

RESOLUTION R-5293

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND DECLARING THE PROPERTY AT 6705 AND 6711 106TH AVENUE NE, KIRKLAND, WASHINGTON TO BE SURPLUS TO THE NEEDS OF THE CITY AND AUTHORIZING THE CITY MANAGER TO SIGN THE ATTACHED HOUSING COOPERATION AGREEMENT TO SELL THAT PROPERTY AND TO ALSO PURCHASE THE PROPERTY AT 1129 8TH STREET, KIRKLAND, WASHINGTON

1 WHEREAS, the City purchased the Houghton Court Apartments
2 at 6705 and 6711 106 Avenue NE ("Houghton Court") in 2015 to secure
3 the land in order to build a pedestrian bridge and connection between
4 the Cross Kirkland Corridor (CKC) and the Houghton Shopping Center
5 as called for in the CKC Master Plan; and
6

7 WHEREAS, the bridge has been constructed and the City will
8 insure that an easement connecting the CKC and the Houghton
9 Shopping Center is maintained, which means the City no longer needs
10 to retain title to the property; and
11

12 WHEREAS, the City Council thus finds that Houghton Court is not
13 needed for current or future City purposes and it therefore surplus to its
14 needs; and
15

16 WHEREAS, because Houghton Court provides affordable housing
17 in Kirkland, the King County Housing Authority ("KCHA") is interested in
18 purchasing the property to ensure it remains affordable housing; and
19

20 WHEREAS, the 2017-2018 City Work Program includes an item
21 to "Expand Maintenance Center capacity to meet the service needs of
22 the larger City," which staff proposed could be met with purchase of the
23 Parks Maintenance Facility ("Maintenance Facility") which is currently
24 owned by KCHA and leased from it by the City; and
25

26 WHEREAS, KCHA is willing to sell the Maintenance Facility to the
27 City for \$1,900,000 and also purchase Houghton Court for \$4,727,250,
28 with difference to be paid by KCHA with funds from other sources,
29 including approximately \$1.98 million in affordable housing "fee in lieu"
30 revenues generated by City, which has been approved by A Regional
31 Coalition for Housing ("ARCH"); and
32

33 WHEREAS, declaring Houghton Court as surplus and authorizing
34 the City Manager to execute the Housing Cooperation Agreement will
35 enable staff to begin the process of selling Houghton Court to KCHA and
36 concurrently purchase the Maintenance Facility,
37

38 NOW, THEREFORE, be it resolved by the City Council of the City
39 of Kirkland as follows:
40

41 Section 1. Ownership of Houghton Court is declared surplus to
42 the needs of the City.

43 Section 2. The City Manager is hereby authorized and directed
44 to execute on behalf of the City of Kirkland a Housing Cooperation
45 Agreement substantially similar to that attached to this Resolution as
46 Attachment 1 for the purpose of buying the Maintenance Facility and
47 selling Houghton Court.
48

49 Passed by majority vote of the Kirkland City Council in open
50 meeting on the 6th day of February, 2018.
51

52 Signed in authentication thereof this 6th day of February,
53 2018.



Amy Walen, Mayor

Attest:



Kathi Anderson, City Clerk

**Housing Cooperation Agreement
Between
Housing Authority of the County of King
and
City of Kirkland**

Relating to the Transfer of Two Parcels of Improved Real Property

This Agreement ("Agreement") is made and entered into the ___ of _____, 2018 between the City of Kirkland, hereinafter called "City", and the Housing Authority of the County of King, hereinafter called "KCHA".

WHEREAS, the City desires to acquire a maintenance facility owned by KCHA and located at 1129 8th Street, Kirkland, Washington (as defined under Section 1 below, the "Maintenance Facility") for use by the City's maintenance operations; and

WHEREAS, KCHA has determined that it has no need for the Maintenance Facility to support its operations and is willing to dispose of the Maintenance Facility by transferring ownership to the City upon the terms and conditions herein; and

WHEREAS, KCHA is willing to apply to the U.S. Department of Housing and Urban Development ("HUD") to release the Declaration of Trust ("DOT") which currently encumbers the Maintenance Facility, so that the Maintenance Facility can be sold to the City; and

