

RESOLUTION R-5276

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER TO EXECUTE A REAL PROPERTY PURCHASE AND SALE AGREEMENT FOR A PORTION OF TAX PARCEL #2826059085 FOR THE EXTENSION OF 118<sup>TH</sup> AVENUE NE.

1           WHEREAS, as identified in Kirkland's comprehensive plan, the  
2 City has planned to extend 118<sup>th</sup> Avenue between NE 116<sup>th</sup> Street and  
3 NE 118<sup>th</sup> Street in the Totem Lake area for over 15 years; and  
4

5           WHEREAS, the opportunity to install that extension presented  
6 itself with the Wolff Company's development of the property where that  
7 extension could be located; and  
8

9           WHEREAS, the proposed location would result in the severance  
10 of a portion of the Wolff Company's 12 acres planned for development  
11 ("Property"), which severance without subdivision is authorized by  
12 Kirkland Municipal Code Section 22.040.010(d); and  
13

14           WHEREAS, a large drainage basin upstream/upslope of this  
15 parcel drains untreated and undetained surface water to Totem Lake,  
16 which could be handled by a surface water treatment and detention  
17 facility that could be constructed on the Property in the future; and  
18

19           WHEREAS, an appraisal of the Property was completed by  
20 Valbridge Property Advisors on September 11, 2017, which arrived at a  
21 value of \$820,000 and the Wolff Company is prepared to sell the  
22 Property to the City for that price.  
23

24           NOW, THEREFORE, be it resolved by the City Council of the City  
25 of Kirkland as follows:  
26

27           Section 1. The City Manager is hereby authorized and directed  
28 to execute on behalf of the City of Kirkland a Real Property Purchase  
29 and Sale Agreement for the Property substantially similar to that  
30 attached to this Resolution as Exhibit "A."  
31

32           Passed by majority vote of the Kirkland City Council in open  
33 meeting this 17th day of October, 2017.  
34

35           Signed in authentication thereof this 17th day of October, 2017.

  
Amy Walen, Mayor

Attest:

  
Kathi Anderson, City Clerk

## AGREEMENT TO PURCHASE AND SELL REAL PROPERTY

This Agreement to Purchase and Sell Real Property ("Agreement") is made this \_\_\_\_ day of October, 2017 ("Effective Date"), by and between the City of Kirkland, a municipal corporation of the State of Washington ("Buyer"), and Kirkland Apartments Development Company, LLC, owner of the real property hereinafter described ("Seller").

For and in consideration of the mutual covenants herein contained, the sufficiency of which is unconditionally acknowledged by Buyer and Seller, the parties hereby agree as follows:

1. Purchase of Real Property. Seller and Buyer hereby agree to the purchase and sale of the real property described as follows:

See Exhibit A, herein incorporated by reference ("Property").

2. Purchase Price; Payment. The "Purchase Price" for the Property shall be Eight Hundred Twenty Thousand and 00/100 Dollars (\$820,000.00). At or before Closing, Buyer shall deposit the Purchase Price with the Escrow Holder. Within ten (10) days following the Effective Date, Buyer shall deliver to Escrow Holder the amount of One Hundred Dollars (\$100.00) as independent consideration for entering into this Agreement and for the rights granted to Buyer under this Agreement, even if such independent consideration is not specifically referenced elsewhere in this Agreement. Following the Effective Date such independent consideration shall be entirely non-refundable to Buyer but will be applicable to the Purchase Price.

3. Escrow Holder: Promptly following the execution of this Agreement, Buyer shall open an escrow with NexTitle, Bellevue, Washington (the "Escrow Holder"). A copy of this Agreement shall be provided to the Escrow Holder to advise the Escrow Holder of the terms and conditions hereof. Escrow Holder shall conduct the Closing in accordance with the terms of this Agreement and pursuant to any additional escrow instructions of the Parties which shall be consistent herewith. At Closing, Escrow Holder shall hold and disburse the Purchase Price and record the deed in accordance with this Agreement.

