

RESOLUTION R-5059

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO ENTER INTO A CONTRACT WITH KIRKLAND CROSSINGS, L.L.C., REGARDING A POTENTIAL MULTIFAMILY HOUSING PROPERTY TAX EXEMPTION AND APPROVING THE ISSUANCE OF A CONDITIONAL CERTIFICATE OF TAX EXEMPTION.

WHEREAS, Kirkland Crossings, L.L.C., has applied for a limited property tax exemption as provided for in Chapter 84.14 RCW and Chapter 5.88 KMC for multifamily residential rental housing ("Multifamily Housing") in the Lakeview Residential Targeted Area, and the Director of Planning and Community Development has approved the application; and

WHEREAS, Kirkland Crossings, L.L.C. has submitted to the City preliminarily site plans and floor plans for one hundred eighty-five (185) units of new Multifamily Housing to be constructed as part of a two hundred forty-three (243) unit mixed use project on property situated at 3801 108th Avenue NE, Kirkland, Washington; and


WHEREAS, the Director has determined the multifamily housing will, if completed, occupied, and owned as proposed, satisfy the requirements for a Final Certificate of Tax Exemption,

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Manager or his designee is authorized and directed to execute on behalf of the City of Kirkland, an agreement substantially similar to that attached as Exhibit "A", which is entitled "Multifamily Housing Limited Property Tax Exemption Agreement" and issue a Conditional Certificate of Acceptance of Tax Exemption.

Passed by majority vote of the Kirkland City Council in open meeting this 17th day of June, 2014.

Signed in authentication thereof this 17th day of June, 2014.


MAYOR

Attest:


City Clerk

MULTIFAMILY HOUSING LIMITED PROPERTY TAX EXEMPTION AGREEMENT

THIS AGREEMENT, entered into this _____ day of _____, 2014, between the City of Kirkland, a State of Washington municipal corporation ("City") and Kirkland Crossings, L.L.C ("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 RCW and Chapter 5.88 KMC for multifamily residential rental housing ("Multifamily Housing") in the Lakeview Residential Target Area, and the City's Director of Planning and Community Development ("Director") has approved the application; and

2. Applicant is the owner of Unit A ("Unit A") of KTOD Condominium ("KTOD Condominium"). KTOD Condominium is situated at 3801 108th Avenue NE in Kirkland, Washington (Property). The legal description of the Property and Unit A are set forth in Exhibit A1 and Exhibit A2 respectively.

3. Applicant has submitted to the City preliminary site plans and floor plans for one hundred and eighty-five (185) units of new Multifamily Housing ("Project-Phase A") to be constructed as part of a 243-unit project ("Overall Project") on the Property;

4. KTOD LLC a Washington Limited Liability Company ("Unit B Owner") is the owner of Unit B of KTOD Condominium ("Unit B"). Unit B Owner has submitted to the City preliminary site plans and floor plans for fifty-eight (58) units of new Multifamily Housing to be constructed in Unit B (the "Project-Phase B"). The legal description of Unit B is set forth on Exhibit A3;

5. No existing rental housing building that contained four (4) or more occupied dwelling units was demolished on the Property within 18 months prior to Applicant's submission of its application for limited property tax exemption; and

6. 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.

7. This Agreement 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. Conditional Certificate of Acceptance of Tax Exemption.

City agrees, upon execution of this Agreement 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 Agreement by the Council, unless extended by the Director as provided in KMC 5.88.070.

2. Agreement to construct Multifamily Housing.

a. Applicant agrees to construct Project-Phase A in Unit A, 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 (4) 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 Overall Project constructed pursuant to this Agreement.

b. Applicant agrees to construct the Project-Phase A in Unit A, and to comply with all 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. Applicant further agrees that approval of this Agreement by the City Council, its execution by the Director, or issuance of a Conditional Certificate by the City pursuant to KMC chapter 5.88.060 in no way constitutes approval of proposed improvements on the Property with respect to applicable provisions of KMC Titles 21, 22, 23, and 25 or other applicable law or obligates the City to approve proposed improvements.

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

3. Agreement to provide affordable housing.

Applicant agrees to provide sixty-one (61) "Affordable Units" for rent, specifically available for Low- and Moderate-Income Households as shown in the following table, and affordable to households whose household annual income does not exceed the percent of the King County median household income given in the table, adjusted for household size, as determined by HUD, and no more than thirty percent (30%) of the monthly household income, based on the chart below, is paid for monthly housing expenses (rent and an appropriate utility allowance). Up to fifty-eight (58) Affordable Units may be provided in Phase B so long as Unit B Owner complies with the requirements of the Affordable Units as provided in the Regulatory Agreement for Unit B between Unit B Owner and the City of Kirkland. In the event Unit B Owner does not meet the requirements for the Affordable Units in Unit B, to the extent there are less than 58 Affordable Units that meet the requirement of this Agreement in Unit B, then the Applicant will need to

provide additional Affordable Units consistent with the provisions of this Agreement in Unit A, or otherwise be subject to the provisions of Section 10 of this Agreement.

	Percent of King County Median Income		Number of Affordable Units	
	Income for Determining Maximum Housing Expense	Maximum Income at Initial Occupancy	Phase A	Phase B
Low-Income	50%	50%	0	37
Moderate-Income	70%	70%	3	21
Total			3	58

4. Location and design of Affordable Units – Affordability Agreement – Conversion.

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 sixty-one (61) units are designated for Affordable Units. The unit mix of Affordable Units provided in Unit A shall be proportional to the unit mix (by bedroom size) of overall units in Unit A. The Applicant shall request in writing the City's approval of any proposed change to the units dedicated in Unit A 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.

The exterior designs of the Affordable Units in Unit A 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.

Prior to issuing a certificate of occupancy, an agreement in a form acceptable to the city attorney ("Affordability Covenant") and substantially in the form of Exhibit D1 for Unit A and D2 for Unit B, herein incorporated by reference as hereafter recorded, 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 the life of the Overall Project.

In the event Project-Phase A 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 in Phase A to owner occupancy 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 Section 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 Agreement, the Affordable Units in Unit A 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-Phase A converted to other use would no longer be eligible for the exemption, and City will not cancel the Final Certificate of Tax Exemption as provided in Section 10 of this Agreement.

5. Requirements for Final Certificate of Tax Exemption.

Applicant may, upon completion of the Overall 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 Department and at a minimum include the following:

a. A statement of expenditures made with respect to the Overall Project (both Phase A and Phase B) and the residential and non-residential portions of the Overall 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 Agreement.

d. Information regarding Applicant's and Unit B Owner's compliance with the affordability requirements in KMC 5.88.090 and this Agreement, which shall include the following:

(1) Identification of all Affordable Units in Unit A and Unit B, whether rented or held vacant to be rented by Income Eligible Occupants, the respective sizes of the Affordable Units in Unit A and Unit B, 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 in both Unit A and Unit B;

(3) A copy of the application and income verification form used for rental of Affordable Units in both Unit A and Unit B; and

(4) A copy of the respective form of leases or rental agreements to be used for Affordable Units in both Unit A and Unit B; and

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

6. Agreement to Issue Final Certificate.

The City agrees to file a Final Certificate of Tax Exemption for Unit A, with an exemption period of twelve (12) years with the King County Assessor within forty (40) days of submission of all materials required by paragraph 5, if Applicant has:

- a. Successfully completed the Multifamily Housing in accordance with the terms of this Agreement and KMC chapter 5.88;
- b. Filed a request for a Final Certificate of Tax Exemption with the Director and submitted the materials described in Paragraph 5 above;
- c. Paid to the City a fee in the amount of \$150.00 to cover the Assessor's administrative costs; and
- d. Met all other requirements provided in KMC chapter 5.88 for issuance of the Final Certificate of Tax Exemption.

7. 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 Affordability 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 in Unit A during the previous year; and
- b. A statement that the Multifamily Housing in Unit A has not changed use since the date of filing of the Final Certificate of Tax Exemption; and
- c. A statement that the Multifamily Housing in Unit A continues to be in compliance with this Agreement and the requirements of KMC chapter 5.88; and
- d. A description of any improvements or changes to the Project-Phase A 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 Unit A 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 Agreement, which shall, at minimum, include the following. For purposes of this section the requirements for Unit B shall be met by the reporting provided by Unit B Owner pursuant to the provisions of Regulatory Agreement for Unit B:

(1) Identification of each Affordable Unit in Unit A and Unit B, 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 in Unit A and Unit B 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 in Unit A and Unit B 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.

8. No violations for duration of exemption.

For the duration of the exemption granted under KMC chapter 5.88, Applicant agrees that the Project-Phase A located in Unit A 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 Department of Planning and Community Development 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.

9. 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 Unit A. 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 Unit A 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.

10. Cancellation of exemption - Appeal.

a. The City reserves the right to cancel the Final Certificate of Tax Exemption if at any time either the Multifamily Housing, the Project-Phase A in Unit A, or the Project-Phase B in Unit B no longer complies with the terms of this Agreement or with the requirements of KMC chapter 5.88, or for any other reason no longer qualifies for an exemption, and Applicant fails to cause any such non-compliance to be cured pursuant to the provisions of Section 11 of the Regulatory Agreement for Unit A.

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 on Unit A 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 KMC chapter 5.88. Applicant acknowledges that, pursuant to RCW 84.14.110, any additional tax owed with respect to Unit A, together with interest and penalty, become a lien on Unit A and attach at the time Unit A 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 Unit A 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).

11. Amendments.

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

12. Binding effect.

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

13. 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 Agreement and KMC chapter 5.88 and to perform evaluations of the effectiveness of the Multifamily Tax Exemption program. Applicant agrees to make appropriate records available for review or audit upon seven days' written notice by the City.

14. Notices.

All notices to be given pursuant to this Agreement 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 Crossings, L.L.C
11624 SE 5th St, Suite 200
Bellevue, WA 98005

Attn: Derek Straight

With a copy to KTOD LLC (Unit B Owner):

C/O RV Manager LLC
10604 NE 38th Place, Suite 215
Kirkland, WA 98033

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

15. Severability.

In the event that any term or clause of this Agreement conflicts with applicable law, such conflict shall not affect other terms of this Agreement that can be given effect without the conflicting terms or clause, and to this end, the terms of the Agreement 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 RCW Chapter 84.14 and KMC Chapter 5.88, then this agreement shall be deemed terminated, or may be terminated, as soon as possible in compliance with any applicable law.

16. Estoppel Certificates.

The City agrees, upon the request of Applicant or its successor in interest, to provide an Estoppel Certificate pursuant to the provisions of Section 11 of the Regulatory Agreement for Unit A

17. Exhibits.

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

Exhibit A1	Legal Description of Property
Exhibit A2	Legal Description of Unit A
Exhibit A3	Legal Description of Unit B
Exhibit B	Unit A and Unit B Site Plans
Exhibit C	Designation of Affordable Units, Unit A and Unit B
Exhibit D1	Regulatory Agreement and Affordability Covenant Unit A
Exhibit D2	Regulatory Agreement and Affordability Covenant Unit B

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

THE CITY OF KIRKLAND

APPLICANT: Kirkland Crossings, L.L.C., a
Washington limited liability company

Eric R. Shields
Its: Planning Director

[REDACTED]
Its:

Approved as to Form

City Attorney

EXHIBIT A1

LEGAL DESCRIPTIONS OF PROPERTY

UNITS A AND B, KTOD CONDOMINIUM, THE DECLARATION OF WHICH IS RECORDED UNDER KING COUNTY RECORDING NO. 2131105000955 AND THE SURVEY MAP AND PLANS OF WHICH IS RECORDED UNDER KING COUNTY RECORDING NO.2131105000954, KING COUNTY, WASHINGTON.