WHEREAS, the City of Kirkland Comprehensive Plan (the "Plan") has identified a need to preserve, maintain and improve existing affordable housing through assistance to residents and housing providers within the City boundaries and has outlined a policy of supporting housing acquisition and creation by private or nonprofit organizations, housing authorities, or other social and health service agencies for very low-, low- and moderate-income residents; and

WHEREAS, the City has a public purpose in adopting the Plan for the long-term preservation of affordable housing within its jurisdiction; and

WHEREAS, the City acquired a multifamily development commonly referred to as the Houghton Court Apartments in 2015 which meets the City's targeted criteria for preserving affordable housing. The development includes 15 apartments in two 2-story apartment buildings located at 6705 106th Avenue NE in Kirkland ("6705 Parcel") and 6711 106th Avenue NE in Kirkland ("6711 Parcel"). The 6705 Parcel and the 6711 Parcel are collectively defined under Section 1 below as the "Housing Units" or "HU"; and

WHEREAS, KCHA is a public housing authority experienced in the operation of affordable housing that seeks to encourage the provision of long-term affordable housing for low-income persons residing within King County; and

WHEREAS, KCHA desires to acquire and operate the Housing Units as assisted housing for such purpose; and

WHEREAS, in order to assist KCHA in ensuring the long-term preservation of the Housing Units as affordable housing, the City is willing to enter into this Agreement with KCHA; and

WHEREAS, pursuant to the Housing Cooperation Act, Ch. 35.83 RCW, "...any state public body may upon such terms...as it may determine: (1) Dedicate, sell, grant, convey, or lease any of its interest in any property...to a housing authority...; (8) Do any and all things, necessary or convenient to aid and cooperate in the planning, undertaking, construction or operation of such housing projects..."; and

WHEREAS, it is in the best interests of the public that the City and the KCHA cooperate in undertaking those actions necessary to complete the transfers of the Housing Units and the Maintenance Facility in order to meet each party's expressed objectives and to ensure a smooth ownership transition; and

WHEREAS, joint cooperation between the City and KCHA is necessary (i) for KCHA to obtain HUD's approval to sell the Maintenance Facility to the City, and (ii) to preserve the Housing Units as long term affordable housing within the City of Kirkland;

NOW, THEREFORE, in consideration of the mutual interests and promises contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and the KCHA agree as follows:

1. Definitions

- 1.1. Housing Units or HU: the improved property located on the two contiguous sites legally described on Exhibit A attached hereto, together with all of the City's right, title and interest in (i) all structures, fixtures, buildings and other improvements thereon, (ii) all fixtures, furniture, equipment or personal property located thereon, (iii) any easements, rights of way and appurtenances pertaining to the use and enjoyment of the property, (iv) all rental agreements, including any deposits made by tenants, related to the property, and (v) all permits, certificates, approvals and licenses pertaining to the use and occupancy of the property and all drawings, plans and specifications related to site improvements thereon.

- 1.2. HU Closing Date: the last day of the month falling not less than 30 days after the fulfillment of the conditions set forth in Section 2.1, but in no event later than April 30, 2018.
- 1.3. HU Purchase Price: \$4,727,250.00.
- 1.4. Buyer means, as to the Housing Units, KCHA and, as to the Maintenance Facility, the City.
- 1.5. City Grant means the funds provided to KCHA pursuant to Section 2.1(b) below.
- 1.6. Maintenance Facility: the improved property located on the site legally described on Exhibit B attached hereto, together with all of KCHA's right, title and interest in (i) all structures, fixtures, buildings and other improvements thereon, (ii) all fixtures, furniture, equipment or personal property located thereon, (iii) any easements, rights of way and appurtenances pertaining to the use and enjoyment of the property, and (iv) all permits, certificates, approvals and licenses pertaining to the use and occupancy of the property and all drawings, plans and specifications related to site improvements thereon.
- 1.7. MF Closing Date: the last day of the month falling not less than 30 days after the fulfillment of the conditions set forth in Section 2.2.
- 1.8. MF Purchase Price: \$1,900,000.00, as established by Restricted Appraisal Report prepared by Kidder Mathews.
- 1.9. Sale Property means (i) the Housing Units when the Seller is the City and the Buyer is KCHA, and (ii) the Maintenance Facility when the Seller is KCHA and the Buyer is the City.
- 1.10. Seller means, as to the Maintenance Facility, KCHA and as to the Housing Units, the City.