4. Title Policy and Condition of Title. Buyer will order a standard coverage preliminary commitment for title ("Title Report") from Escrow Holder immediately upon mutual execution hereof. Within 10 days after receipt of the title report, Buyer shall notify Seller what exceptions to title, will be accepted by Buyer. Seller shall have no obligation to cure any title objections other than the Mandatory Cure Exceptions (as hereinafter defined). Seller shall undertake all necessary actions to cure or remove (i) any liens evidencing monetary encumbrances (other than liens for non-delinquent general real estate taxes) ("Monetary Liens") that are created as a result of the intentional acts of Seller or its agents and affiliates, including any mechanics liens and judgment liens that arise after the Effective Date, (ii) any liens or encumbrances other than Monetary Liens created by Seller or its agents and affiliates after the date of this Agreement, and (iii) any exception to title that Seller has specifically agreed in writing to cure or remove pursuant to the terms of this Section 4 (collectively, the "Mandatory Cure Exceptions"). Seller's failure to cure or remove any of the Mandatory Cure Exceptions shall be a breach of this Agreement and shall entitle Buyer to exercise its remedies under this Agreement.

5. Closing. Title to the Property at closing shall be conveyed to Buyer by bargain and sale deed, free and clear of all Mandatory Cure Exceptions and shall be so insurable. The "Date of Closing" shall be the date the deed is recorded. The closing of the sale of the Property and recordation of the deed shall be held at the Escrow Holder's office no later than November 15, 2017. This date may be extended by agreement of the parties, which agreement shall not be unreasonably withheld. Notwithstanding the foregoing, Buyer and Seller agree that the Date of Closing shall occur no later than December 15, 2017. Buyer shall be entitled to possession of the Property at closing.

At closing, Seller and Buyer shall each pay one-half of the escrow fees, if any, charged by Escrow Holder. Seller shall pay all recording fees, transfer taxes, real estate excise tax, deed stamps, and similar property transfer charges. Each party shall pay its own attorneys' fees. With respect to the title policy, Seller shall pay the premium for a standard owner's title policy and Buyer shall pay the additional premium associated with any extended or other policy Buyer elects to acquire. Buyer shall also pay the premiums for any endorsements to the title policy, unless an endorsement is required to cure a Mandatory Cure Exception or otherwise deliver title to the Property as herein prescribed, in which case, Seller shall pay the premium for such endorsement. Buyer and Seller shall place with escrow all instruments, documents, and monies necessary to complete the sale in accordance with this Agreement.

6. Access to Property. Buyer and its employees and agents shall have the right and permission from the date of this Agreement through closing date to enter upon the Property for inspection purposes, but Buyer will not conduct any tests at the Property that involve piercing the ground or structures. Buyer shall indemnify, defend and hold Seller and Seller's affiliates, members, partners, subsidiaries, shareholders, officers, directors and employees (collectively, "Seller Indemnified Parties") harmless from and against all causes of action, claims, costs, damages, demands, expenses (including reasonable legal expenses), liabilities and suits (collectively, "Claims") actually incurred by Seller and directly associated with such entry or activities on the Property.

7. Property Tax. Even though Buyer is exempt from property taxes, all property taxes applicable to the Property will be paid by Seller prior to closing or through Escrow. Immediately after closing, if any taxes have been paid in excess of what was required, the City will advise King County to refund the excess taxes to Seller, if refundable.

8. Condition of Property. All representations and warranties of Seller contained herein shall be true, accurate, and complete at the time of closing. Except for certain construction and grading activities conducted by Seller at the request and requirement of Buyer, the physical condition of the Property at closing shall be the same as on the Effective Date. If not, Buyer may elect at its sole discretion to either 1) rescind this Agreement, with Seller refunding the entire purchase price and reimbursing Buyer for all costs incurred, or 2) have Seller pay for all costs of repair or restoration at Seller's expense. In the event the Property contains a well, fuel tank or septic tank, Seller will remove such tank and until it is removed there will be no closing.

