Council Meeting: 03/02/2010
Agenda: Other Business
Item #: 8. h. (1).

CITY OF KIRKLAND
Department of Planning and Community Development
123 Fifth Avenue, Kirkland, WA 98033 425-587-3225
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Dawn Nelson, AICP, Planning Supervisor

Date: February 18, 2010

Subject: LUNA SOL, LLC APPLICATION FOR CONDITIONAL CERTIFICATE FOR MULTIFAMILY PROPERTY TAX EXEMPTION, FILE MIS10-00010

RECOMMENDATION

Staff recommends that the City Council approve the enclosed resolution authorizing the Planning Director to enter into the contract included as Exhibit A with Luna Sol, LLC for a potential multifamily housing property tax exemption and issue a conditional certificate of acceptance of tax exemption.

BACKGROUND DISCUSSION

In December 2009, the City Council adopted amendments to Chapter 5.88 KMC which allow developments that are not subject to the mandatory affordable housing regulations access to the multifamily housing property tax exemption. In exchange for an eight year exemption from property taxes on the value of improvements, 10% of the multifamily units in the project are required to be affordable. The prescribed affordability level for rental projects in this situation is 80% of King County median. The affordability provisions are required to remain in place for the life of the project and are secured by the agreements attached to the resolution.

The Luna Sol project is a five story mixed use development nearing completion at 11415 Slater Avenue NE in the North Rose Hill business district (see Attachment 1). It will include 52 apartment units over 10,000 square feet of ground floor office space and three floors of underground parking (see Attachment 2). The project will include a mix of studio, one- and two-bedroom apartments and the proposed affordable units are one studio unit, three one-bedroom units and one two-bedroom unit (see Attachment 3). The maximum affordable monthly rents will be $1,180 for the studio, $1,349 for the one bedroom units, and $1,517 for the two bedroom unit. These rent allowances include all utilities.

The process for approving a multifamily housing property tax exemption includes the following steps:

- Review and approval of application for conditional certificate for tax exemption by the Planning Director – *completed on February 17, 2010*

- Approval of resolution to enter into contract with City – *pending action by City Council on March 2, 2010*

- Execution of contract and issuance of conditional certificate of acceptance of tax exemption

- Recording of covenant that addresses long term affordability requirements (Exhibit D to contract)

- Completion of construction as provided in the contract within three years and issuance of a Certificate of Occupancy

- Submittal of request for final certificate for tax exemption and review by Planning Director