2. Mutual Cooperation and Services

- 2.1. Housing Units. KCHA and the City agree that:
 - a) KCHA will have access to the Housing Units to complete any remaining due diligence and non-destructive testing that it desires in connection with the Housing Units, including obtaining title reports, inspections and surveys, if desired. The parties will work in good faith to resolve any issues discovered in connection therewith. The City shall provide to KCHA requested documents in its possession that are customarily used in acquiring and financing commercial real estate, including but not limited to appraisals,

surveys, environmental reports, inspections, tenant leases, existing permits and approvals, and operational expenses relating to the Housing Units.

- b) The City will assist KCHA in obtaining a grant from the City's in-lieu funds or other City funds administered by A Regional Coalition for Housing ("Administering Agency") in the amount of \$2,827,250 (the HU Purchase Price less the MF Purchase Price) for acquisition of the Housing Units. Such funds are referred to herein as the "City Grant." KCHA's closing costs and internal staff time, related travel and other internal administrative costs in connection with this acquisition will be absorbed by KCHA. The City Grant will not bear interest or have any repayment obligation, will be evidenced by a promissory note and will be subordinate at all times to any lien or other covenant or regulatory agreement relating to federal operating assistance for the Housing Units in favor of HUD or any successor agency. As part of the terms of such City assistance, KCHA is agreeing to the terms set forth in Section 6 below.
- c) KCHA will obtain an owner's title insurance policy, at KCHA's cost, insuring it has marketable title in the Housing Units as of the HU Closing Date.
- d) Access Easements. On or before the HU Closing Date, two perpetual public access easements for pedestrian and bicycle use will be finalized, in mutually agreeable form, and recorded in the county records. These two easements will be located:
 - 1) Where City improvements currently exist on the 6711 Parcel and as shown and legally described on Exhibit C attached hereto; and
 - 2) Over the south 5 feet of the existing private 25 foot easement which benefits the 6711 Parcel and is described in the last paragraph of Exhibit A. Such easement shall not encroach on the 6705 Parcel without the express consent of KCHA.

If the parties are unable to reach mutual agreement on the form of the easements or cannot locate these easements as provided here, and agreement to locate them elsewhere cannot be reached, then either party can give notice of termination of this agreement before Closing.

- e) Interim Financing. If the parties are unable to assemble the funding described in Section 2.1(b) above prior to the April 1, 2018, KCHA will provide financing to the City on a short term basis (not longer than twelve months) upon terms and conditions mutually agreeable to the parties.

2.2. Maintenance Facility. KCHA and the City agree that:

- a) The City currently leases the Maintenance Facility from KCHA. The City may perform any due diligence and non-destructive testing desired in connection with the Maintenance Facility, including obtaining title reports, inspections and surveys, if desired. The parties will work in good faith to resolve any issues discovered in connection therewith. KCHA shall provide to the City requested documents in its possession that are customarily used in acquiring and financing commercial real estate, including but not limited to appraisals, surveys, environmental reports, inspections, existing permits and approvals, and operational expenses relating to the Maintenance Facility.
- b) KCHA will obtain HUD written approval for sale of the Maintenance Facility to the City.
- c) The City will secure funds equal to the purchase price for the Maintenance Facility. The City's closing costs and internal staff time, related travel and other internal administrative costs in connection with this acquisition will be absorbed by the City.
- d) The City will obtain an owner's title insurance policy, at the City's cost, insuring it has marketable title in the Maintenance Facility as of the MF Closing Date and reflecting the release of the DOT lien.

