

RESOLUTION R-5655

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

1 WHEREAS, Fairfield Slater, LLC has applied for a limited  
2 property tax exemption as provided for in chapter 84.14 RCW and  
3 chapter 5.88 KMC for multifamily residential rental housing ("Multifamily  
4 Housing") in the Totem Lake and North Rose Hill Residential Targeted  
5 Area and the Director of Planning and Building has approved the  
6 application; and  
7

8 WHEREAS, Fairfield Slater, LLC has submitted to the City  
9 preliminary site plans and floor plans for four hundred eighty-six (486)  
10 units of new Multifamily Housing to be constructed on property situated  
11 at 12430 NE 120th Street, Kirkland, Washington; and  
12

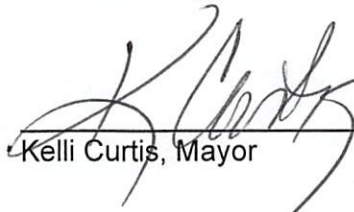
13 WHEREAS, the Director has determined the Multifamily  
14 Housing, if completed, occupied, and owned as proposed, will satisfy  
15 the requirements for a final certificate of tax exemption by providing 49  
16 units of housing affordable to those who earn no more than 50% of King  
17 County median income as required by the City of Kirkland.  
18

19 NOW, THEREFORE, be it resolved by the City Council of the  
20 City of Kirkland as follows:  
21

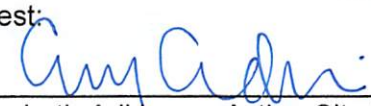
22 Section 1. The City Manager or designee is authorized and  
23 directed to execute on behalf of the City of Kirkland an agreement  
24 substantially similar to that attached as Exhibit A, which is entitled  
25 "Multifamily Housing Limited Property Tax Exemption Agreement," and  
26 to issue a Conditional Certificate of Acceptance of Tax Exemption.  
27

28 Passed by majority vote of the Kirkland City Council in open  
29 meeting this 10<sup>th</sup> day of December, 2024.  
30

31 Signed in authentication thereof this 10<sup>th</sup> day of December,  
32 2024.

  
Kelli Curtis, Mayor

Attest:

  
Elizabeth Adklisson, Acting City Clerk

## MULTIFAMILY HOUSING LIMITED PROPERTY TAX EXEMPTION CONTRACT

### THE BRYNN APARTMENTS

THIS CONTRACT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2024, between the City of Kirkland, a State of Washington municipal corporation ("City") and FAIRFIELD SLATER LLC, a Delaware limited liability company ("Applicant"), and incorporated attachments and exhibits, contains all terms and conditions agreed to by the City and the Applicant to undertake the activities described herein.

### RECITALS

1. Applicant has applied for a limited property tax exemption as provided in Chapter 84.14 Revised Code of Washington (RCW) and Chapter 5.88 Kirkland Municipal Code (KMC) for multifamily residential rental housing ("Multifamily Housing") in the TOTEM LAKE Residential Target Area, and the City's Director of Planning and Building ("Director") has approved the application; and
2. Applicant has submitted to the City preliminary site plans and floor plans for new Multifamily Housing to be constructed as part of a four hundred eighty-six (486)-unit project ("Project") on property situated at 12430 NE 120<sup>th</sup> Street in Kirkland, Washington ("Property"), and as more particularly described in **Exhibit A** which is attached hereto, and incorporated by reference herein; and
3. Applicant is the owner of the Property; and
4. The City has determined that the Multifamily Housing will, if completed, occupied, and owned as proposed, satisfy the requirements for a Final Certificate of Tax Exemption ("Final Certificate").
5. This Contract is entered into pursuant to City Council action taken on \_\_\_\_\_.

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

1. Definitions.
  - a. Words and terms capitalized in this Contract, unless explicitly defined in this Contract, shall have the meanings ascribed them by Chapter 5.88 KMC.
  - b. "Eligible Household." One or more adults and their dependents, which adults certify that their household income does not exceed the applicable percent of the King County Median Income given in Section 4.a. of this Contract, as adjusted for household size.

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

2. Conditional Certificate of Acceptance of Tax Exemption.

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

3. Agreement to construct Multifamily Housing.

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

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

c. Applicant agrees that the Multifamily Housing will be completed within three years from the date the Director approved the Applicant's application for the limited property tax exemption, unless extended by the Director for cause as provided in KMC 5.88.070.