8.1 Seller shall not enter into any lease, trust deed, mortgage, restriction, encumbrance, lien, license or other instrument or agreement affecting the Property without the prior written consent of Buyer from and after the date of this Agreement.

Seller warrants as follows: that Seller is the sole legal owner of the fee simple interest in the Property and holds title to the Property as described on Buyer's title policy.

8.2 This offer is made with respect to the physical condition of the Property on an "as is basis" as of the Date of Closing, and Buyer acknowledges and agrees that if Buyer purchases the Property, Buyer shall be deemed to have approved and waived any and all objections to Property, and the physical, legal, environmental and economic characteristics and conditions thereof (including the existence of any hazardous substances upon, under or about the Property), whether or not disclosed by this Agreement, and/or Buyer's inspection; and that Buyer is relying solely upon its own inspection, investigation and analysis of the Property and is acquiring the Property AS IS, WHERE IS, AND WITH ALL FAULTS, without any representations or warranties of any kind whatsoever by Seller. Buyer on behalf of itself and its successors-in-interest in the Property agrees to, and hereby does, forever waive, release, discharge and acquit Seller from any and all Claims, in law or in equity, known or unknown, which Buyer or its successors-in-interest in the Property had, now has, or hereafter may have or acquire or possess arising out or in any way connected with the Property, including but not limited to (i) any Claims arising out of, or in any way related to toxic, dangerous, or hazardous waste or substance as the same may now or hereafter be defined by any applicable law or regulation; and (ii) any Claims related to toxic, dangerous, or hazardous waste or substance as may hereafter be found and determined to have been on or within the subject Property as of the Date of Closing of this sale or earlier.

9. Seller's Knowledge. To the best of Seller's knowledge, the Property is not in violation of any law or regulation relating to the environmental conditions thereon and there is no hazardous waste, toxic substance or pollutant, within the scope of any state, federal or local environmental statute or rule, on or in the vicinity of the Property or on any parcels of land which abut the Property to the best of Seller's knowledge. Further, to the best of Seller's knowledge there is no asbestos, PCB's or underground storage tanks located on the Property or which have been removed therefrom.

10. Remedies. If Seller reasonably concludes that Buyer is in breach of this Agreement, Seller's sole remedy shall be to terminate this Agreement by sending written notice to Buyer and Escrow. If Buyer reasonably concludes that Seller is in breach of this Agreement, Buyer shall have the right to either terminate this Agreement by sending written notice to Seller and Escrow or may instead maintain an action for specific performance (together with recovery of costs and attorney's fees incurred in such action). If an action or proceeding occurs between the parties seeking enforcement of any provision contained in this Agreement, the prevailing party in any such action or proceeding shall be entitled to reasonable attorney's fees and costs in addition to any other relief which a court of law having jurisdiction determines it is entitled to.

11. Notice. Any demand, request or notice which either party hereto desires or may be required to make or deliver to the other shall be in writing and shall be deemed given whether delivered by facsimile, delivered to the person, or three days after being deposited in the United States mail, addressed as follows:

To Seller:

To Buyer:

Kirkland Apartments Development  
Company, LLC  
6710 E. Camelback Road, Suite 100  
Scottsdale, Arizona 85251

City of Kirkland  
123 Fifth Avenue  
Kirkland, WA 98033

12. Binding. This Agreement shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto and shall inure to the benefit of them.