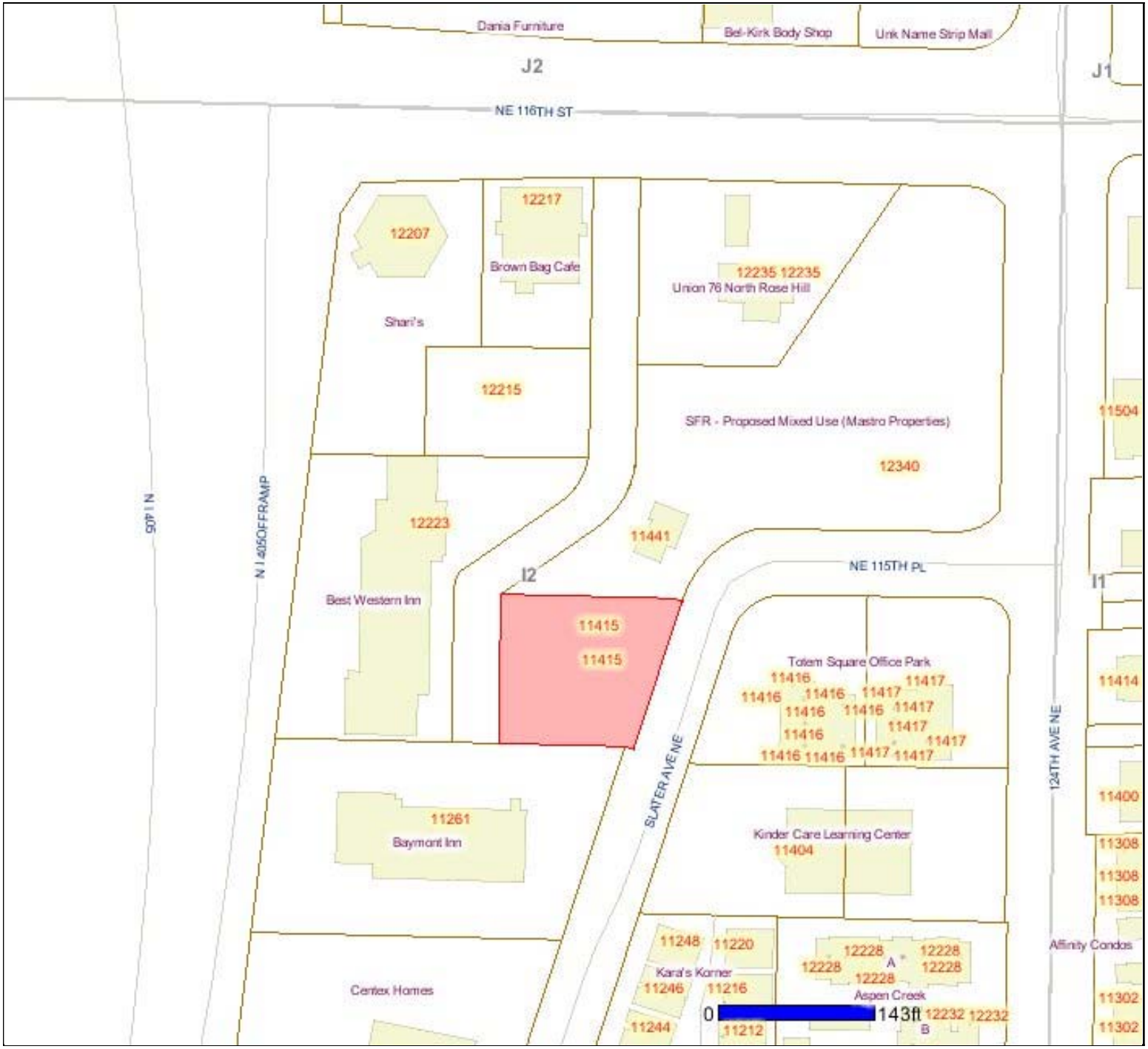
- Filing of final certificate of tax exemption with the King County Assessor

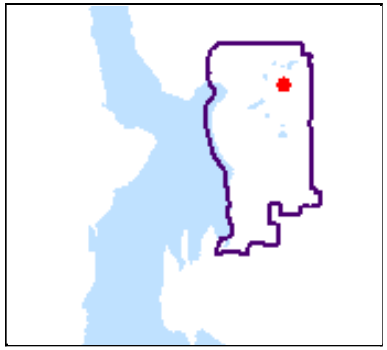
- Submittal of annual certification of compliance by property owner