EXHIBIT A2

LEGAL DESCRIPTIONS OF UNIT A

UNIT A, KTOD CONDOMINIUM, THE DECLARATION OF WHICH IS RECORDED UNDER KING COUNTY RECORDING NO. 2131105000955 AND THE SURVEY MAP AND PLANS OF WHICH IS RECORDED UNDER KING COUNTY RECORDING NO.2131105000954, KING COUNTY, WASHINGTON

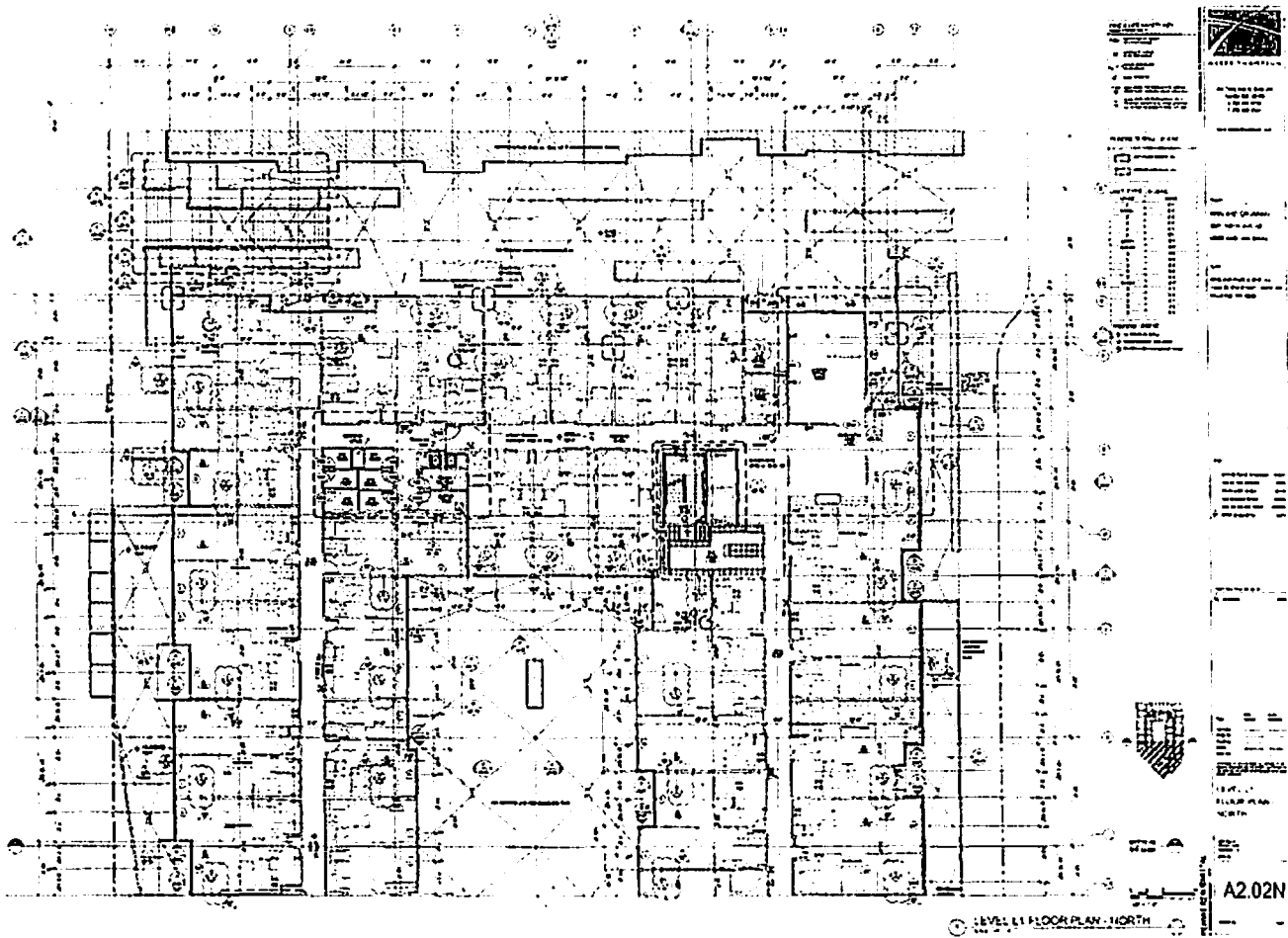
EXHIBIT A3

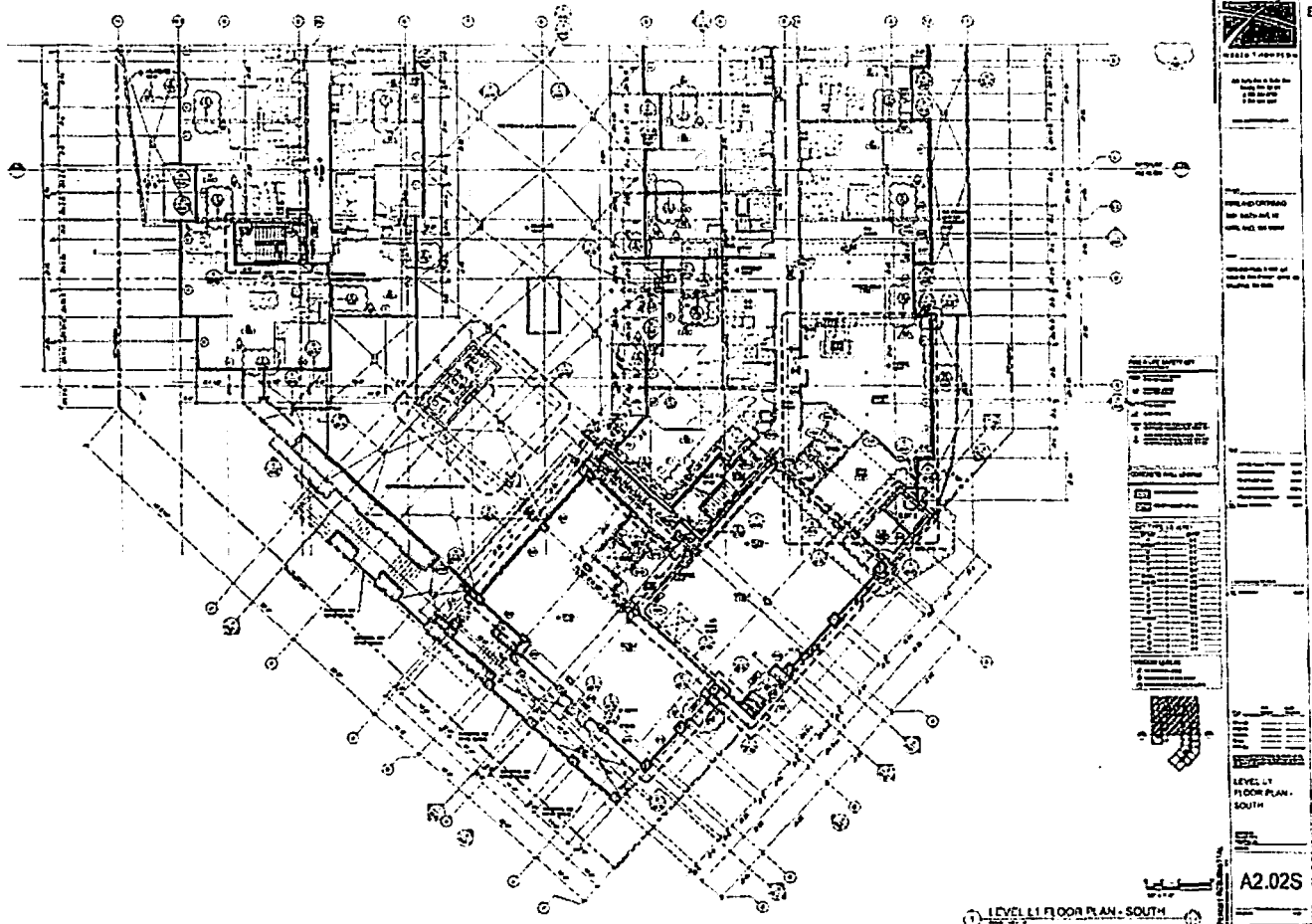
LEGAL DESCRIPTIONS OF UNIT B

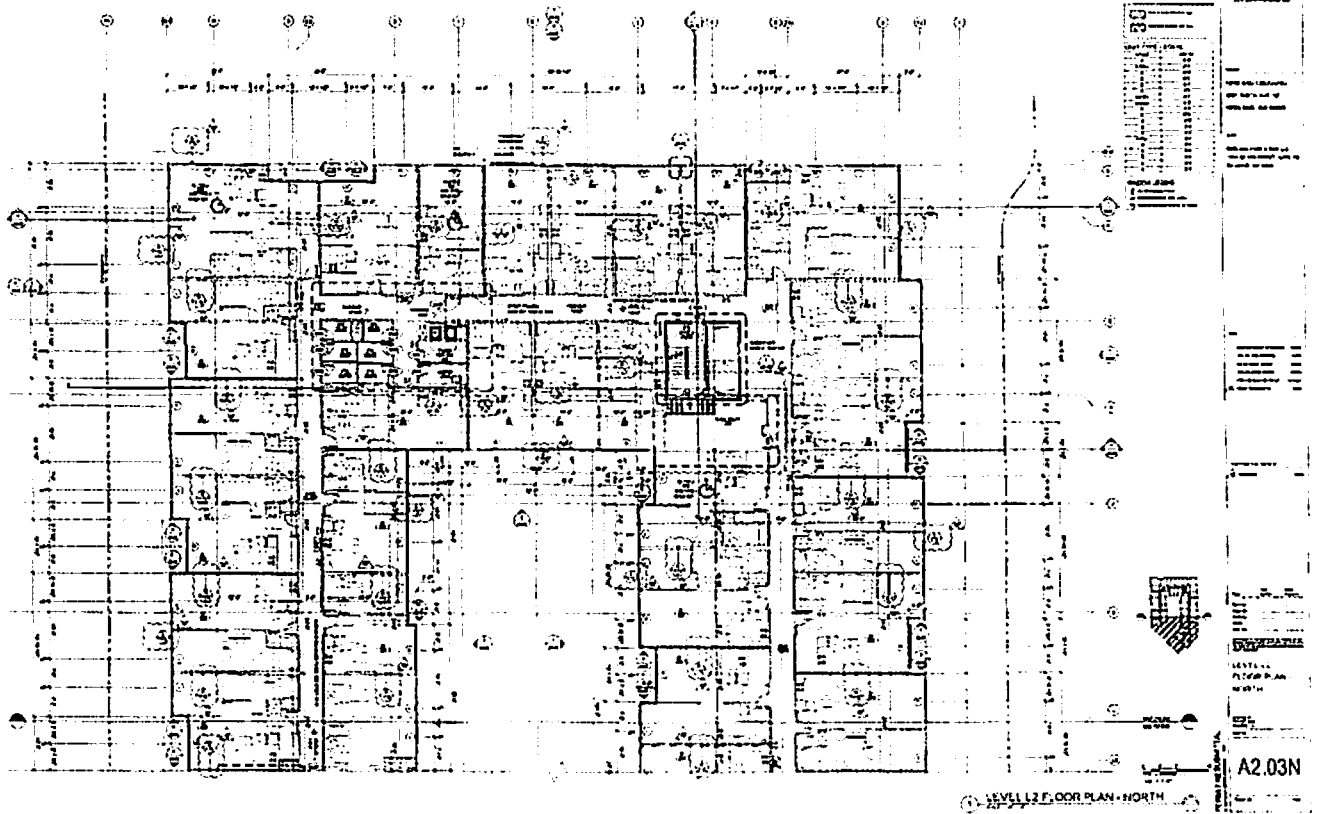
UNIT B, KTOD CONDOMINIUM, THE DECLARATION OF WHICH IS RECORDED UNDER KING COUNTY RECORDING NO. 2131105000955 AND THE SURVEY MAP AND PLANS OF WHICH IS RECORDED UNDER KING COUNTY RECORDING NO.2131105000954, KING COUNTY, WASHINGTON