4. Agreement to provide affordable housing.

Applicant agrees to provide 49 dwelling units ("Affordable Units") for rent, reserved for occupancy by Eligible Households and having a monthly housing expense, including rent, one parking space, utilities or an applicable utility allowance, and other expenses required by the

landlord as a condition of tenancy, that is no greater than thirty percent (30%) of the monthly King County Median Income given in the following table, as adjusted for household size.

Dwelling Units

	Affordability Level		Total Units
	Percent of King County Median Income	Market Rate	
	50%		
Studio	12	102	114
1-bedroom	20	179	199
2-bedroom	17	156	173
Total	49	437	486

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

a. The Affordable Units shall be those units indicated in **Exhibit C**. The Applicant may propose to change the particular units dedicated for the Affordable Units in accordance with the terms of the Covenant., provided that a total of 49 unit(s) is (are) designated for Affordable Units, and the same unit mix, and minimum sizes of Affordable Units is maintained. The Applicant shall request in writing the City's approval of any proposed change to the units designated for the Affordable Units. The City will review the proposed changes and shall base its approval or disapproval of the proposed changes upon the criteria set forth in this section.

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

c. Prior to issuing a certificate of occupancy, an agreement in a form acceptable to the city attorney ("Covenant") and substantially in the form of **Exhibit D** that addresses price restrictions, Eligible Household qualifications, long-term affordability, and any other applicable topics of the Affordable Units shall be recorded with the King County recorder's office. 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 Project. In the event of a conflict between the terms of this Contract and the terms of the Covenant, the terms of the Covenant will control.

d. In the event the Project is proposed for conversion to condominium, owner-occupied, or non-rental residential use, the Applicant must submit to the City for its approval a plan for preserving the Affordable Units. The City can consider options which would convert the Affordable Units to owner-occupied Affordable Units. In the event a condominium conversion occurs during the period of the property tax exemption and owner-occupied Affordable Units are provided at the affordability levels as defined in KMC 5.88.020(a) or that have such other comparable level of affordability as provided for in the city's affordable housing multifamily tax exemption incentive program, as regulated through Chapter 112 of the Kirkland Zoning Code, per

Section 6 of this Contract, the Affordable Units will continue to be eligible for the property tax exemption for the balance of the exemption period or for the period of time the conversion allows, whichever is appropriate. The balance of the Project would no longer be eligible for the exemption, and City will not cancel the Final Certificate as provided in Section 11 of this Contract.

6. Requirements for Final Certificate of Tax Exemption.

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

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

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

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

7. Agreement to Issue Final Certificate.

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

- a. Successfully completed the Multifamily Housing in accordance with the terms of this Contract and Chapter 5.88 KMC;

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

8. Annual certification.

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

- a. A statement of the occupancy and vacancy of the Multifamily Housing units during the previous year; and
- b. A statement that the Multifamily Housing has not changed use since the date of filing of the Final Certificate; and
- c. A statement that the Multifamily Housing continues to comply with this Contract and the requirements of Chapter 5.88 KMC; and
- d. A description of any improvements or changes to the Project made after the filing of the Final Certificate or the previous certification; and
- e. A statement of the change in ownership of all or any part of the property since the Final Certificate was filed; and
- f. Information and documentation sufficient to demonstrate, to the satisfaction of the Director, compliance with the affordability requirements of KMC 5.88.090 and this Contract, which shall, at minimum, include the following:

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

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

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

9. No violations for duration of exemption.

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

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

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

11. Cancellation of exemption - Appeal.

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

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

responsibility to or with which the Property may become charged or liable. Applicant further acknowledges that RCW 84.14.110 provides that any such lien may be foreclosed in the manner provided by law for foreclosure of liens for delinquent real property taxes.

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

12. Amendments.

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

13. Binding effect.

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

14. Governing and Applicable Law.

This Contract shall be governed by and construed in accordance with the laws of the State of Washington. Venue for any action arising out of this Contract shall be in King County Superior Court.