3. Conveyance of Title

3.1. Housing Units. Upon fulfillment of all of the conditions set forth in Section 2.1 of this Agreement, the City shall:

- a) Convey to KCHA by quitclaim deed all its ownership interest in the Housing Units in the form attached as Exhibit D-1, assign to KCHA all of its interest in the tenant leases for the Housing Units in the form attached as Exhibit D-2, and terminate all property management and other contracts relating to the Housing Units in conformity with the terms of such contracts (unless otherwise requested not to terminate by KCHA in writing not less than five business days prior to the HU Closing Date).
- b) After closing, KCHA and the City will reconcile the actual amount of revenues and expenses as of the HU Closing Date.

3.2. Facility. Upon fulfillment of the conditions set forth in Section 2.2 of this Agreement, KCHA shall convey all its ownership interest in the Maintenance Facility to the City by quitclaim deed in the form attached as Exhibit E.

4. Covenant, Representations and Warranties. Prior to closing, each party shall continue to operate its site in the ordinary course of its business and will maintain its site in the same condition as existing of the date hereof. Each party agrees not to enter into any new leases, service contracts or other agreements affecting its site

without first obtaining the prior written consent of the other party which consent shall not be unreasonably withheld.

5. Condition of Premises and Responsibility for Operations, Maintenance, Repairs, Improvements

- 5.1. The City has inspected and knows the condition of the Maintenance Facility and agrees to accept the Maintenance Facility in as is condition, and to assume full and complete responsibility for all operations, maintenance, repairs, improvements of the Maintenance Facility, from and after Facility Closing Date.
- 5.2. KCHA agrees to accept the Housing Units in as is condition, and to assume full and complete responsibility for all operations, maintenance, repairs, improvements of the Housing Units, from and after the HU Closing Date.
- 5.3. Neither Seller is making, and both Sellers specifically disclaim, any warranties, express or implied, including any warranty of merchantability or fitness for a particular purpose or any warranty concerning hazardous materials, with respect to the Sale Property.
- 5.4. Each Buyer acknowledges and agrees that, except as indicated in Exhibit F, the Seller shall have no liability for, and the Buyer shall release and have no recourse against the Seller for, any defect or deficiency of any kind whatsoever in the Sale Property and without regard to whether any such defect or deficiency was known or discoverable by the Buyer or the Seller.

6. Housing Affordability Agreement. KCHA agrees as follows:

- 6.1 Use. The City Grant will be used only for the acquisition of the Housing Units and for no other purpose. If made, the funding commitment shall continue, for six (6) months from the date of Council approval and shall expire thereafter if all conditions are not satisfied. An extension may be requested to City staff no later than sixty (60) days prior to the expiration date. City staff may grant up to a 12 month extension.
- 6.2 Improvements. KCHA will use federal funds: (i) within the first twelve months after the HU Closing Date, to invest not less than \$150,000 to address priority improvements at the Housing Units, and (ii) within five years after the HU Closing Date, to make significant additional improvements described in the Property Condition Assessments dated December 12, 2016 prepared by Jeff Samdal & Associates, for the purpose of improving curb appeal and addressing major capital needs, such as roof, window and siding work. The work performed by KCHA under this Section 6.2 is referred to collectively as the "Improvements."

- 6.3 **Relocation.** No resident of the Housing Units at the time of the HU Closing Date will be required to relocate to another property. Any such resident who is ineligible to receive federal assistance (i.e. whose monthly rent plus utilities is less than 30% of their monthly income) will have future rent increases limited to the lesser of market rent or an annual increase that does not exceed the standard increase as customarily applied on an annual basis to rents in KCHA's workforce housing portfolio.
- 6.4 **Affordability.** A covenant, which shall be subordinate to any HUD Declaration Trust or subsequent covenant or regulatory agreement related to federal operating assistance, shall be recorded ensuring that, for a period of fifty (50) years from the HU Closing Date, all of the Housing Units will be leased, or available for lease, at affordability that is governed by the requirements of HUD's public housing program or any successor program. Units shall be made available as public housing or, if the Housing Units are no longer public housing or funded through a successor program, affordability levels will be set at rents that do not exceed 60% of the area median income, with utility costs based on KCHA allowances, unless otherwise agreed by the City. Notwithstanding the foregoing, affordability levels may be increased up to 80% of the area median income, if the long-term economic viability of the Housing Units is in jeopardy as reasonably determined by KCHA and upon approval of City staff which shall not be unreasonably withheld.
- 6.5 **Compliance/Reporting.** KCHA shall comply with all local, state and federal requirements in connection with the operation and development of the Housing Units. KCHA shall submit monitoring reports quarterly through completion of the Improvements, as requested, and annually thereafter. KCHA shall submit a final budget upon completion of the Improvements. So long as the Housing Units continue to receive federal operating assistance, a certification by KCHA to that effect shall satisfy the annual reporting requirement. If applicable, KCHA shall submit final budget and initial tenant information as requested by the City or Administering Agency. KCHA shall submit evidence of funding commitments from all proposed public sources. Such evidence may be in the form of a letter from KCHA confirming its use of federal funds to provide the balance of the acquisition financing.
7. **Seller Disclosure Statements.** To the maximum extent permitted by RCW 64.06, Buyers each expressly waive their rights to receive from Sellers a seller disclosure statement and to rescind this Agreement, both as set forth in RCW 64.06. Each party, as Seller, agrees that the other party, as Buyer, cannot waive its right to receive the section of the Seller Disclosure Statement entitled "Environmental" if the answer to any of the questions in that section would be "yes."

