Fee below (except Renter's Insurance, if it's not required).</b>											

Unit #	Tenant Name	Family Size	Move-in Date	Current Lease Date	Current HH Income*	Unit Type (BRs)	Affrd Level	Max Housing Expense**	Electric & Gas Allowance	Water & Sewer Allowance ***	Garbage Allowance (or Fee)	Insurance Allowance	Parking Fee	Max Rent	Current Contract Rent
															\$0
															\$0
															\$0
															\$0
															\$0
															\$0
															\$0
															\$0
															\$0

\* As of report date or when current lease was signed.  
 \*\* Find on "Rental and Income Guidelines."  
 \*\*\* Maximum Housing Expenses also include water, sewer, and garbage. If these are paid for directly by the tenant (in addition to rent), the maximum rent must be reduced by the typical costs to the tenant of such utilities, or a set allowance established by the city (or ARCH).

- |                                            |                                      |
|--------------------------------------------|--------------------------------------|
| <u>ARCH Electric &amp; Gas Allowances:</u> | <u>Water &amp; Sewer Allowances:</u> |
| Studio                                     | Studio                               |
| 1-bedroom                                  | 1-bedroom                            |
| 2-bedroom                                  | 2-bedroom                            |
| 3-bedroom                                  | 3-bedroom                            |
| 4-bedroom                                  | 4-bedroom                            |
| 5-bedroom                                  | 5-bedroom                            |

Vacancy Status: The following units are vacant as of \_\_\_\_\_ and are being held vacant for eligible Tenants.

PUBLICATION SUMMARY  
OF ORDINANCE NO. O-4697

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO THE MULTIFAMILY HOUSING PROPERTY TAX EXEMPTION AND PROVIDING FOR DIFFERENT REQUIREMENTS IN THE EVENT OF RENTAL UNIT PROJECTS PROVIDING SUBSTANTIAL ADDITIONAL PUBLIC BENEFITS.

SECTION 1. Amends the definition of "affordable" as it relates to multi-family housing property tax exemptions.

SECTION 2. Sets forth project eligibility requirements for multi-family housing property tax exemptions.

SECTION 3. Amends the exemption duration criteria for multifamily housing property tax exemption requirements.

SECTION 4. Authorizes the City Manager to execute Master Lease Agreements.

SECTION 5. Authorizes the City Manager to execute the MFTE Contract and Covenant.

SECTION 6. Provides a severability clause for the ordinance.

SECTION 7. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the \_\_\_\_ day of \_\_\_\_\_, 2019.

I certify that the foregoing is a summary of Ordinance O-4697 approved by the Kirkland City Council for summary publication.

\_\_\_\_\_  
Kathi Anderson, City Clerk