15. Audits and inspection of records.

Applicant understands and agrees that the City has the right to audit or review appropriate records to assure compliance with this Contract and Chapter 5.88 KMC and to perform evaluations of the effectiveness of the Multifamily Limited Property Tax Exemption program. Applicant agrees to make appropriate records available for review or audit upon seven days' written notice by the City.

16. Notices.

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



APPLICANT: Fairfield Slater LLC  
5355 Mira Sorrento Place, Suite 100  
San Diego, CA 92121  
ATTN: Jenna Woods

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

With a copy to:

A Regional Coalition for Housing (ARCH)  
16305 NE 87<sup>th</sup> Street, Suite 119  
Redmond, WA 98052

17. Severability.

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

18. Exhibits.

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

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

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

THE CITY OF KIRKLAND

APPLICANT

FAIRFIELD SLATER LLC,  
a Delaware limited liability company

---

Julie Underwood  
Its: Deputy City Manager

By: FRH CC Manager LLC,  
a Delaware limited liability company,  
its Non-Member Manager

Approved as to Form

By:

---

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

Title: \_\_\_\_\_

---

City Attorney

STATE OF WASHINGTON                    }  
  }  
COUNTY OF KING                    }       ss.

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

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

\_\_\_\_\_  
Notary Public in and for the State of Washington.

Print Name\_\_\_\_\_

Residing at \_\_\_\_\_

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

STATE OF WASHINGTON                    }  
  }  
COUNTY OF KING                    }       ss.

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

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

\_\_\_\_\_  
Notary Public in and for the State of Washington.

Print Name \_\_\_\_\_

Residing at \_\_\_\_\_

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

## **EXHIBIT A**

### **LEGAL DESCRIPTION**

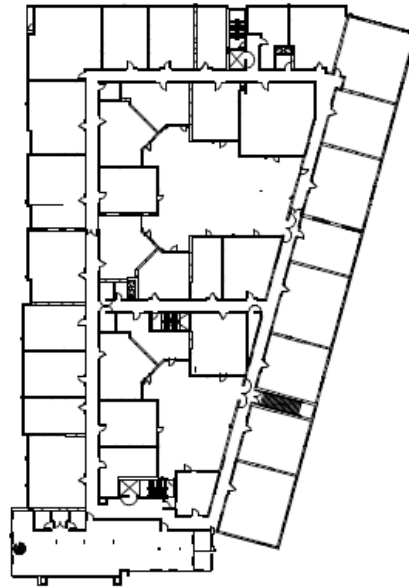
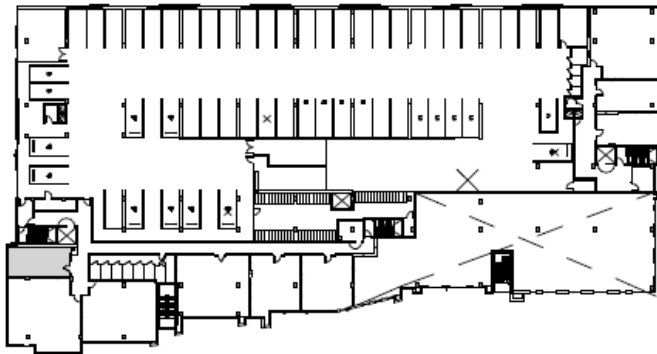
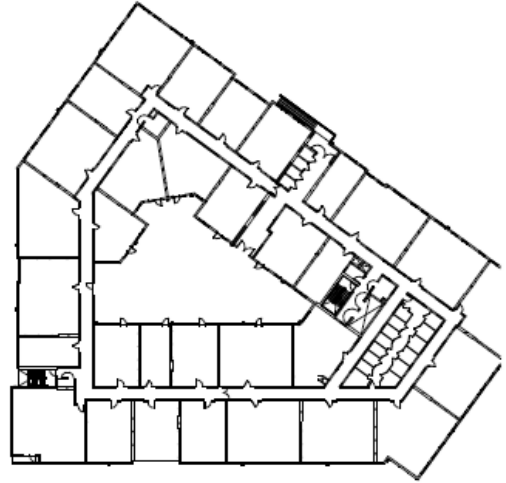
**PARCEL 1:**

LOT A OF CITY OF KIRKLAND LOT LINE ADJUSTMENT NO. LLA-04-00011, RECORDED UNDER RECORDING NO. 20041216900011, AS AMENDED UNDER RECORDING NO. 20101018000207, IN KING COUNTY, WASHINGTON;  
EXCEPT THOSE PORTIONS CONVEYED TO THE CITY OF KIRKLAND BY DEEDS RECORDED UNDER RECORDING NOS. 20010622000894, 20130621001280, 20150508001554 AND 20220708000350.