8. **Environmental Liability and Mutual Indemnities.** The additional provisions set forth on Exhibit G are incorporated herein by this reference and apply to each party under this Agreement in their respective roles as Buyer and Seller.
9. **Waiver and Amendments.** Waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any subsequent breach. No term or condition shall be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.
10. **Entire Agreement; Modifications; Counterparts.** This Agreement and the attached Exhibits set forth the entire agreement between the parties with respect to the subject matters hereof. This Agreement may be supplemented by addenda or amendments agreed upon by both parties in writing. The parties may execute this Agreement in one or more identical counterparts.
11. **Effective Date; Time is of the Essence; Survival.** This Agreement shall be effective upon signature and authorization by both parties. Time is of the essence in the performance of the agreements herein. The terms, covenants, representations and warranties contained herein shall not merge in the deeds of conveyance, but shall survive the conveyance and continue in force for a period of six months following the date of this Agreement.
12. **Notice.** Any notice provided for herein, which shall be sent by email, facsimile or first class mail, the latter of which will be deemed effective when received or within two days of mailing, whichever first occurs, and shall be sent to the respective parties at:

King County Housing Authority
600 Andover Park West
Tukwila, WA 98188
Attn: Executive Director

City of Kirkland
City Hall
123 Fifth Avenue
Kirkland, WA 98033
Attn: City Manager
Email: wevans@kirklandwa.gov
Fax: 425-587-3025

[Signatures located on next page]

IN WITNESS WHEREOF, the parties have executed this Agreement.

**Housing Authority of the
County of King**

City of Kirkland

Its: Executive Director

Its: City Manager

Date

Date

Approved as to Form:

City Attorney

Date

[INSERT NOTARY SIGNATURE BLOCKS]

EXHIBIT A
Legal Description of Housing Units

1. 6705 - 106th Avenue NE, Kirkland, Washington:

A PORTION OF TRACT 43, SOUTH KIRKLAND ACREAGE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 11 OF PLATS, PAGE 94, IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF TRACT 43, A DISTANCE OF 273.08 FEET SOUTH OF THE NORTHEAST CORNER THEREOF;

THENCE WEST PARALLEL TO THE NORTH LINE OF SAID TRACT 137.6 FEET;

THENCE SOUTHWESTERLY TO A POINT 205.2 FEET WEST OF THE SOUTHEAST CORNER OF SAID TRACT 43;

THENCE EAST 205.2 FEET TO THE SOUTHEAST CORNER OF SAID TRACT;

THENCE NORTH ALONG THE EAST LINE OF SAID TRACT 253.42 FEET TO THE BEGINNING;

EXCEPT THE SOUTH 157.42 FEET THEREOF.