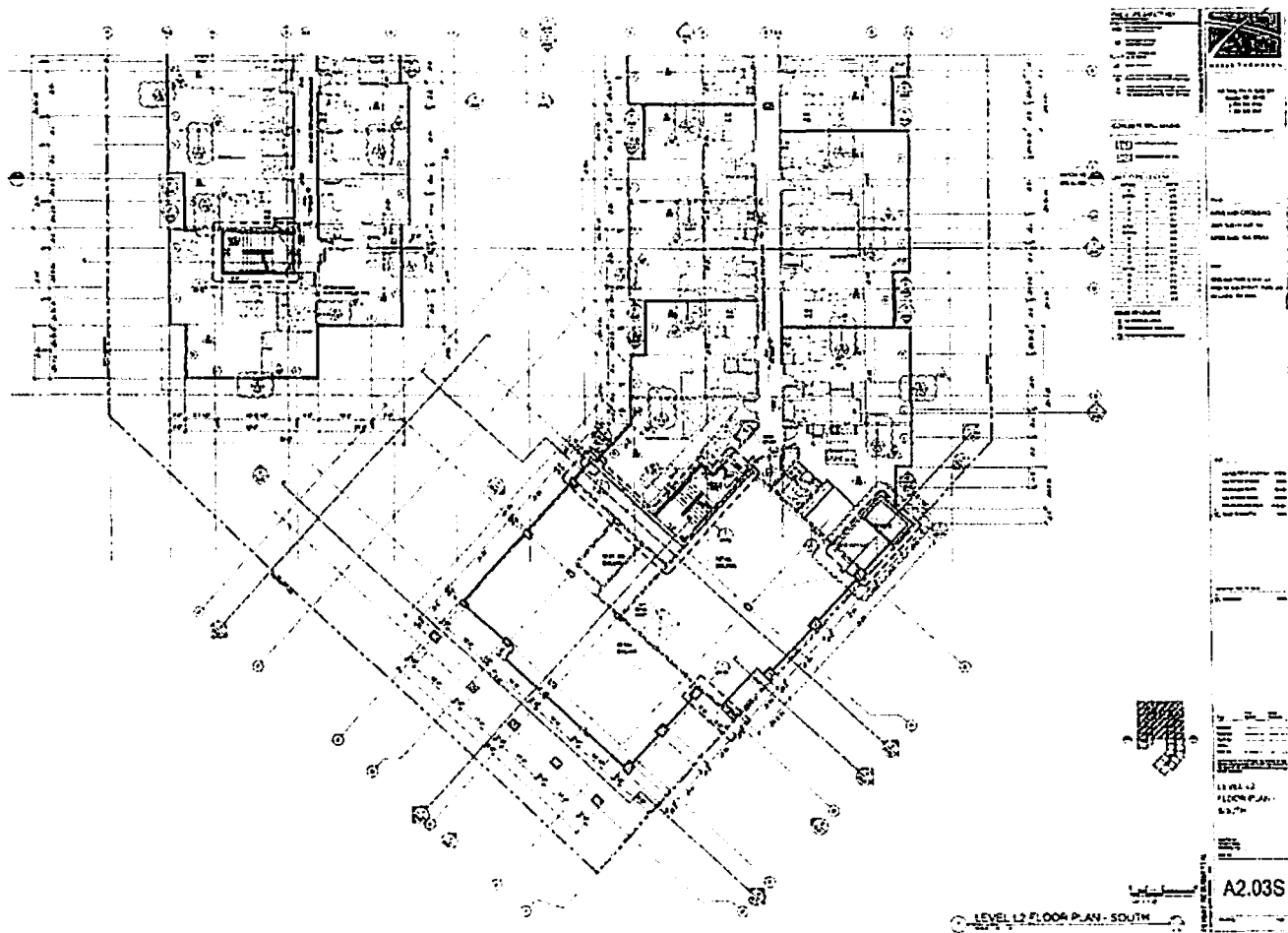
EXHIBIT B
SITE AND UNIT PLANS

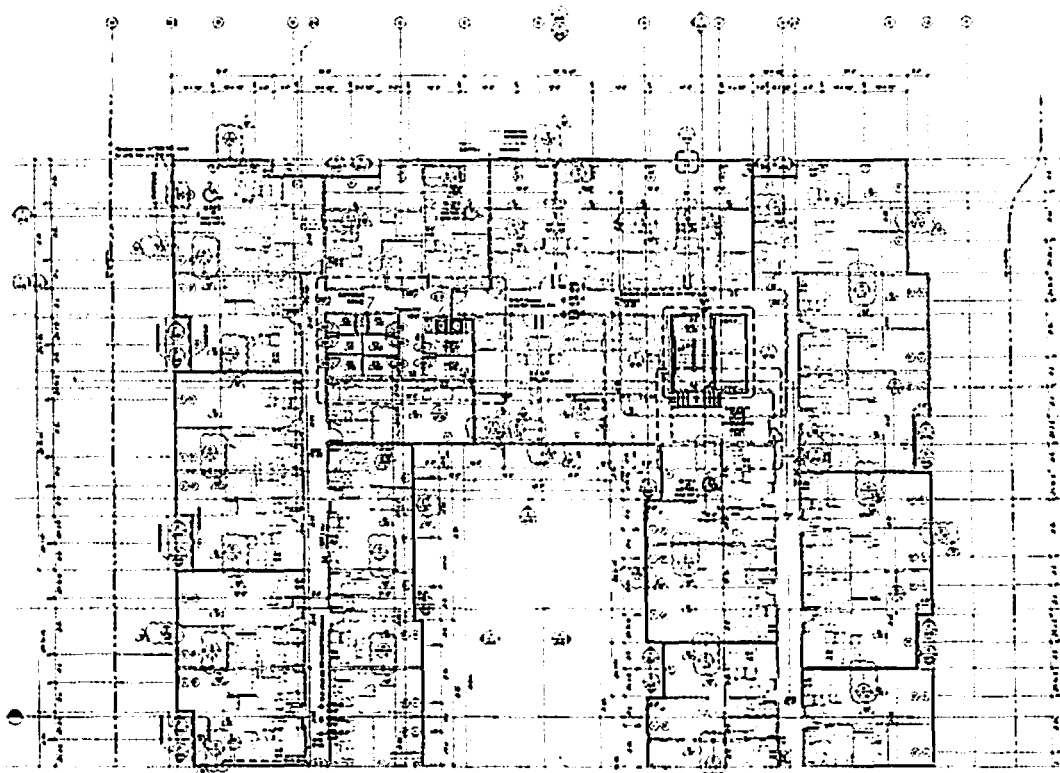
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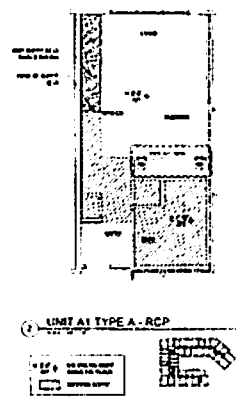
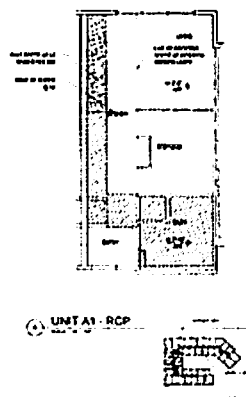
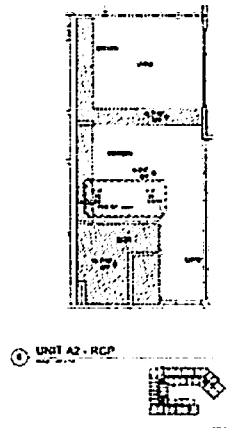
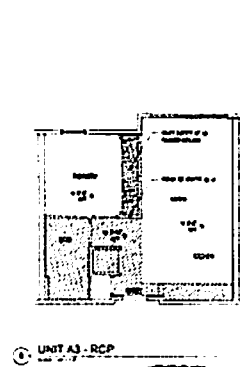
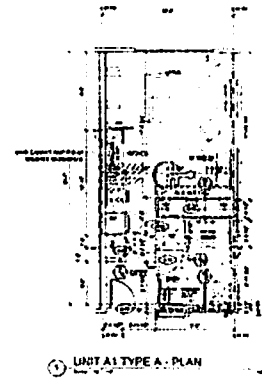
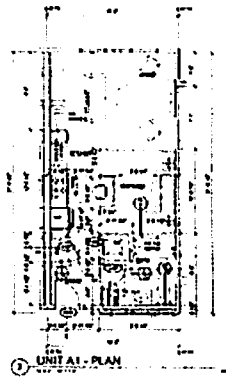
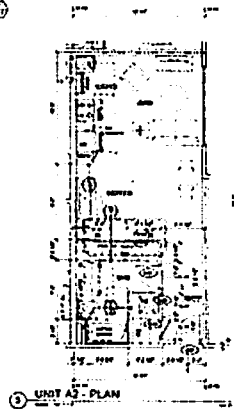
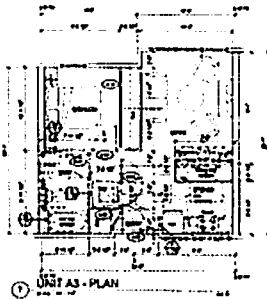