ATTACHMENTS

1. Vicinity Map
2. Luna Sol Project Elevation Drawings
3. Luna Sol Residential Floor Plans

Luna Sol LLC Vicinity Map





Approximate
Scale 1:1,709
1 in = 142 ft

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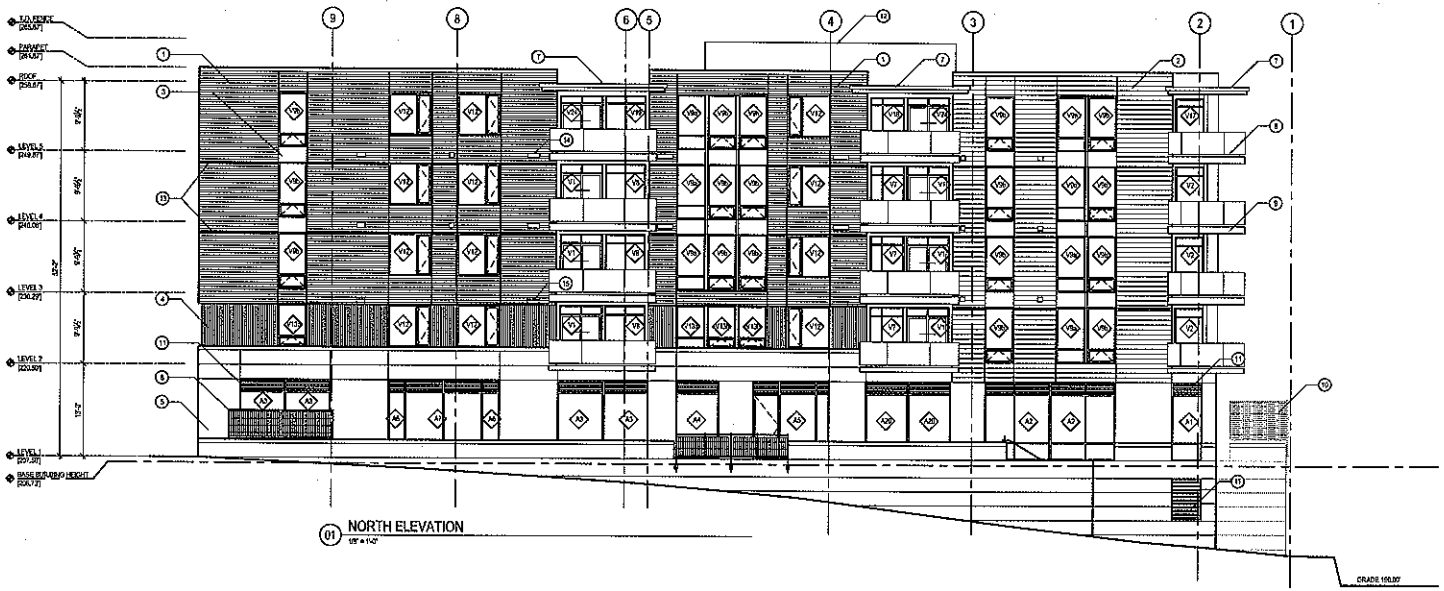
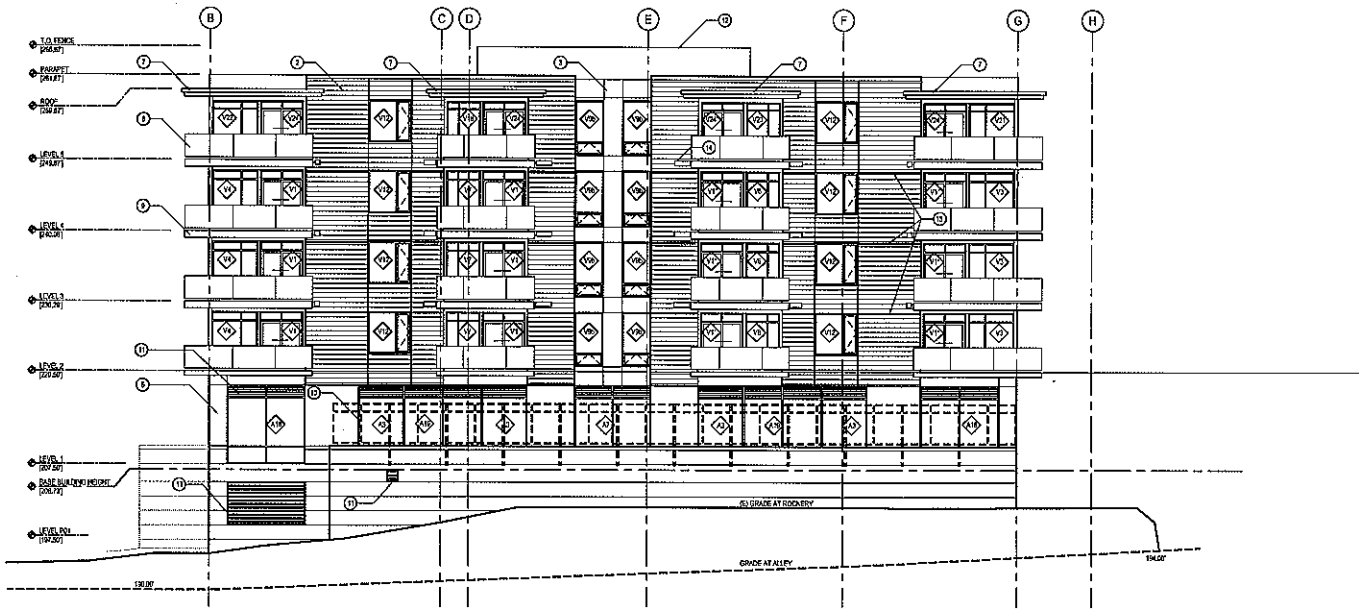