AND

2. 6711 - 106th Avenue NE, Kirkland, Washington:

PARCEL B, AS DELINEATED ON AND DESCRIBED IN KIRKLAND SHORT PLAT NUMBER 77-7-14 (JJ), RECORDED UNDER RECORDING NUMBER 7708220679, BEING A PORTION OF TRACT 43, SOUTH KIRKLAND ACREAGE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 11 OF PLATS, PAGE 94, IN KING COUNTY, WASHINGTON;

TOGETHER WITH AN EASEMENT FOR INGRESS, EGRESS AND UTILITIES OVER THE SOUTH 25 FEET OF THE EAST 138.25 FEET OF THE NORTH 273.08 FEET OF TRACT 43, SOUTH KIRKLAND ACREAGE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 11 OF PLATS, PAGE 94, IN KING COUNTY, WASHINGTON.

EXHIBIT B
Legal Description of the Maintenance Facility

Parcel A:

Lots 1 through 4, inclusive, Block 27, Lake Avenue Addition to Kirkland, according to the plat thereof, recorded in Volume 6 of Plats, Page 86, in King County, Washington.

Parcel B:

Lots 1 through 7, inclusive, Block 240, Supplementary Plat of Kirkland, according to the plat thereof, recorded in Volume 8 of Plats, Page 5, in King County, Washington.

Parcel C:

An easement for access and utilities over the west 7.25 feet of that portion of vacated Eighth Street (formerly known as Lake Avenue) lying between Blocks 26 and 27 of Lake Avenue Addition to Kirkland, according to the plat thereof, recorded in Volume 6 of Plats, Page 86, in King County, Washington and between Blocks 240 and 241 of the Supplementary Plat of

Kirkland, according to the plat thereof, recorded in Volume 8 of Plats, Page 5, in King County, Washington, established for the benefit of said Parcels A and B by instrument recorded under recording number 9103291849.

EXHIBIT C
Depiction of Easements (including legal description)

That portion of Parcel B, City of Kirkland Short Plat Number 77-7-14(JJ), recorded under Recording No. 7708220679, records of King County, Washington, described as follows:

Commencing at the southeast corner of said Parcel B;
thence along the easterly line of said parcel, North $16^{\circ}05'36''$ East 100.44 feet to the **True Point of Beginning**;
thence continuing along said easterly line, North $01^{\circ}22'56''$ East 7.14 feet; thence North $86^{\circ}55'05''$ West 8.39 feet; thence North $88^{\circ}55'04''$ West 32.78 feet;
thence North $55^{\circ}40'28''$ West 27.60 feet to a point on a non-tangent curve to the left and having a radius of 30.00 feet, a radial line of said curve from said point bears South $20^{\circ}05'03''$ West;
thence along said curve westerly and southwesterly 29.29 feet through a central angle of $55^{\circ}55'49''$;
thence tangent from said curve, South $54^{\circ}09'13''$ West 6.97 feet; thence South $72^{\circ}42'24''$ West 10.38 feet; thence South $85^{\circ}28'14''$ West 10.38 feet; thence North $78^{\circ}22'06''$ West 10.11 feet;
thence North $70^{\circ}11'00''$ West 12.96 feet to the westerly line of said parcel; thence along said westerly line, South $17^{\circ}55'29''$ West 9.64 feet; thence South $69^{\circ}15'56''$ East 12.84 feet; thence South $80^{\circ}32'58''$ East 35.42 feet; thence North $06^{\circ}00'14''$ East 12.07 feet; thence North $65^{\circ}38'05''$ East 14.15 feet to the beginning of a tangent curve to the right and having a radius of 17.50 feet; thence along said curve easterly and southeasterly 25.15 feet through a central angle of $82^{\circ}20'49''$;
thence tangent from said curve, South $32^{\circ}01'06''$ East 9.79 feet; thence South $89^{\circ}37'40''$ East 38.83 feet; thence South $84^{\circ}39'06''$ East 15.50 feet to the **True Point of Beginning**.

Containing: 1304 Square Feet, more or less.

DRAFT

R-5293
Attachment 1

EXHIBITS D-1, D-2 & E
Quitclaim Deeds and Assignment of Leases

EXHIBIT F
Environmental Liability and Mutual Indemnification

1. Environmental Liability

1.1 "Hazardous Materials" as used herein shall mean any hazardous, dangerous or toxic wastes, materials, or substances as defined in state or federal statutes or regulations as currently adopted or hereafter amended, but does not include hazardous building materials that are on or in structural components on the Sale Property such as, but not limited to, the presence of asbestos or lead based paint on or in walls, floors, ceilings, piping or insulation.