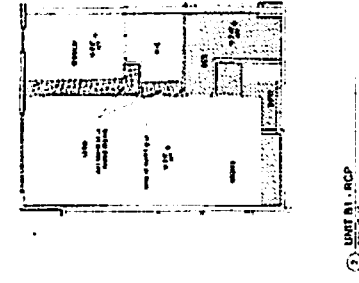
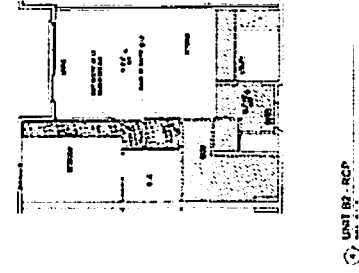
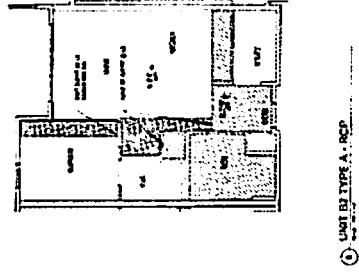
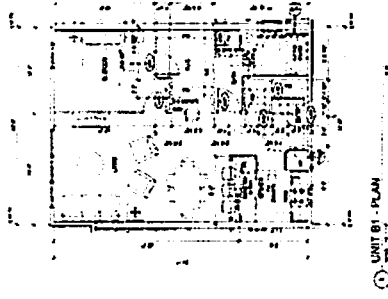
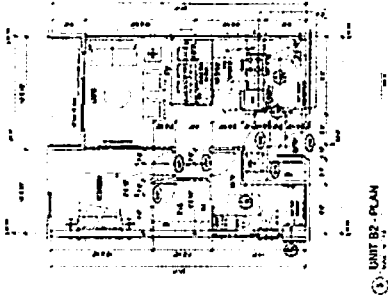
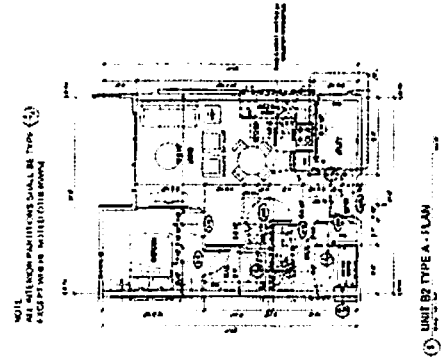


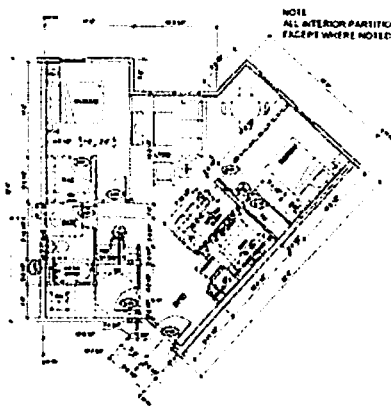
LEVEL 13 FLOOR PLAN - NORTH

A2.04N

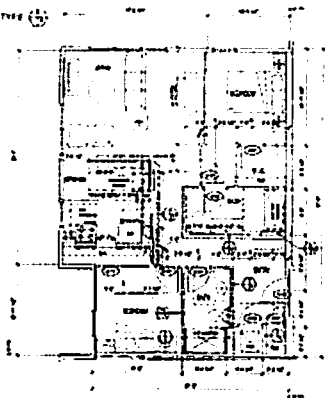
NOTE
ALL INTERIOR PARTITIONS SHALL BE TYPE "T"
EXCEPT WHERE NOTED OTHERWISE



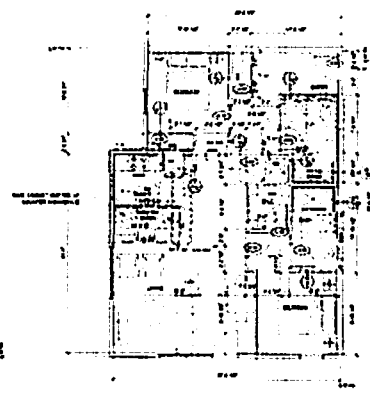




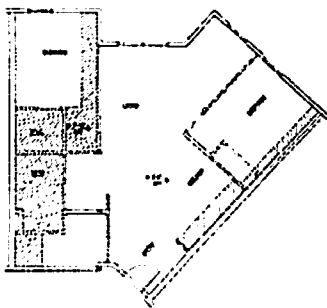
UNIT C2 • PLAN



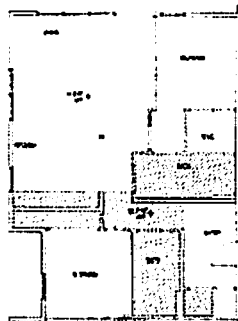
UNIT C1 - PLAN



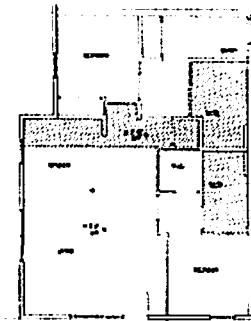
UNIT C1 TYPE A PLAN



UNIT C2 - RCP



UNIT C1 - RCP



UNIT C1 TYPE A - RCP

[illegible]

EXHIBIT C

DESIGNATION OF AFFORDABLE UNITS

UNIT A

See Attached Figure

UNIT B

See Attached List

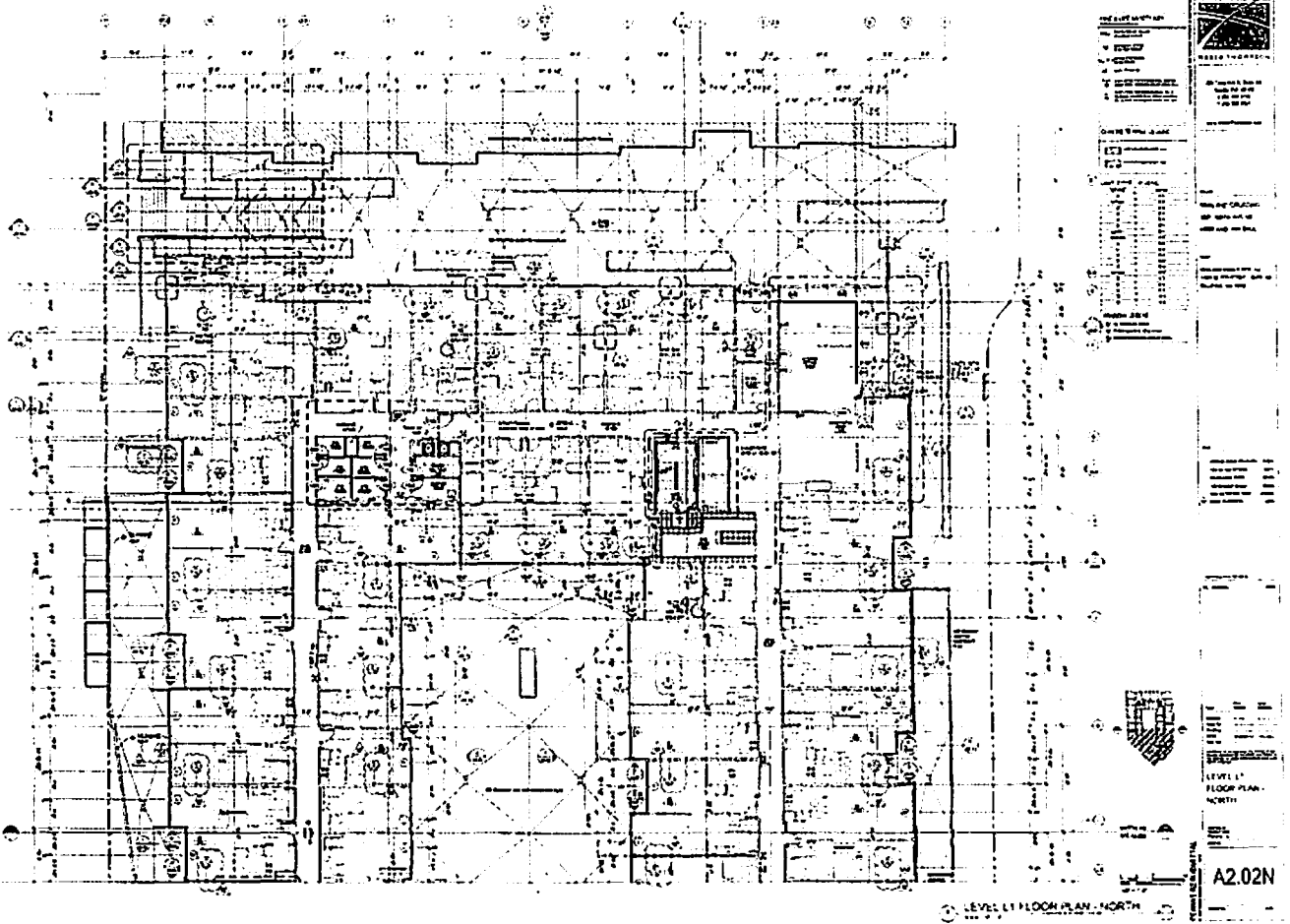


Exhibit C Designation of Affordable Units, Unit A and Unit B

KTOD LLC Unit Income Level Affordability

Unit #	Size	Household Income Restriction (% of Area Median Income)	LIHTC Income Affordability	MFTE Income Affordability
104	1 bedroom	30%	Extremely Low Income	Low Income
106	1 bedroom	40%	Very Low Income	Low Income
107	1 bedroom	30%	Extremely Low Income	Low Income
108	1 bedroom	60%	Low Income	Moderate Income
111	1 bedroom	40%	Very Low Income	Low Income
112	1 bedroom	30%	Extremely Low Income	Low Income
203	1 bedroom	40%	Very Low Income	Low Income
204	1 bedroom	30%	Extremely Low Income	Low Income
205	1 bedroom	40%	Very Low Income	Low Income
206	1 bedroom	60%	Low Income	Moderate Income
207	1 bedroom	40%	Very Low Income	Low Income
208	1 bedroom	30%	Extremely Low Income	Low Income
211	1 bedroom	60%	Low Income	Moderate Income
212	1 bedroom	60%	Low Income	Moderate Income
303	1 bedroom	30%	Extremely Low Income	Low Income
304	1 bedroom	60%	Low Income	Moderate Income
305	1 bedroom	60%	Low Income	Moderate Income
306	1 bedroom	60%	Low Income	Moderate Income
307	1 bedroom	60%	Low Income	Moderate Income
308	1 bedroom	30%	Extremely Low Income	Low Income
311	1 bedroom	40%	Very Low Income	Low Income
312	1 bedroom	60%	Low Income	Moderate Income
403	1 bedroom	60%	Low Income	Moderate Income
404	1 bedroom	60%	Low Income	Moderate Income
405	1 bedroom	40%	Very Low Income	Low Income
406	1 bedroom	60%	Low Income	Moderate Income
407	1 bedroom	30%	Extremely Low Income	Low Income
408	1 bedroom	60%	Low Income	Moderate Income
411	1 bedroom	40%	Very Low Income	Low Income
412	1 bedroom	60%	Low Income	Moderate Income
102	2 bedroom	30%	Extremely Low Income	Low Income
114	2 bedroom	30%	Extremely Low Income	Low Income
115	2 bedroom	30%	Extremely Low Income	Moderate Income
202	2 bedroom	30%	Extremely Low Income	Low Income
214	2 bedroom	30%	Extremely Low Income	Low Income
215	2 bedroom	30%	Extremely Low Income	Moderate Income
302	2 bedroom	30%	Extremely Low Income	Low Income