01 NORTH ELEVATION
1/8" = 1'-0"



02 WEST ELEVATION
1/8" = 1'-0"

1. 4" EXPOSURE HARDIE PLANK LAP SIDING, SMOOTH FINISH-TUSCAN GOLD
2. 8" EXPOSURE HARDIE PLANK LAP SIDING, SMOOTH FINISH-CHESTNUT BROWN
3. VARIOUS PANEL SIDING, SMOOTH FINISH-SLATE BLUE
4. METECHO 12" U-12 METAL PANEL-DARK BLUE
5. CAST-IN-PLACE PAINTED CONCRETE
6. METAL GUARDRAIL SCREEN, SEE RAILING DETAILS FOR SIM.
7. 18 GA. FLASHING/TRIM, TO MATCH DECK COLOR
8. BALCONY RAILING, SEE A12.05
9. BOLT-ON METAL BALCONY
10. LANDSCAPE SCREEN BEYOND, SEE A12.05
11. LOUVERED EXHAUST GRILL
12. MECHANICAL SCREEN BEYOND
13. THROUGH-WALL FLASHING TO MATCH SERIES COLOR, SEE WATERPROOFING
14. EXTERIOR EXHAUST VENT HOOD, SEE 4/A12.04
15. INTERIOR EXHAUST VENT TERMINAL, SEE 5/A12.04

Luna Sol Building

11415 Slater Avenue NE
Kirkland, WA 98033

Owner
Base Capital, LLC
411 108th Avenue, Ste 1870
Bellevue, WA 98004
425.646.3030

Kim Faust
Kimf@basecapital.com

7585 REGISTERED ARCHITECT
STATE OF WASHINGTON

911 WESTERN AVE, SUITE 408
SEATTLE, WASHINGTON 98104
P: 206.467.1744 F: 206.903.8273
WWW.SHUGARTBATES.COM

SHUGART BATES

Revisions	Date
Permit Submittal	11.09.08
1-Permit Resubmittal	3.13.08
2-Permit Revisions	5.07.08
3-Permit Revisions	7.10.08

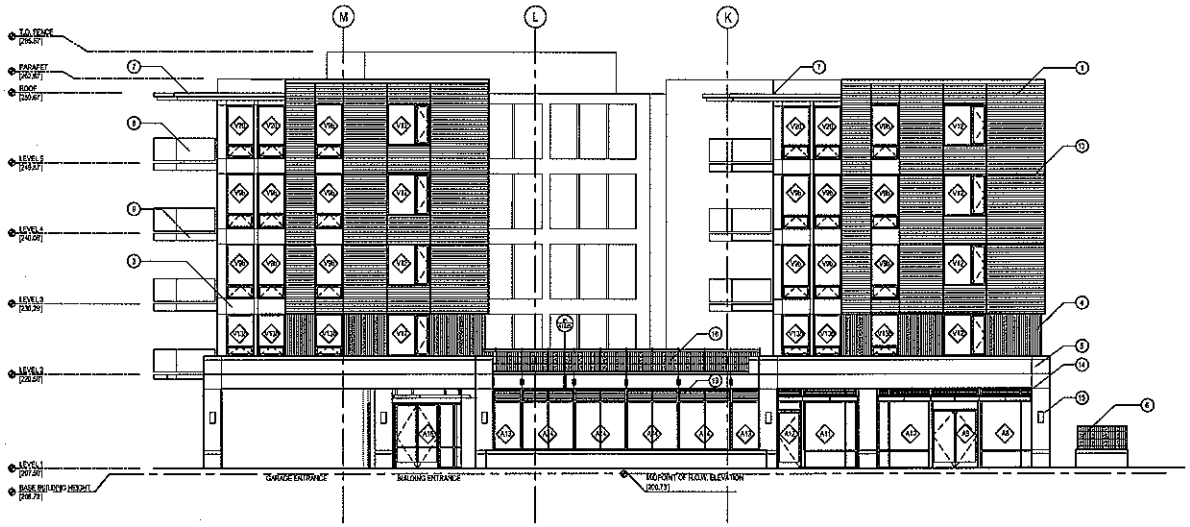
Name:	Consolidated Construction Documents
Date:	8.15.08
Job #:	27008
Permit #:	BLD07-01107
Drawing:	kd
Approval:	jdb