**PARCEL 2:**

AN EASEMENT FOR SEWER LINES AND STORM WATER DRAINAGE AS MORE PARTICULARLY DESCRIBED IN DOCUMENT RECORDED MARCH 24, 2005 UNDER RECORDING NO. 20050324000524 AND AMENDED BY DOCUMENT RECORDED SEPTEMBER 2, 2016 UNDER RECORDING NO. 20160902000982, RECORDS OF KING COUNTY, WASHINGTON.

**EXHIBIT B**  
**PROJECT SITE PLAN**



## EXHIBIT C

### DESIGNATION OF AFFORDABLE UNITS

Unit Number	Unit Type	Approx. Unit Size (sq ft)
1204	2-BEDROOM	1,021
1206	STUDIO	433
1304	2-BEDROOM	1,021
1306	STUDIO	433
1308	STUDIO	462
1407	STUDIO	463
1429	2-BEDROOM	1,108
1430	1-BEDROOM	614
1507	STUDIO	463
1530	1-BEDROOM	614
1607	STUDIO	463
1630	1-BEDROOM	614
1707	STUDIO	463
1730	1-BEDROOM	614
2305	2-BEDROOM	979
2318	1-BEDROOM	684
2326	1-BEDROOM	658
2405	2-BEDROOM	979
2416	2-BEDROOM	926
2418	1-BEDROOM	684
2426	1-BEDROOM	658
2505	2-BEDROOM	979
2516	2-BEDROOM	926
2518	1-BEDROOM	684
2526	1-BEDROOM	658
2605	2-BEDROOM	979
2616	2-BEDROOM	926
2618	1-BEDROOM	684
2626	1-BEDROOM	658
2705	2-BEDROOM	979
2716	2-BEDROOM	926
2718	1-BEDROOM	684
2726	1-BEDROOM	658
3301	1-BEDROOM	836
3304	2-BEDROOM	1,048
3329	STUDIO	448
3401	1-BEDROOM	836
3404	2-BEDROOM	1,048

3415	1-BEDROOM	596
3429	STUDIO	448
3501	1-BEDROOM	836
3504	2-BEDROOM	1,048
3529	STUDIO	448
3601	1-BEDROOM	836
3604	2-BEDROOM	1,048
3629	STUDIO	448
3701	1-BEDROOM	836
3704	2-BEDROOM	1,048
3729	STUDIO	448



**EXHIBIT D**

**FORM OF DECLARATION OF AFFORDABLE HOUSING COVENANTS**

Attached.

WHEN RECORDED, MAIL TO:

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

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

<b>Document Title(s)</b> <i>(or transactions contained therein):</i>  <b>DECLARATION OF AFFORDABLE HOUSING COVENANTS—THE BRYNN APARTMENTS</b>		
<b>Grantor(s)</b> <i>(Last name first, then first name and initials):</i> 1. <u>Fairfield Slater LLC</u> <input type="checkbox"/> Additional names on page ___ of document.		
<b>Grantee(s)</b> <i>(Last name first, then first name and initials):</i> 1. <u>CITY OF KIRKLAND</u> <input type="checkbox"/> Additional names on page ___ of document.		
<b>Legal Description:</b> Section , Township North, Range 5 East, Quarter Section NW, (include division if applicable) <u>Portion of the NW quarter of the SE quarter of Section 28, Township 26 North, Range 5 East</u>		
<b>Other Details:</b> <input checked="" type="checkbox"/> The complete or remaining legal description is on Exhibit "A" of document.		
<b>Assessor's Property Tax Parcel Account Number(s):</b> <u>2826059181</u>		
<b>Reference Number(s) of Documents assigned or released:</b>  <input type="checkbox"/> Additional reference numbers on page _____ of document.		
<b>City Contact:</b> Dawn Nelson	<b>Phone:</b> 425-587-3230	<b>City I.D. #</b> <input type="checkbox"/> CAO