314	2 bedroom	30%	Extremely Low Income	Moderate Income
315	2 bedroom	30%	Extremely Low Income	Low Income
402	2 bedroom	30%	Extremely Low Income	Moderate Income
414	2 bedroom	30%	Extremely Low Income	Low Income
415	2 bedroom	30%	Extremely Low Income	Moderate Income
201	3 bedroom	30%	Extremely Low Income	Low Income
301	3 bedroom	30%	Extremely Low Income	Moderate Income
401	3 bedroom	30%	Extremely Low Income	Moderate Income
105	studio	30%	Extremely Low Income	Low Income
109	studio	40%	Very Low Income	Low Income
110	studio	30%	Extremely Low Income	Low Income
113	studio	40%	Very Low Income	Low Income
209	studio	30%	Extremely Low Income	Low Income
210	studio	40%	Very Low Income	Low Income
213	studio	30%	Extremely Low Income	Low Income
309	studio	40%	Very Low Income	Low Income
310	studio	30%	Extremely Low Income	Low Income
313	studio	40%	Very Low Income	Low Income
409	studio	40%	Very Low Income	Low Income
410	studio	30%	Extremely Low Income	Low Income
413	studio	40%	Very Low Income	Low Income

EXHIBIT D1

REGULATORY AGREEMENT AND AFFORDABILITY COVENANT

UNIT A

Attached

When Recorded Mail To:

City of Kirkland
123 Fifth Avenue
Kirkland, Washington 98033
ATTN: City Clerk
Planning Dep't Housing Planner

KIRKLAND PARK AND RIDE UNIT A

REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

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
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SECTION 13 -	ESTOPPEL CERTIFICATE
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SECTION 21 -	CONSTRUCTION
SECTION 22 -	TITLES AND HEADINGS

EXHIBITS

"A1"	LEGAL DESCRIPTION OF PROPERTY
"A2"	LEGAL DESCRIPTION OF UNIT A
"A3"	LEGAL DESCRIPTION OF UNIT B
"B"	DESIGNATION OF AFFORDABLE UNITS
"C"	CERTIFICATE OF HOUSEHOLD ELIGIBILITY
"D"	REGULATORY AGREEMENT - UNIT B
"E"	ANNUAL PROJECT CERTIFICATION

REGULATORY AGREEMENT DECLARATION OF RESTRICTIVE COVENANTS

THIS REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (the "Agreement") is made and entered into as of this _____ day of _____, 2014, by and between the CITY OF KIRKLAND, a Municipal Corporation of the State of Washington (the "City"); and Kirkland Crossings, L.L.C., LLC a Washington limited liability company (the "Unit A Owner").

WITNESSETH:

A. This Agreement is predicated upon the following facts:

1) Unit A Owner is the owner of Unit A of KTOD Condominium ("Unit A"). KTOD LLC, a Washington limited liability company ("Unit B Owner") is the owner of Unit B of KTOD Condominium ("Unit B"). The Condominium Declaration and Survey Map and Plans for KTOD Condominium are recorded under King County Recording Nos. 2131105000955 and 2131105000954, respectively. The legal description of Unit A of KTOD Condominium is set forth on Exhibit A2. KTOD Condominium is situated at 3801 108th Avenue NE in Kirkland, Washington (the "Property"). The legal description of the Property is set forth on Exhibit A1.

2) Unit A Owner and Unit B Owner intend to develop said Property by constructing and renting a total of two hundred forty-three (243) rental units (the "Overall Project") subject to City approval and such other approvals by State and local agencies, as required. Unit A Owner intends to construct and rent one hundred eighty-five (185) of the two hundred and forty three (243) housing units as another phase of the Overall Project ("Project-Phase A") and Unit B Owner intends to construct and rent fifty-eight (58) of the two hundred and forty three (243) housing units as one phase of the Overall Project ("Project-Phase B").

3) The Unit A Owner's proposed Project-Phase A in Unit A shall include three (3) affordable rental units for Moderate-Income Households. The Overall Project shall together have a total of sixty-one (61) affordable units. Unit B Owner's proposed Project-Phase B shall include 58 affordable rental units for Moderate- and Low- Income Households ("Eligible Households", as the term is defined below)

4) The City finds that the Project-Phase A will benefit the City by providing rental housing for Eligible Households.

5) The Unit A Owner has indicated its willingness to accept certain conditions affecting the use of Unit A. It is the purpose of this Agreement to set forth the conditions under which the City has approved Project-Phase A and to impose enforceable restrictions on the use and occupancy of the rental portion of the Project-Phase A.

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

7) Unit A Owner has applied for a limited property tax exemption for twelve years as provided for in Chapter 84.14 RCW and Chapter 5.88 KMC for multi-family residential rental housing ("Multifamily Housing") in the Lakeview Residential Targeted Area, and the Director of Planning and Community Development 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 Unit A 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 Rents" means a monthly housing expense, including if applicable a Utility Allowance and parking, which is no greater than thirty percent (30%) of the monthly median income for Eligible Households within the Seattle-Bellevue, WA HUD Metro FMR Area ("Seattle-Bellevue HMFA"), as shown in the following chart, as adjusted for Household Size. The maximum Affordable Rents shall be adjusted no more than once every twelve (12) months and such adjustment shall be by a factor equivalent to adjustments in the Seattle-Bellevue HMFA Median Income.

Affordable Rent Level	Applicable Median Income Level
Low-Income	50%
Moderate-Income	70%

"Affordable Units" mean the 61 units within Project-Phase A and Project-Phase B of the Overall Project as selected by the Unit A Owner or Unit B Owner and as approved by the City or its Designee, as set forth in Exhibit B pursuant to Section 3 of this Agreement, and reserved for occupancy by Eligible Households pursuant to Section 3, adjusted for household size.

"City" means the City of Kirkland.

"Completion Date" means the date of the issuance of the Occupancy Permit of the Project-Phase A in Unit A,

"Designee" means A Regional Coalition for Housing ("ARCH") or such other agency as may be designated by the City in writing to the Unit A Owner. The City shall notify the Unit A 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, Section 3.F of this Agreement, 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 Median Income for the Seattle-Bellevue HMFA, as set forth in this definition and Section 3.F of this Agreement, adjusted for household size, as published by the United States Department of Housing and Urban Development ("HUD").

Income Level	Maximum Percent of Median Income at Occupancy
Low-Income	50%
Moderate-Income	70%

"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	2 Persons
2 Bedroom	3 Persons
3 Bedroom	4 Persons

"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 holding a mortgage encumbering Unit A.

"Median Income" means the median income for the Seattle-Bellevue HMFA as most recently determined by the Secretary of Housing and Urban Development (the "Secretary") under Section 8(f)(3) of the United States Housing Act of 1937, as amended, or if programs under said Section 8(f)(3) are terminated, median income determined under the method used by the Secretary prior to such termination.

"Overall Project" means the combined two hundred and forty-three (243) housing units, including the building, structures and other improvements (to be constructed) on the Property, and all equipment, fixtures and other property owned by Unit A Owner or Unit B Owner and located on, or used in connection with, such buildings, structures and other improvements and all functionally related and subordinate facilities.

"Owner Representative" means the person or persons (who may be employees of the Unit A Owner) designated from time to time to act hereunder on behalf of the Unit A 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 Unit A Owner or on behalf of the Unit A Owner by a duly authorized representative of the Unit A Owner.

"Project-Phase A" means the one hundred and eighty-five (185) housing units including the building, structures and other improvements (to be constructed) in Unit A, and all equipment, fixtures and other property owned by Unit A Owner and located on, or used in connection with, such buildings, structures and other improvements and all functionally related and subordinate facilities.

"Project-Phase B" means the fifty-eight (58) housing units, including the building, structures and other improvements (to be constructed) in Unit B, and all equipment, fixtures and other property owned by the Unit B 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 Overall Project as more particularly described in Exhibit A1 which is attached hereto, and incorporated by reference herein, and all rights and appurtenances thereunto appertaining.

"Qualified Project Period" means for the life of the Overall Project.

"Regulatory Agreement" or "Agreement" means this Regulatory Agreement and Declaration of Restrictive Covenants between the City and the Unit A Owner.

"Unit A" means Unit A of KTOD Condominium, which will be devoted to the Project-Phase A as more particularly described in Exhibit A2 which is attached hereto, and incorporated by reference herein, and all rights and appurtenances thereunto appertaining.

"Unit B" means Unit B of KTOD Condominium, which will be devoted to the Project-Phase B as more particularly described in Exhibit A3 which is attached hereto, and incorporated by reference herein, and all rights and appurtenances thereunto appertaining.

"Unit A Owner" means Kirkland Crossings, L.L.C., a Washington limited liability company,, and its successors and assigns, and any surviving, resulting or transferee entity.

"Unit B Owner" means KTOD LLC, a Washington limited liability company and its successors and assigns, and any surviving, resulting or transferee entity.

"Utility Allowance" means that portion of housing expenses for utilities. Therefore, Affordable Rents are calculated assuming payment of all utilities (not including phone, internet service, or cable or satellite television) by the Unit A Owner. In the event gas and/or electric utilities, used for purposes of heating, cooking and/or lighting, are paid directly by the tenant, then the monthly Affordable Rent will be reduced by the following allowance:

Studio	\$39
One Bedroom	\$59
Two Bedroom	\$79
Three Bedroom	\$99

The base year for the ARCH utility allowance figures is 2014. The allowance figures will be adjusted annually based on changes in the Consumer Price Index-U.S. Cities Average-All Urban Consumers. If water, garbage and/or sewage are paid for directly by the tenant, the affordable rent levels will be further reduced by the typical cost to the tenant of such utilities, or a set allowance established by the City or its Designee.

SECTION 2 - RESIDENTIAL RENTAL PROPERTY

A. General Description. Unit A will be acquired and constructed for purposes of providing multi-family rental housing, and neighborhood retail uses and the Unit A Owner shall own, manage and operate or cause the management and operation of Unit A to provide multiple-family rental 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 Unit A shall include facilities for use by the tenants, including, for example, recreational facilities, parking areas, and other facilities which are reasonably required for Unit A, for example, heating and cooling equipment, trash disposal equipment or units of resident managers or maintenance personnel.

B. Similar Quality Construction. All of the dwelling units in Unit A shall be constructed of similar quality, and each dwelling unit in Unit A 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 Unit A and will include a sleeping area, separate bathing facility, and a cooking range, refrigerator and sink.

C. Conversion to Condominium. In the event Unit A is proposed for conversion to condominium, owner-occupied, or non-rental residential use, the Unit A Owner 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 occupancy by Eligible Households. This section does not waive the Unit A 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. All of the Affordable Units in the Overall Project shall be leased or rented, or available for lease or rental, to the general public, and the Unit A Owner and Unit B Owner shall designate all of the Affordable Units, reserved for occupancy by Eligible Households, as follows:

Income Level	Affordable Units	
	Unit A	Phase B
Low-Income	0	37
Moderate-Income	3	21
Total	3	58

In addition to the 3 Affordable Units in Unit A, the Unit B Owner will provide 58 Affordable Units in Unit B pursuant to the terms of a Regulatory Agreement recorded against Unit B (Substantially in the form of Exhibit D). The Property Tax Exemption for Unit A and land use permits for Unit A and the Project-Phase B is dependent upon the Unit B Owner providing the 58 Affordable Units in Unit B pursuant to the terms of the Regulatory Agreement recorded against Unit B. The land use approval for Unit A is dependent upon the Unit B Owner continuing to provide the 58 Units. Any default under the Regulatory Agreement for Phase B will also result in a default under this Agreement.