North & West Elevations

SHUGART BATES | A8.01

ATTACHMENT 2
LUNA SOL LLC
MARCH 2, 2010 CITY COUNCIL

01 SOUTH ELEVATION
1/8" = 1'-0"



02 SOUTHEAST ELEVATION
1/8" = 1'-0"

1. 4" EXPOSURE HARDIE PLANK LAP SIDING, SMOOTH FINISH - TUSCAN GOLD
2. 8" EXPOSURE HARDIE PLANK LAP SIDING, SMOOTH FINISH - CHESTNUT BROWN
3. HARDIE PANEL (MDNG), SMOOTH FINISH - SLATE BLUE
4. METECNO 12" 1-1-12 METAL PANEL - DARK BLUE
5. CAST-IN-PLACE PAINTED CONCRETE
6. METAL GARBAGE SCREEN, SEE DETAILS A12.05 FOR SIM.
7. 16 GA. FLASHING/TRIM, TO MATCH DECK COLOR
8. BALCONY RAILING, SEE A12.05
9. BOLT-ON METAL BALCONY
10. LANDSCAPE SCREEN, SEE A12.05
11. GARAGE RAMP SCREEN, SEE A12.05
12. MECHANICAL SCREEN BEYOND
13. THROUGH-WALL FLASHING TO MATCH SIDING COLOR, SEE WATERPROOFING
14. STOREFRONT CANOPIES, SEE A12.05 FOR DETAILS
15. WALL MOUNTED LIGHT FIXTURE
16. COURTYARD RAILING, SEE A12.05, DETAIL G5
17. EXTERIOR EXHAUST VENT HOOD, SEE 5/A13.04
18. INTERIOR EXHAUST VENT TERMINAL, SEE 5/A12.04
19. LOUVERED EXHAUST GRILL

Luna Sol Building

11415 Slater Avenue NE
Kirkland, WA 98033

Owner
Base Capital, LLC
411 108th Avenue, Ste 1920
Bellevue, WA 98004
425.645.3030

Kim Faust
Kim@basecapital.com

7565 REGISTERED ARCHITECT
STATE OF WASHINGTON

811 WESTERN AVE. SUITE 400
SEATTLE, WASHINGTON 98104
P: 206.624.7714 F: 206.583.8573
WWW.SHUGARTBATES.COM
SHUGART BATES

Revisions	Date
Permit Submittal	11.09.08
1-Permit Resubmittal	3.13.08
2-Permit Revisions	5.07.08
3-Permit Revisions	7.10.08

Name:	Consolidated Construction Documents
Date:	6.16.08
Job #:	27005
Permit #:	BLD07-01107
Drawings:	jd
Approval:	jdb