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

## **DECLARATION OF AFFORDABLE HOUSING COVENANTS**

### **THE BRYNN APARTMENTS**

SECTION 1 —	DEFINITIONS AND INTERPRETATION
SECTION 2 —	RESIDENTIAL RENTAL PROPERTY
SECTION 3 —	AFFORDABLE UNITS FOR ELIGIBLE HOUSEHOLDS
SECTION 4 —	REPORTING REQUIREMENTS
SECTION 5 —	SECTION 8 CERTIFICATE HOLDERS
SECTION 6 —	LEASE PROVISIONS
SECTION 7 —	SALE OR TRANSFER OF THE PROJECT
SECTION 8 —	TERM
SECTION 9 —	NO DISCRIMINATION
SECTION 10 —	COVENANTS RUN WITH LAND
SECTION 11 —	ENFORCEMENT
SECTION 12 —	SUBORDINATION, TERMINATION, RIGHTS RESERVED BY HUD
SECTION 13 —	ESTOPPEL CERTIFICATE
SECTION 14 —	AGREEMENT TO RECORD
SECTION 15 —	RELIANCE
SECTION 16 —	GOVERNING LAW
SECTION 17 —	NO CONFLICT WITH OTHER DOCUMENTS
SECTION 18 —	AMENDMENTS
SECTION 19 —	NOTICES
SECTION 20 —	MULTIFAMILY HOUSING LIMITED PROPERTY TAX EXEMPTION CONTRACT
SECTION 21 —	SEVERABILITY
SECTION 22 —	CONSTRUCTION
SECTION 23 —	TITLES AND HEADINGS

### **EXHIBITS**

"A"	LEGAL DESCRIPTION OF PROPERTY
"B"	DESIGNATION OF AFFORDABLE UNITS
"C"	FORM FOR CERTIFICATION OF HOUSEHOLD ELIGIBILITY
"D"	FORM FOR ANNUAL PROJECT CERTIFICATION
"E"	FORM OF AGREEMENT FOR PAYMENT IN LIEU OF AFFORDABLE UNITS

**DECLARATION OF AFFORDABLE HOUSING COVENANTS  
THE BRYNN APARTMENTS**

THIS DECLARATION OF AFFORDABLE HOUSING COVENANTS (the "Covenant") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and between the CITY OF KIRKLAND, a Municipal Corporation of the State of Washington (the "City"); and FAIRFIELD SLATER LLC, a Delaware limited liability company (the "Owner").

WITNESSETH:

This Covenant is predicated upon the following facts:

1) The Owner is the owner of property located at 12430 NE 120th Street in Kirkland, Washington (the "Property"). Owner intends to develop said property by constructing and renting 486 dwelling units (the "Project") subject to City approval and such other approvals by State and local agencies, as required.

2) The Owner's proposed Project shall include forty-nine (49) affordable rental units for Low-Income Households ("Eligible Households," as the term is defined below). Such affordable rental units shall be of such bedroom quantity and quality as are in proportion to the overall proportion of bedroom quantity and quality of all of the rental units in the Project.

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

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

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

6) Owner has applied for a limited property tax exemption for eight (8) years as provided for in Chapter 84.14 RCW and Chapter 5.88 KMC for multi-family residential rental housing ("Multifamily Housing") in the TOTEM LAKE Residential Targeted Area, and the Director of Planning and Building ("Director") has approved the application.

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

## SECTION 1 — DEFINITIONS AND INTERPRETATION

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

“Affordable Rent” means a monthly housing expense, including Utilities or an applicable Utility Allowance for tenant-paid utilities, parking for a minimum of one car and any expenses required by the Owner as a condition of tenancy (including but not limited to renter’s insurance, pest control, and sewer system capacity charges), that is no greater than thirty percent (30%) of the monthly King County Median Income level(s) for Eligible Households, as shown in the following table, as adjusted for Household Size. If a tenant pays for Utilities separately from rent, the Affordable Rent shall be reduced by the amount of the applicable Utility Allowance.

**Affordable Rent Levels**

	<b>Percent of King County Median Income</b>
Low Income	50%

“Affordable Units” means the forty-nine (49) units in the Project as selected by the Owner and as approved by the City or its Designee, as set forth in **Exhibit B**, and reserved for occupancy by Eligible Households pursuant to Section 3.

“City” means the City of Kirkland.