A. Designation/Re-designation of Affordable Units. Prior to June 1, 2014, the Unit A Owner shall submit to the City or its Designee for the City's or its Designee's approval a certificate in writing of such designation of Affordable Units within Unit A. Within Unit A, units so designated shall have substantially the same equipment and amenities as other dwelling units in Unit A with the comparable number of bedrooms. Within Unit A, the Affordable Units shall be intermingled with all other dwelling units and shall be of a unit mix comparable to the overall mix of units in Unit A. The City or its Designee shall base its approval or disapproval of the proposed Affordable Units within Unit A upon the criteria set forth in this section.

The Unit A Owner, from time to time, may propose to change the particular units declared as Affordable Units provided that at all times at least 3 of the residential units are designated as Affordable Units, and provided that at all times the same unit mix is retained. The Unit A 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 base its approval or disapproval of the proposed changes based upon the criteria set forth in this Section.

B. 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 (12) months of occupancy.

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

D. Equal Access to Common Facilities. Within Unit A, Tenants in the Affordable Units shall have equal access to enjoyment of all common facilities of Unit A.

E. 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 Median Income set forth in the chart 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 chart 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 such household must within 90 days either pay market rent and the next available comparable market rate unit must be rented as an Affordable Unit; or vacate the unit, unless otherwise prohibited by law, to make it available for an Eligible Household.

Maximum Permitted Income Levels

Eligible Households	Maximum Initial Income	Maximum Recertification Income
Low-Income	50%	70%
Moderate Income	70%	90%

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

<u>Unit Size</u>	<u>Household Size</u>
Studio	1-3 Persons
1 Bedroom	1-4 Persons
2 Bedroom	2-5 Persons
3 Bedroom	3-7 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 for Project-Phase A, the Unit A Owner shall notify the City's Planning and Community Development Department [Attn: Housing Planner] or its Designee, of receipt of the occupancy permit for the Project-Phase A.

B. City Mailing List. The City maintains a mailing list of households interested in occupying Affordable Units. From time to time the City or its Designee will provide to the Unit A Owner the names of persons from the City's mailing list. In determining which eligible applicants shall be rented Affordable Units, the Unit A Owner shall, subject to Section 4.C below,

reasonably consider persons on the City's mailing list, and when they were placed on the City's mailing list.

C. Completion of Certificate of Household Eligibility. Prior to allowing any household to occupy any Affordable Unit in Unit A, the Unit A 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 Unit A Owner shall also undertake a good faith effort to verify the applicant's Household Income, as reported on the completed Certificate. The Unit A 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 Unit A 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, Household Income shall be verified by 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 Unit A Owner shall require all households occupying an Affordable Unit in Unit A to complete and return to the Unit A Owner an updated Certificate of Household Eligibility. The Unit A Owner shall undertake a good faith effort to verify the reported Household Income, as reported in the completed Certificate. The Unit A 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 Unit A 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, Household Income shall be verified by wage or salary statements, or other income records the City or its Designee may consider appropriate.

Such certifications shall be filed with the City or its Designee, by attachment to the Annual Project Certification required pursuant to Subsection E and are subject to independent investigation and verification by the City or its Designee.

E. Annual Project Certification. After the Completion Date and until 90% of the rental units in Unit A are occupied, the Unit A Owner shall, on a quarterly basis, file with the City or its Designee an Annual Project Certification, in substantially the form of Exhibit E. Thereafter, during the

term of this Regulatory Agreement, such certification shall be filed annually on or before March 31st and shall set forth the required information for the preceding year.

F. Maintain Complete Records. The Unit A Owner shall maintain complete and accurate records for Unit A 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 Unit A Owner pertaining to the Affordable Units in Unit A, and if applicable, incomes of Eligible Households residing in Unit A. 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, all documentation required by this Section shall be submitted on the forms designated herein as such forms 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 Unit A Owner's obligations hereunder.

SECTION 5 - SECTION 8 CERTIFICATE HOLDERS

The Unit A 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 Unit A Owner shall not apply, or permit the application of, management policies or lease provisions with respect to Unit A which have the effect of precluding occupancy of Units by holders of Section 8 certificates.

SECTION 6 - LEASE PROVISIONS

A. It is the Unit A Owner's responsibility to screen and select tenants for desirability and credit worthiness. Such selection is within the Unit A Owner's discretion. If written management policies exist, or exist in the future, with respect to Unit A, 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 Agreement.

B. In the event income certifications are required pursuant to Section 4.C of this Agreement, all leases for

Eligible Households 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 Unit A Owner to terminate the lease for the Affordable Unit.

SECTION 7 - SALE OR TRANSFER OF UNIT A

The Unit A Owner hereby covenants and agrees not to sell, transfer or otherwise dispose of Unit A or any portion thereof without first providing a written notice from the purchaser stating that the purchaser understands, and will comply with the Unit A Owner's duties and obligations under this Agreement. 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 Regulatory Agreement 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 Unit A 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 Unit A or in connection with the employment or application for employment of persons for the operation and management of Unit A.

SECTION 10 - COVENANTS RUN WITH UNIT A

The City and Unit A 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 Unit A by certain Eligible Households, and (ii) by furthering the public purposes of providing housing for Eligible Households.

The City and the Unit A Owner hereby declare that the covenants and conditions contained herein shall bind and the benefits shall inure to, respectively, the Unit A Owner and Unit A 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 Regulatory Agreement, each and every contract, deed or other instrument hereafter executed conveying Unit A or any portion thereof or interest therein shall contain an express provision making such conveyance subject to the covenants and conditions of this Agreement, 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 Unit A Owner shall exercise reasonable diligence to comply with the requirements of this Agreement and shall correct any such noncompliance within sixty (60) days after such noncompliance is first discovered by the Unit A Owner or would have been discovered by the exercise of reasonable diligence, or within 60 days after the Unit A 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 Unit A Owner is exercising due diligence to correct the noncompliance. If such noncompliance remains uncured after such period, then the Unit A 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 Unit A Owner to perform its obligations under this Regulatory 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 Unit A Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of the Unit A Owner's default;

2) Have access to, and inspect, examine and make copies of, all of the books and records of the Unit A Owner pertaining to Unit A. 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 Unit A Owner under this Regulatory Agreement.

4) The Unit A Owner hereby grants to the City or the Designee the option, upon Unit A Owner's default under this Regulatory Agreement, for the Qualified Project Period to lease up to 3 of the units in Unit A as mutually selected by the City or its Designee and the Unit A Owner for the purpose of subleasing such units to Eligible Households, but only to the extent necessary to comply with the provisions of this Agreement. The City or its Designee may lease from the Unit A 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 Unit A upon determination that the Unit A Owner is no longer in default pursuant to this Agreement.

B. Hold Harmless. The Unit A Owner hereby agrees to pay, indemnify and hold the City and its Designee and any other party authorized hereunder to enforce the terms of this Regulatory Agreement harmless from any and all costs, expenses and fees, including all attorneys' fees which may be incurred by the City or the Designee or any other party in enforcing or attempting to enforce this Regulatory Agreement following any default hereunder on the part of the Unit A Owner or its successors, whether the same shall be enforced by suit or otherwise; together with all costs, fees and expenses which may be incurred in connection with any amendment to this Regulatory Agreement or otherwise by the City at the request of the Unit A Owner.

C. No Third Party Beneficiaries. The provisions of this Agreement and of the documents to be executed and delivered in connection herewith are and will be for the benefit of the Unit A 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 Agreement 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 Agreement to the contrary, all of the provisions of this Agreement 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 Unit A is held as a security.

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

(3) Title to Unit A 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.

Notwithstanding anything in this Agreement to the contrary, enforcement of this Agreement 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 Unit A, 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 Unit A other than from available surplus cash as that term is defined by HUD/FHA or any other Lender.

B. Notwithstanding anything in this Agreement to the contrary:

(1) All of the provisions of this Agreement 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 Agreement 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 Agreement will be effective without the prior written consent of Lender, if any.

(4) The Unit A Owner, its successors or assigns, will take all steps necessary to comply with this Agreement; provided that the Unit A 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 Unit A Owner or its successor in interest, to promptly execute and deliver to the Unit A Owner or its successor in interest or to any potential or actual purchaser, mortgagor or encumbrance of Unit A, a written certificate stating, if such is true, that the City has no knowledge of any violation or default by the Unit A Owner of any of the covenants or conditions of this Agreement, or if there are such violations or defaults, the nature of the same.

SECTION 14 - AGREEMENT TO RECORD

The Unit A Owner shall cause this Regulatory Agreement to be recorded in the real property records of King County, Washington. The Unit A 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 Unit A Owner hereby recognize and agree that the representations and covenants set forth herein may be relied upon by City and the Unit A Owner. In performing its duties and obligations hereunder, the City may rely upon statements and certificates of the Unit A Owner and Eligible Households, and upon audits of the books and records of the Unit A Owner pertaining to occupancy of Unit A. In performing its duties hereunder, the Unit A Owner may rely on the Certificates of Tenant Eligibility unless the Unit A Owner has actual knowledge or reason to believe that such Certificates are inaccurate.

SECTION 16 - GOVERNING LAW

This Regulatory Agreement 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 Unit A 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 Regulatory Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

SECTION 18 - AMENDMENTS

This Regulatory Agreement 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 Unit A Owner and the City and/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 Unit A 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 98073-9710

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 Unit A Owner: Kirkland Crossings, L.L.C.
11624 SE 5th St, Suite 200
Bellevue, WA 98005
Attn: Derek Straight

If to the Unit B Owner: KTOD LLC
C/O RV Manager LLC
10604 NE 38th Place, Suite 215
Kirkland, WA 98033

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 - SEVERABILITY

If any provision of this Regulatory Agreement 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 21 - 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 Agreement and to sustain the validity hereof.

SECTION 22 - TITLES AND HEADINGS


The titles and headings of the sections of this Agreement 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.

IN WITNESS WHEREOF, the Unit A Owner and City have each executed the Regulatory Agreement and Declaration of Restrictive Covenants on the Date first above written.

Unit A Owner:

City:

Its: 


Kurt Triplett
Its: City Manager

Approved as to Form:



City Attorney

EXHIBIT D2

**REGULATORY AGREEMENT AND AFFORDABILITY COVENANT
UNIT B**

Attached

When Recorded Mail To:

City of Kirkland
123 Fifth Avenue
Kirkland, Washington 98033
ATTN: City Clerk
Planning Dep't Housing Planner

KIRKLAND PARK AND RIDE UNIT B

REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

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 UNIT B
SECTION 8 - TERM
SECTION 9 - NO DISCRIMINATION
SECTION 10 - COVENANTS RUN WITH LAND
SECTION 11 - ENFORCEMENT
SECTION 12 - INTENTIONALLY LEFT BLANK
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 - SEVERABILITY
SECTION 21 - CONSTRUCTION
SECTION 22 - TITLES AND HEADINGS

EXHIBITS

"A1" LEGAL DESCRIPTION OF PROPERTY
"A2" LEGAL DESCRIPTION OF UNIT A
"A3" LEGAL DESCRIPTION OF UNIT B
"B" DESIGNATION OF AFFORDABLE UNITS
"C" CERTIFICATE OF HOUSEHOLD ELIGIBILITY
"D" REGULATORY AGREEMENT - UNIT A
"E" ANNUAL PROJECT CERTIFICATION

REGULATORY AGREEMENT DECLARATION OF RESTRICTIVE COVENANTS

THIS REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (the "Agreement") is made and entered into as of this _____ day of _____, 2014, by and between the CITY OF KIRKLAND, a Municipal Corporation of the State of Washington (the "City"); and KTOD LLC, a Washington limited liability company (the "Unit B Owner").