1.2 Nothing in this agreement shall be deemed to waive any statutory claim for contribution that the Buyer might have against the Seller under federal or state environmental statutes that arises from Hazardous Materials deposited or released on the Sale Property by the Seller during the Seller's period of ownership. The Buyer may not, however, assert such a claim to the extent that the Buyer has created the need for or has exacerbated the cost of remediation upon which a statutory claim for contribution is based as a result of the activities of the Buyer, its employees, agents or contracts (i) during any period of tenancy prior to the closing date, or (ii) as new owner, performing construction or other activities after the closing date.

1.3 If the Buyer discovers the presence of hazardous materials arising prior to the effective date of conveyance at levels that could give rise to a statutory claim for contribution against the Seller, it shall immediately notify the Seller. Such notice shall in no event be provided more than 10 days after discovery. After notice is provided, the parties shall make their best efforts to reach agreement as to which party is responsible for remediation under the terms of this Agreement. If the Buyer fails to provide timely notice as provided for herein, it shall be prohibited from bringing a statutory claim for contribution against the Seller.

1.4 In no event shall the Seller be responsible for any costs of remediation that exceed the minimum necessary to satisfy the state or federal agency with jurisdiction over the remediation.

2. Indemnification and Hold Harmless

2.1 Seller shall defend, indemnify and hold harmless the Buyer and its elected officials, officers, agents or employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, which are caused by or result from a negligent action or omission of Seller, its officers, agents and employees in performing its obligations pursuant to this Agreement, and from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever related to the Sale Property arising prior to the effective date of conveyance, except to the extent that indemnifying or holding the Buyer harmless would be limited by the Environmental Liability provisions of this Exhibit D. In the event that any suit based upon such a claim, action, loss or damage is brought against the Buyer or the Buyer and the Seller, the Seller shall defend the same at its sole cost and expense and, if final judgment be rendered against the Buyer and its elected

officials, officers, agents and employees or jointly against the Buyer and Seller and their respective elected officials, officers, agents and employees, Seller shall satisfy the same.

2.2. In executing this Agreement, KCHA does not assume liability or responsibility for or in any way release the City from any liability or responsibility which arises in whole or in part from the existence or effect of City ordinances, rules or regulations. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such City ordinance, rule or regulation is at issue, the City shall defend the same at its sole expense and if judgment is entered or damages are awarded against the City, KCHA or both, the City shall satisfy the same, including all chargeable costs and attorney's fees.

2.3. Buyer shall defend, indemnify and hold harmless the Seller and its elected officials, officers, agents and employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, which are caused by or result from a negligent act or omission of the Buyer, its officers, agents and employees in performing obligations pursuant to this Agreement, and from any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever related to the Sale Property arising on or after the effective date of conveyance, except to the extent that indemnifying or holding the Seller harmless would be limited by the Environmental Liability provisions of this Exhibit D. In the event that any suit based upon such a claim, action, loss or damage is brought against the Seller or the Seller and the Buyer, the Buyer shall defend the same at its sole cost and expense and, if final judgment be rendered against the Seller and its officers, agents and employees or jointly against the Seller and the Buyer and their respective officers, agents and employees, the Buyer shall satisfy the same.

2.4. Each party to this Agreement shall immediately notify the other of any and all claims, actions, losses or damages that arise or are brought against that party relating to or pertaining to the Sale Property.

2.5. Each party agrees that its obligations under this paragraph extend to any claim, demand, and/or cause of action brought by or on behalf of any employees, or agents. For this purpose, each party, by mutual negotiation, hereby waives, with respect to the other party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW, but only to the extent necessary to indemnify the other party.

2.6 In the event that a court of competent jurisdiction finds that the City and KCHA were concurrently negligent, then each party's liability shall only be to the extent of each party's negligence. As permitted under Washington law, KCHA and City shall indemnify, defend, and hold the other harmless to the full extent of the indemnitor's negligence arising from the performance of this Agreement.