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

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

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

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

**Maximum Household Income at Initial Occupancy**

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

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

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

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

“King County Median Income” means the median family income for the Seattle-Bellevue, WA HUD Metro FMR Area as most recently determined by the Secretary of Housing and Urban Development (“HUD”). In the event that HUD no longer publishes median family income figures for King County, the Director may estimate the King County Median Income in such manner as the Director shall determine.

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

“Owner” means Fairfield Slater LLC, and its successors and assigns, and any surviving, resulting or transferee entity.

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

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

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

"Property Tax Exemption Contract" or "MFTE Contract" means that agreement titled Multifamily Housing Limited Property Tax Exemption Contract between the City and Owner dated [REDACTED].

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

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

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

## SECTION 2 — RESIDENTIAL RENTAL PROPERTY

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

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

distinct from other dwelling units in the Project and will include a sleeping area, separate bathing facility, and a cooking range, refrigerator and sink.

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

### SECTION 3 — AFFORDABLE UNITS FOR ELIGIBLE HOUSEHOLDS

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

#### **Dwelling Units**

<b>Unit Type (Bedrooms)</b>	<b>Affordable Units</b>	<b>Total Units in the Project</b>
	Low-Income	
Studio	12	114
1-bedroom	20	199
2-bedroom	17	173
Total	49	486

#### B. Designation/Re-designation of Affordable Units.

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

2. The Owner, from time to time, may propose to change the particular units designated as Affordable Units, provided that at all times at least forty-nine (49) of all of the residential units in the Project are designated as Affordable Units, and provided that at all times the same unit mix is retained. The Owner shall notify the City or its Designee of the proposed change in writing for the City's or its Designee's approval. The City or its Designee will review the proposed changes and shall approve or deny the proposed changes based upon the criteria set forth in this Section.



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

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

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

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

**Maximum Permitted Income Levels**

<b>Income Level(s)</b>	<b>Maximum Income at Initial Occupancy</b>	<b>Maximum Recertification Income</b>
Low Income	50%	70%

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

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

## SECTION 4 — REPORTING REQUIREMENTS

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

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

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

D. Annual Recertification of Residents.

1. On an annual basis, the Owner shall require all households occupying Affordable Units to complete and return to the Owner an updated Certificate of Household Eligibility. The Owner shall undertake a good faith effort to verify the reported Household Income, as reported in the completed Certificate. The Owner's obligation to verify the Household Income shall be limited to obtaining a copy of and reviewing the tenant's federal income tax returns, unless the Owner has actual knowledge or reason to believe that the information provided by the household is materially inaccurate. In the event federal income tax returns are not available, the Owner shall verify Household Income using wage or salary statements, or other income records the City or its Designee may consider appropriate.

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

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

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

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

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

## SECTION 5 — SECTION 8 CERTIFICATE HOLDERS

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

## SECTION 6 — LEASE PROVISIONS

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

B. All leases for Affordable Units shall contain clauses wherein each individual lessee: (i) certifies the accuracy of the statements made in the Certificate of Household Eligibility, (ii) agrees that the household income and other eligibility requirements shall be deemed substantial

and material obligations of the tenancy, and (iii) agrees that misrepresentation in the certification is a material breach of the lease, entitling the Owner to terminate the lease for the Affordable Unit.

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

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

#### SECTION 8 — TERM

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

#### SECTION 9 — NO DISCRIMINATION

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

#### SECTION 10 — COVENANTS RUN WITH LAND

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

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

regardless of whether or not such covenants and conditions are set forth or incorporated by reference in such contract, deed or other instrument.

## SECTION 11 — ENFORCEMENT

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

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

2. Have access to, and inspect, examine, and make copies of, all of the books and records of the Owner pertaining to the Project that are relevant to compliance with this Covenant or the Property Tax Exemption Contract; provided, however, the City or its Designee shall not divulge such information to any third party unless required by law or unless the same is necessary to enforce the City's rights hereunder; and

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

4. The Owner hereby grants to the City or the Designee the option, upon Owner's default under this Covenant, for the Qualified Project Period to lease up to forty-nine (49) of the units in the Project as mutually selected by the City or its Designee and the Owner for the purpose of subleasing such units to Eligible Households, but only to the extent necessary to comply with the provisions of this Covenant. The City or its Designee may lease from the Owner the units at the Affordable Rent level less a reasonable management fee to reimburse the City or its Designee for any expenses incurred in connection with such sublease. The City or its Designee may terminate its lease of the units in the Project upon determination that the Owner is no longer in default pursuant to this Covenant.