WITNESSETH:

A. This Agreement is predicated upon the following facts:

1) Unit B Owner is the owner of Unit B of KTOD Condominium ("Unit B"). Kirkland Crossings, L.L.C., a Washington limited liability company ("Unit A Owner") is the owner of Unit A of KTOD Condominium ("Unit A"). The Condominium Declaration and Survey Map and Plans for KTOD Condominium are recorded under King County Recording Nos. 2131105000955 and 2131105000954, respectively. The legal description of Unit B of KTOD Condominium is set forth on Exhibit A3. KTOD Condominium is situated at 3801 108th Avenue NE in Kirkland, Washington (the "Property"). The legal description of the Property is set forth on Exhibit A1.

2) Unit A Owner and Unit B Owner intend to develop said Property by constructing and renting a total of two hundred forty-three (243) rental units (the "Overall Project") subject to City approval and such other approvals by State and local agencies, as required. Unit A Owner intends to construct and rent one hundred eighty-five (185) of the two hundred and forty three (243) housing units as another phase of the Project ("Project-Phase A") and Unit B Owner intends to construct and rent fifty-eight (58) of the two hundred and forty three (243) housing units as one phase of the Project ("Project-Phase B").

3) The Unit B Owner's proposed Project-Phase B in Unit B shall include fifty-eight (58) affordable rental units for Moderate- and Low-Income Households ("Eligible Households", as the term is defined below). Unit A Owner's proposed Project-Phase A shall include three (3) affordable rental units for Moderate Income Households. The Overall Project shall together have a total of sixty-one (61) affordable units.

4) The City finds that the Project-Phase B will benefit the City by providing rental housing for Eligible Households.

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

6) This Agreement is entered into pursuant to Chapter 112 of the Kirkland Zoning Code, which implements the Affordable Housing policies of the City of Kirkland and Chapters 27.04, 27.06 and 27.08 of the Kirkland Municipal Code, which implements the Transportation, Parks and School Impact Fee Exemptions for Low-Income Housing.

7) The Unit A Owner has applied for a limited property tax exemption for twelve years as provided for in Chapter 84.14 RCW and Chapter 5.88 KMC for multi-family residential rental housing ("Multifamily Housing") in the Lakeview Residential Targeted Area, and the Director of Planning and Community Development 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 Unit B 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 Rents" means a monthly housing expense, including if applicable a Utility Allowance and parking, which is no greater than thirty percent (30%) of the monthly median income for Eligible Households within the Seattle-Bellevue, WA HUD Metro FMR Area ("Seattle-Bellevue HMFA"), as shown in the following chart, as adjusted for Household Size or for Section 8 Households, the applicable Section 8 rent level). The maximum Affordable Rents shall be adjusted no more than once every twelve (12) months and such adjustment shall be by a factor equivalent to adjustments in the Seattle-Bellevue HMFA Median Income.

Affordable Rent Level	Applicable Median Income Level
Low-Income	50%
Moderate-Income	70%

"Affordable Units" mean the fifty-eight (58) units within the Project-Phase B as selected by the Unit B Owner and as approved by the City or its Designee, as set forth in Exhibit B pursuant to Section 3 of this Agreement, and reserved for occupancy by Eligible Households pursuant to Section 3, adjusted for household size.

"City" means the City of Kirkland.

"Completion Date" means the date of the issuance of the Occupancy Permit of the Project-Phase B in Unit B.

"Designee" means A Regional Coalition for Housing ("ARCH") or such other agency as may be designated by the City in writing to the Unit B Owner. The City shall notify the Unit B 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 who certify that they meet the qualifications for eligibility set forth below in this definition, Section 3.F of this Agreement, 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 Median Income for the Seattle-Bellevue HMFA, as set forth in this definition and Section 3.F of this Agreement, adjusted for household size, as published by the United States Department of Housing and Urban Development ("HUD").

Income Level	Maximum Percent of Median Income at Occupancy
Low-Income	50%
Moderate-Income	70%

"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	2 Persons
2 Bedroom	3 Persons
3 Bedroom	4 Persons

"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 holding a mortgage encumbering Unit B.

"Median Income" means the median income for the Seattle-Bellevue HMFA as most recently determined by the Secretary of Housing and Urban Development (the "Secretary") under Section 8(f)(3) of the United States Housing Act of 1937, as amended, or if programs under said Section 8(f)(3) are terminated, median income determined under the method used by the Secretary prior to such termination.

"Overall Project" means the combined two hundred and forty-three (243) housing units, including the building, structures and other improvements (to be constructed) on the Property, and all equipment, fixtures and other property owned by Unit A Owner or Unit B Owner and located on, or used in connection with, such buildings, structures and other improvements and all functionally related and subordinate facilities.

"Owner Representative" means the person or persons (who may be employees of the Unit B Owner) designated from time to time to act hereunder on behalf of the Unit B 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 Unit B Owner or on behalf of the Unit B Owner by a duly authorized representative of the Unit B Owner.

"Project-Phase A" means the one hundred and eighty-five (185) housing units including the building, structures and other improvements (to be constructed) in Unit A, and all equipment, fixtures and other property owned by Unit A Owner and located on, or used in connection with, such buildings, structures and other improvements and all functionally related and subordinate facilities.

"Project-Phase B" means the fifty-eight (58) housing units, including the building, structures and other improvements (to be constructed) in Unit B, and all equipment, fixtures and other property owned by the Unit B 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 Overall Project as more particularly described in Exhibit A1 which is attached hereto, and incorporated by reference herein, and all rights and appurtenances thereunto appertaining.

"Qualified Project Period" means for the life of the Overall Project.

"Regulatory Agreement" or "Agreement" means this Regulatory Agreement and Declaration of Restrictive Covenants between the City and the Unit B Owner.

"Section 8 Household" means one or more adults and their dependents who are eligible for and receiving Federal certificates for rent subsidies pursuant to the existing HUD program under Section 8.

"Unit A" means Unit A of KTOD Condominium, which will be devoted to the Project-Phase A as more particularly described in Exhibit A2 which is attached hereto, and incorporated by reference herein, and all rights and appurtenances thereunto appertaining.

"Unit B" means Unit B of KTOD Condominium, which will be devoted to the Project-Phase B as more particularly described in Exhibit A3 which is attached hereto, and incorporated by reference herein, and all rights and appurtenances thereunto appertaining.

"Unit A Owner" means Kirkland Crossings, L.L.C., a Washington limited liability company,, and its successors and assigns, and any surviving, resulting or transferee entity.

"Unit B Owner" means KTOD LLC, a Washington limited liability company and its successors and assigns, and any surviving, resulting or transferee entity.

"Utility Allowance" means that portion of housing expenses for utilities. Therefore, Affordable Rents are calculated assuming payment of all utilities (not including phone, internet service, or cable or satellite television) by the Unit B Owner. In the event gas and/or electric utilities, used for purposes of heating, cooking and/or lighting, are paid directly by the tenant, then the monthly Affordable Rent unless otherwise agreed to by the Unit B Owner and City or Designee Staff, will be reduced by one of the following methods: the King County Housing Authority utility allowance; actual utility costs or energy model; or by the ARCH utility allowance:

The ARCH utility allowance schedule at time of this Agreement is:

Studio	\$39
One Bedroom	\$59
Two Bedroom	\$79
Three Bedroom	\$99

The base year for the ARCH utility allowance figures is 2014. The allowance figures will be adjusted annually based on changes in the Consumer Price Index-U.S. Cities Average-All Urban Consumers. If water, garbage and/or sewage are paid for directly by the tenant, the affordable rent levels will be further reduced by the typical cost to the tenant of such utilities, or a set allowance established by the City or its Designee.

SECTION 2 - RESIDENTIAL RENTAL PROPERTY

A. General Description. Unit B will be acquired and constructed for purposes of providing multi-family rental housing, and the Unit B Owner shall own, manage and operate (or cause the management and operation of) Unit B to provide multiple-family rental housing comprising a building or structure or several inter-related buildings or structures, each consisting of more than one dwelling unit and facilities functionally related and subordinate thereto, and no other

facilities. As used herein facilities functionally related and subordinate to Unit B shall include facilities for use by the tenants, including, for example, recreational facilities, parking areas, and other facilities which are reasonably required for Unit B, for example, heating and cooling equipment, trash disposal equipment or units of resident managers or maintenance personnel.

B. Similar Quality Construction. All of the dwelling units in Unit B shall be constructed of similar quality, and each dwelling unit in Unit B 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 Unit B and will include a sleeping area, separate bathing facility, and a cooking range, refrigerator and sink.

C. Conversion to Condominium. In the event Unit B is proposed for conversion to condominium, owner-occupied, or non-rental residential use, the Unit B Owner 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 occupancy by Eligible Households. This section does not waive the Unit B 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. All of the Affordable Units in Unit B shall be leased or rented, or available for lease or rental, to the general public, and the Unit B Owner shall designate all of the Affordable Units, reserved for occupancy by Eligible Households or Section 8 Households, as follows:

Affordable Units in Unit B *					
Income Level	Number of Units by Bedroom Size				
	Studio	1	2	3	Total
Low-Income	13	16	7	1	37
Moderate-Income		14	5	2	21
Total	13	30	12	3	58

B. In addition to the 58 Affordable Units in Unit B, the Unit A Owner will provide 3 Affordable Units in Unit A pursuant

to the terms of a Regulatory Agreement recorded against Unit A for the purposes of securing a property tax exemption for twelve years as provided for in Chapter 84.14 RCW and Chapter 5.88 KMC for multi-family residential rental housing. (Substantially in the form of Exhibit D) The Property Tax Exemption being received by the Unit A Owner for Unit A is dependent upon the Unit B Owner providing the 58 Affordable Units in Unit B pursuant to the terms of this Agreement.

C. Designation/Re-designation of Affordable Units. Prior to June 1, 2014, the Unit B Owner shall submit to the City or its Designee for the City's or its Designee's approval a certificate in writing of such designation of Affordable Units within Unit B. Within Unit B, an Affordable Unit designated for Eligible Households shall have substantially the same equipment and amenities as any other Affordable Unit in the Project-Phase B with the comparable number of rooms. The Administering Agency or its Designee shall base its approval or disapproval of the proposed Affordable Units upon the criteria set forth in this section.

The Unit B Owner, from time to time, may propose to change the affordability levels of particular units declared as Affordable Units provided that at all times the Unit B Owner maintains the same number of units at the affordability levels set forth in paragraph 'A' of this section, and provided that at all times the same unit mix is retained. The Owner shall notify the Administering Agency or its Designee of the proposed change in writing for the Administering Agency or its Designee's approval. The Administering Agency or its Designee will review the proposed changes and shall base its approval or disapproval of the proposed changes based upon the criteria set forth in this section.

D. Affordable Units Rent Level. The monthly rent for the Affordable Units occupied by Eligible Households or Section 8 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 (12) months of occupancy.