13. Time is of the essence of this Agreement and the dates and deadlines contained herein are also of the essence of this Agreement.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement to be effective as of the Effective Date.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

CITY OF KIRKLAND

By: \_\_\_\_\_  
Kurt Triplett, City Manager

Approved as to form:

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

KIRKLAND APARTMENTS DEVELOPMENT COMPANY, LLC

By: N. G. Keller  
Its: Secretary  
Date: October 4, 2017

**ACCEPTANCE BY ESCROW HOLDER**

This Agreement, together with the independent consideration, is hereby acknowledged and accepted and the escrow is opened as of \_\_\_\_\_, 2017. Escrow Holder accepts its designation as such, and agrees to act as "the person responsible for closing" the purchase and sale transaction contemplated in this Agreement within the meaning of Section 6045(e) of the Internal Revenue Code of 1986, as amended, and to file all forms and returns required thereby.

NEXTTILE OF BELLEVUE

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Exhibit A  
Legal Description of Property  
*[Please see attached]*

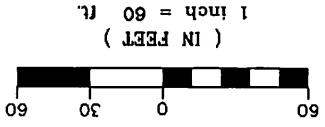
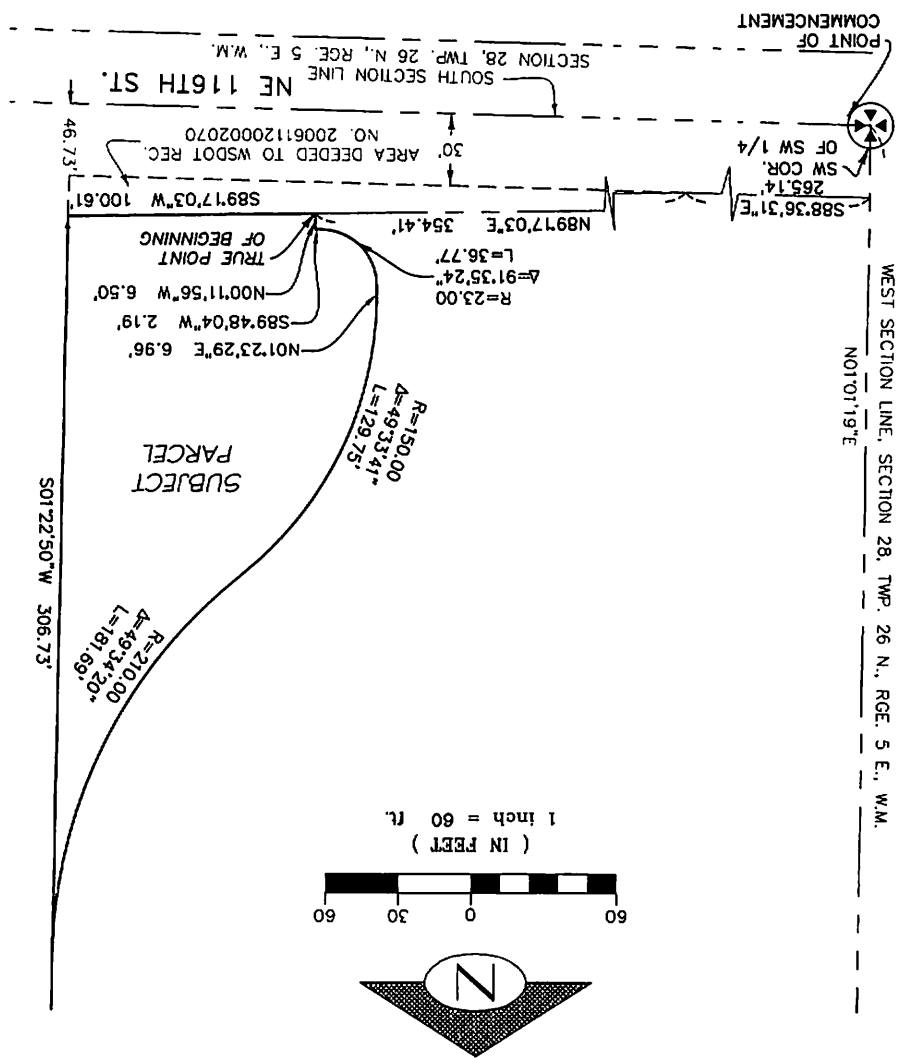
**BUSH, ROED & HITCHINGS, INC.**  
 CIVIL ENGINEERS & LAND SURVEYORS  
 2009 MINOR AVE. EAST, SEATTLE, WA 98102  
 (206) 323-4144  
 FAX (206) 323-7135  
 1-800-935-0508