B. Assignment of Rents. Owner hereby assigns to the City or the Designee the right to receive the rents collected during the entire period an Affordable Unit or Units are occupied in

violation of this Covenant. Any funds collected shall be deposited into the City's housing fund for use consistent with the City's affordable housing policies, plans, or initiatives. Owner shall be responsible for all costs to the City, including reasonable attorney fee, to recover such rents.

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

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

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

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

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

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

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

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

Notwithstanding anything in this Covenant to the contrary, enforcement of this Covenant shall not serve as a basis for (i) default under the Deed of Trust insured by HUD/FHA or any other Lender, or (ii) an acceleration of the loan secured by the Deed of Trust ("Loan"), or result in any claim against the Project, the Loan proceeds, any reserve or deposit required by HUD/FHA or any

other Lender in connection with the Loan transaction or the rents or other income from the Project other than from available surplus cash as that term is defined by HUD/FHA or any other Lender.

B. Notwithstanding anything in this Covenant to the contrary:

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

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

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

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

#### SECTION 13 — ESTOPPEL CERTIFICATE

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

#### SECTION 14 — AGREEMENT TO RECORD

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

#### SECTION 15 — RELIANCE

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

#### SECTION 16 — GOVERNING LAW

This Covenant shall be governed by and construed in accordance with 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. Venue for any action arising out of this Contract shall be in King County Superior Court.

#### SECTION 17 — NO CONFLICT WITH OTHER DOCUMENTS

The Owner warrants that it has not executed and will not execute other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event the requirements of this Covenant are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith except for the Multifamily Housing Limited Property Tax Exemption Contract referenced in Section 20 herein.

#### SECTION 18 — AMENDMENTS

This Covenant shall be amended only by a written instrument executed by the parties hereto or their respective successors in title, and duly recorded in the real property records of King County, Washington. Subject to Section 3(B), amendments to **Exhibit B** shall be considered to be approved in writing when the revised **Exhibit B** is signed by the Owner and the City or its Designee without the need for a further written document attaching the revised exhibit and striking prior versions of the exhibit.



## SECTION 19 — NOTICE

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

If to the City:	Planning Department-Housing Planner City of Kirkland 123 Fifth Avenue Kirkland, WA 98033 With a copy to the Designee  A Regional Coalition for Housing (ARCH) 16305 NE 87th Street, Suite 119 Redmond, WA 98052 Attn: Housing Planner
If to the Owner:	Fairfield Slatter LLC 5355 Mira Sorrento Place, Suite 100 San Diego, CA 92121 Attn: Jenna Woods  With a copy to: Fairfield Slatter LLC 5355 Mira Sorrento Place, Suite 100 San Diego, CA 92121 Attn: Affordable Housing Compliance

Any party may change its address for notices upon ten (10) days prior written notice to the other parties. Legal counsel for a party may deliver notices on behalf of the represented party and such notice shall be deemed delivered by such party.

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

This Covenant is subject to the terms and conditions of the Property Tax Exemption Contract. In the event of any conflict between the terms of this section and the terms of the Property Tax Exemption Contract, the terms of the Property Tax Exemption Contract shall control. All amounts

payable hereunder shall be paid without any set-off or deduction of any nature. Termination of this Covenant before termination of the MFTE Contract, for any reason, including foreclosure on the Project, shall have no effect on the terms of the MFTE Contract, including the imposition of additional taxes, interest, penalties, and other obligations pursuant to the MFTE Contract and state law.

#### SECTION 21 — SEVERABILITY

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

#### SECTION 22 — CONSTRUCTION

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

#### SECTION 23 — TITLES AND HEADINGS

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

[Signature page follows.]

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

Owner:

FAIRFIELD SLATER LLC,  
a Delaware limited liability company

By: FRH CC Manager LLC,  
a Delaware limited liability company,  
its Non-Member Manager

By:

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

Title:

City:

\_\_\_\_\_  
Julie Underwood  
Its: Deputy City Manager

Approved as to Form:

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