E. Renting Affordable Units to Eligible Households. During the Qualified Project Period, the Unit B Owner shall rent or lease the Affordable Units to Section 8 or Eligible Households and, if at any time the Unit B Owner is unable to rent or lease the Affordable Units, the Affordable Units shall

remain vacant pending rental or lease to Section 8 or Eligible Households.

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

G. Qualifying Eligible Household Income for Affordable Units at Initial Occupancy and Recertification. Unless a household is a Section 8 Household, and subject to the provisions of Internal Revenue Code Section 42 and the regulations promulgated thereunder, Qualifying Eligible Household Income at time of occupancy may not exceed the applicable percent of Median Income set forth in the chart 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 chart below, adjusted for Household Size or the household continues to receive Section 8 assistance. Unless otherwise prohibited by binding restrictions imposed by Project-Phase B financing, such as the provisions of Internal Revenue Code Section 42 or the regulations promulgated thereunder or other applicable law or ordinance, in the event, if at the time of recertification Household Income exceeds the Maximum Recertification Income limit for the income level initially qualified for by a household and does not receive Section 8 assistance, then such household must within 90 days either pay rent affordable to the next highest affordability level qualified for and the next available comparable Affordable Unit must be rented as a Low Income Unit; or vacate the unit to make it available for a qualified Eligible or Section 8 Household; or vacate the unit, unless otherwise prohibited by law, to make it available for an Eligible Household.

Maximum Permitted Income Levels

Eligible Households	Maximum Initial Income	Maximum Recertification Income
Low-Income	50%	70%
Moderate Income	70%	90%

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

<u>Unit Size</u>	<u>Household Size</u>
Studio	1-2 Persons
1 Bedroom	1-3 Persons
2 Bedroom	2-5 Persons
3 Bedroom	3-7 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 for Unit B, the Unit B Owner shall notify the City's Planning and Community Development Department [Attn: Housing Planner] or its Designee, of receipt of the occupancy permit for Unit B.

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

C. Completion of Certificate of Household Eligibility. Prior to allowing any household to occupy any Affordable Unit in Unit B, the Unit B 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 Unit B Owner shall also undertake a good faith effort to verify the applicant's Household Income, as reported on the completed Certificate. The Unit B 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 Unit B 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, Household Income shall be verified by wage or salary statements, or other income records that the City or its Designee may consider appropriate. In the event a household is receiving Section 8 assistance, the requirements of this Section 4.C and Section 4.D of this Agreement can be met through providing documentation associated with complying with the Section 8 program.

D. Annual Recertification of Residents. On an annual basis, the Unit B Owner shall require all households occupying an Affordable Unit in Unit B to complete and return to the Unit B Owner an updated Certificate of Household Eligibility. The Unit B Owner shall undertake a good faith effort to verify the reported Household Income, as reported in the completed Certificate. The Unit B 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 Unit B 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, Household Income shall be verified by wage or salary statements, or other income records the City or its Designee may consider appropriate.

Such certifications shall be filed with the City or its Designee, by attachment to the Annual Project Certification required pursuant to Subsection E and are subject to independent investigation and verification by the City or its Designee.

E. Annual Project Certification. After the Completion Date and until 90% of the rental units are occupied in Unit B, the Unit B Owner shall, on a quarterly basis, file with the City or its Designee an Annual Project Certification, in substantially the form of Exhibit E. Thereafter, during the term of this Regulatory Agreement, such certification shall be filed annually on or before June 30th and shall set forth the required information for the preceding year.

F. Maintain Complete Records. The Unit B Owner shall maintain complete and accurate records pertaining to the Affordable Units in Unit B, and shall permit any duly authorized representative of the City, including, without limitation, its Designee to inspect the books and records of the Unit B Owner pertaining to the Affordable Units in Unit B, and if applicable, incomes of Eligible Households residing in Unit B. 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, all documentation required by this Section shall be submitted on the forms designated herein as such forms 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 Unit B Owner's obligations hereunder.

SECTION 5 - SECTION 8 CERTIFICATE HOLDERS

Unit B 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 Unit B Owner shall not apply, or permit the application of, management policies or lease provisions with respect to Unit B which have the effect of precluding occupancy of Units by holders of Section 8 certificates.

SECTION 6 - LEASE PROVISIONS

A. It is the Unit B Owner's responsibility to screen and select tenants for desirability and credit worthiness. Such selection is within the Unit B Owner's discretion. If written management policies exist, or exist in the future, with respect to Unit B, 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 Agreement.

B. All leases for Eligible Households 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 Unit B Owner to terminate the lease for the Affordable Unit.

SECTION 7 - SALE OR TRANSFER OF UNIT B

The Unit B Owner hereby covenants and agrees not to sell, transfer or otherwise dispose of Unit B or any portion of Unit B without first providing a written notice from the purchaser stating that the purchaser understands, and will comply with the Unit B Owner's duties and obligations under this Agreement. 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 Regulatory Agreement shall become effective upon its execution and delivery, and shall continue in full force and effect throughout the Qualified Project Period.

SECTION 9 - NO DISCRIMINATION

The Unit B 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 Unit B or in connection with the employment or application for employment of persons for the operation and management of Unit B.

SECTION 10 - COVENANTS RUN WITH UNIT B

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

The City and the Unit B Owner hereby declare that the covenants and conditions contained herein shall bind and the benefits shall inure to, respectively, the Unit B Owner and Unit B 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 Regulatory Agreement, each and every contract, deed or other instrument hereafter executed conveying Unit B or any portion thereof or interest therein shall contain an express provision making such conveyance of Unit B subject to the covenants and conditions of this Agreement, 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 Unit B Owner shall exercise reasonable diligence to comply with the requirements of this Agreement and shall correct any such noncompliance within sixty (60) days after such noncompliance is first discovered by the Unit B Owner or would have been discovered by the exercise of reasonable diligence, or within 60 days after the Unit B 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 Unit B Owner is exercising due diligence to correct the noncompliance. The City or its Designee shall send any notice of non-compliance to Unit A Owner concurrently with the sending of such notice to Unit B Owner. If such noncompliance remains uncured after such period, then the Unit B 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 Unit B Owner to perform its obligations under this Regulatory 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 Unit B Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of the Unit B Owner's default;

2) Have access to, and inspect, examine and make copies of, all of the books and records of the Unit B Owner pertaining to Unit B. 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 Unit B Owner under this Regulatory Agreement.

4) The Unit B Owner hereby grants to the City or the Designee the option, upon Unit B Owner's default under this Regulatory Agreement, for the Qualified Project Period to lease up to 58 of the units in Unit B as mutually selected by the City or its Designee and the Unit B Owner for the purpose of subleasing such units to Eligible Households, but only to the extent necessary to comply with the provisions of this

Agreement. The City or its Designee may lease from the Unit B 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 Unit B upon determination that the Unit B Owner is no longer in default pursuant to this Agreement.

B. Hold Harmless. The Unit B Owner hereby agrees to pay, indemnify and hold the City and its Designee and any other party authorized hereunder to enforce the terms of this Regulatory Agreement harmless from any and all costs, expenses and fees, including all attorneys' fees which may be incurred by the City or the Designee or any other party in enforcing or attempting to enforce this Regulatory Agreement following any default hereunder on the part of the Unit B Owner or its successors, whether the same shall be enforced by suit or otherwise; together with all costs, fees and expenses which may be incurred in connection with any amendment to this Regulatory Agreement or otherwise by the City at the request of the Unit B Owner.

C. No Third Party Beneficiaries. The provisions of this Agreement and of the documents to be executed and delivered in connection herewith are and will be for the benefit of the Unit B 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 Agreement or of the documents to be executed and delivered in connection herewith.

SECTION 12 - THIS SECTION INTENTIONALLY LEFT BLANK

SECTION 13 - ESTOPPEL CERTIFICATE

The City agrees, upon the request of either the Unit B Owner, Unit A Owner, or their respective successors in interest, to promptly execute and deliver to the Unit B Owner or its successor in interest or to any potential or actual purchaser, mortgagor or encumbrance of Unit B, or the Unit A Owner or its successor in interest or to any potential or actual purchaser, mortgagor or encumbrance of Unit A if the Unit A Owner if the requesting party, a written certificate stating, if such is true, that the City has no knowledge of any violation or default by the Unit B Owner of any of the covenants or conditions of

this Agreement, or if there are such violations or defaults, the nature of the same.

SECTION 14 - AGREEMENT TO RECORD

The Unit B Owner shall cause this Regulatory Agreement to be recorded in the real property records of King County, Washington. The Unit B 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 Unit B Owner hereby recognize and agree that the representations and covenants set forth herein may be relied upon by City and the Unit B Owner. In performing its duties and obligations hereunder, the City may rely upon statements and certificates of the Unit B Owner and Eligible Households, and upon audits of the books and records of the Unit B Owner pertaining to occupancy of Unit B. In performing its duties hereunder, the Unit B Owner may rely on the Certificates of Tenant Eligibility unless the Unit B Owner has actual knowledge or reason to believe that such Certificates are inaccurate.

SECTION 16 - GOVERNING LAW

This Regulatory Agreement 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 Unit B 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 Regulatory Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

SECTION 18 - AMENDMENTS

This Regulatory Agreement 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 Unit B Owner and the City and/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 Unit B 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 98073-9710

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 Unit B Owner:
KTOD LLC
C/O RV Manager LLC
10604 NE 38th Place, Suite 215
Kirkland, WA 98033

With a copy to Investor Member:
RJ HOF 26-KTOD L.L.C.

c/o Raymond James Tax Credit Funds, Inc.
880 Carillon Parkway
St. Petersburg, Florida 33716
Facsimile No.: 727-567-8455
Attention: Steve Kropf, President

If to the Unit A Owner:

Kirkland Crossings, L.L.C
11624 SE 5th St, Suite 200
Bellevue, WA 98005
Attn: Derek Straight

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 - FEE WAIVER REQUIREMENTS

Pursuant to Chapters 27.04, 27.06, and 27.08 of the Kirkland Municipal Code the Unit B Owner received fee waivers in the approximate amount of \$186,377 for City Parks and Transportation Impact fees and \$20,068 for school impact fees as consideration for the provision of affordable units in Unit B. In the event at any time during the term of this Agreement, the Affordable Units are not provided pursuant to the provisions of this Agreement, the City retains the right to require the Unit B Owner to pay to the City all fees that were waived at the rate prevailing at the time the City determines Unit B is no longer conforming to the affordability requirements of this Agreement. This provision shall survive termination of the Agreement prior to expiration of the Qualified Project Period.

SECTION 21 - SEVERABILITY

If any provision of this Regulatory Agreement 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 Agreement and to sustain the validity hereof.

SECTION 23 - TITLES AND HEADINGS

The titles and headings of the sections of this Agreement 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.

IN WITNESS WHEREOF, the Unit B Owner and City have each executed the Regulatory Agreement and Declaration of Restrictive Covenants on the Date first above written.

Owner Unit B:
KTOD LLC, a
Washington limited liability company

City:

By: RV Manager LLC,
A Washington limited liability company, Its: City Manager
its Managing Member
By: Red Vines 1,
a Washington nonprofit corporation,
its Sole Member and Manager

Kurt Triplett
City Manager

By: Ann Levine, Executive Director

Approved as to Form:

City Attorney