LEGAL DESCRIPTION EXHIBIT  
 WOLFF COMPANY  
 LIFEBRIDGE CHURCH  
 CITY OF KIRKLAND  
 WASHINGTON

JOB NO 2016035.03  
 SCALE 1" = 60'  
 DRAWN TRS  
 CHECKED IGM  
 DATE 09/22/17



09/22/17



IN THE SW 1/4 OF THE SW 1/4 OF SECTION 28, TOWNSHIP 26  
 NORTH, RANGE 05 EAST, W.M.,  
 KING COUNTY, WASHINGTON



BUSH, ROED & HITCHINGS, INC.  
2009 MINOR AVENUE EAST  
SEATTLE, WA 98102  
(206) 323-4144

WOLFF COMPANY  
LIFEBRIDGE CHRUCH  
TAYLOR R. SCHULTE P.L.S.NO. 44646  
BRH JOB NO. 2016035.03  
SEPTEMBER 22, 2017



LEGAL DESCRIPTION

THAT PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 26 NORTH, RANGE 05 EAST, W.M., IN KING COUNTY, WASHINGTON, MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE SOUTHWEST CORNER OF SAID SOUTHWEST QUARTER, THENCE NORTH 01°01'19" EAST, ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER, A DISTANCE OF 30.00 FEET TO THE NORTHERLY RIGHT OF WAY MARGIN OF NORTHEAST 16TH STREET;

THENCE SOUTH 88°36'31" EAST, ALONG SAID NORTH MARGIN, A DISTANCE OF 265.14 FEET TO THE INTERSECTION OF SAID NORTH MARGIN AND THE NORTH MARGIN OF SAID NORTHEAST 16TH STREET AS DESCRIBED ON WARRANT DEED RECORDED UNDER RECORDING NUMBER 20061120002070, RECORDS OF KING COUNTY, WASHINGTON;

THENCE NORTH 89°17'03" EAST, ALONG SAID NORTH MARGIN, A DISTANCE OF 354.41 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 00°11'56" WEST, A DISTANCE OF 6.50 FEET;

THENCE SOUTH 89°48'04" WEST, A DISTANCE OF 2.19 FEET TO A TANGENT CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 23.00 FEET;

THENCE NORTHWESTERLY ALONG SAID CURVE, AN ARC LENGTH OF 36.77 FEET, THROUGH A CENTRAL ANGLE OF 91°35'24";

THENCE NORTH 01°23'29" EAST, A DISTANCE OF 6.96 FEET TO A TANGENT CURVE, CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 150.00 FEET;

THENCE NORTHWESTERLY ALONG SAID CURVE, AN ARC LENGTH OF 129.75 FEET, THROUGH A CENTRAL ANGLE OF 49°33'41" TO THE POINT OF REVERSE CURVE, CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 210.00 FEET;

THENCE NORTHEASTERLY ALONG SAID CURVE, AN ARC LENGTH OF 181.69 FEET, THROUGH A CENTRAL ANGLE OF 49°34'20";

THENCE SOUTH 01°22'50" WEST, A DISTANCE OF 306.73 FEET TO SAID NORTHERLY RIGHT OF WAY MARGIN OF SAID NORTHEAST 16TH STREET PER WARRANT DEED;

THENCE SOUTH 89°17'03" WEST, ALONG SAID MARGIN, A DISTANCE OF 100.61 FEET TO THE TRUE POINT OF BEGINNING;

CONTAINING AN AREA OF 20,353 SQUARE FEET OR 0.4672 ACRES, MORE OR LESS;

SITuate IN THE CITY OF KIRKLAND, KING COUNTY, WASHINGTON.