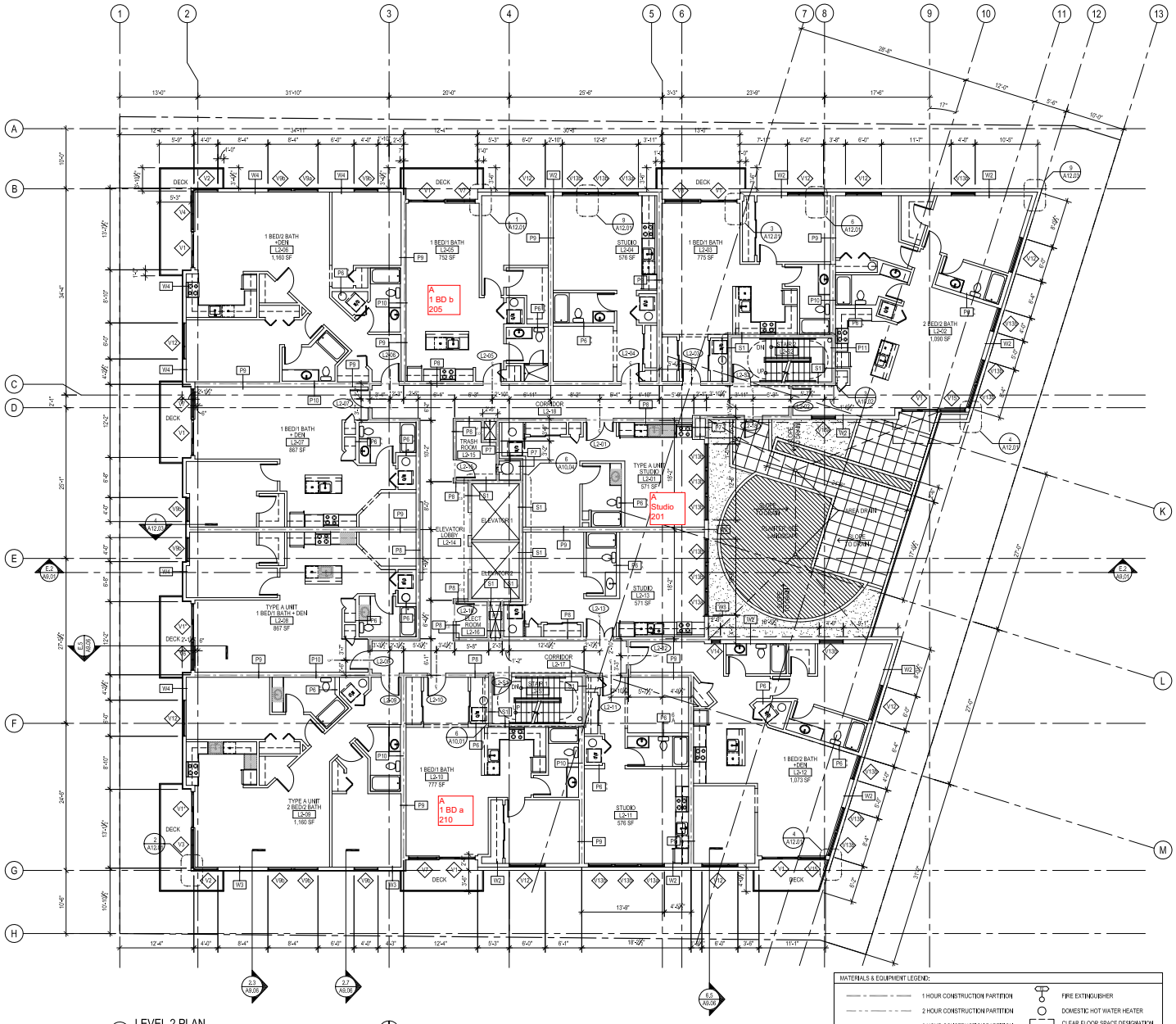
South & Southeast Elevations

SHUGART BATES

A8.02

ATTACHMENT 2
LUNA SOL LLC
MARCH 2, 2010 CITY COUNCIL

ATTACHMENT 3
LUNA SOL LLC
MARCH 2, 2010 CITY COUNCIL



01 LEVEL 2 PLAN
1/8" = 1'-0"

LEVEL 2 GENERAL NOTES:
1. ALL RESIDENTIAL UNIT INTERIOR WALLS PARTITION TYPE P6 UON
2. ALL RESIDENTIAL UNIT INTERIOR PLUMBING WALLS PARTITION TYPE P6 UON
3. REFER TO ELEVATIONS AND WINDOW SCHEDULE FOR EXACT WINDOW COUNT
4. CORRIDOR AND DEMISING WALLS DIMENSIONED TO CENTER OF WALL.
5. SEE STRL FOR ELEVATOR AND STAIR SHAFT CONSTRUCTION.

MATERIALS & EQUIPMENT LEGEND:

- 1 HOUR CONSTRUCTION PARTITION
- 2 HOUR CONSTRUCTION PARTITION
- 3 HOUR CONSTRUCTION PARTITION
- CONCRETE WALL REF STRUCTURAL
- FIRE EXTINGUISHER
- DOMESTIC HOT WATER HEATER
- CLEAR FLOOR SPACE DESIGNATION FOR AREA OF REFUGE
- PAINT STRIPED CLEAR FLOOR SPACE DESIGNATION

SHUGART BATES

Luna Sol Building

11415 Slater Avenue NE
Kirkland, WA 98033

Owner
Base Capital, LLC
411 108th Avenue, Ste 1970
Bellevue, WA 98004
425.646.3030

Kim Faust
Kimf@basecapital.com

7565 REGISTERED ARCHITECT
JEFFERY DAVID BATES
STATE OF WASHINGTON

BELLEVUE, WA 98004
SEATTLE, WASHINGTON
WWW.SHUGARTBATES.COM
SHUGART BATES

Revisions	Date
Permit Submittal	11.09.08
1-Permit Resubmittal	3.13.08
2-Permit Revisions	5.07.08
3-Permit Revisions	7.10.08

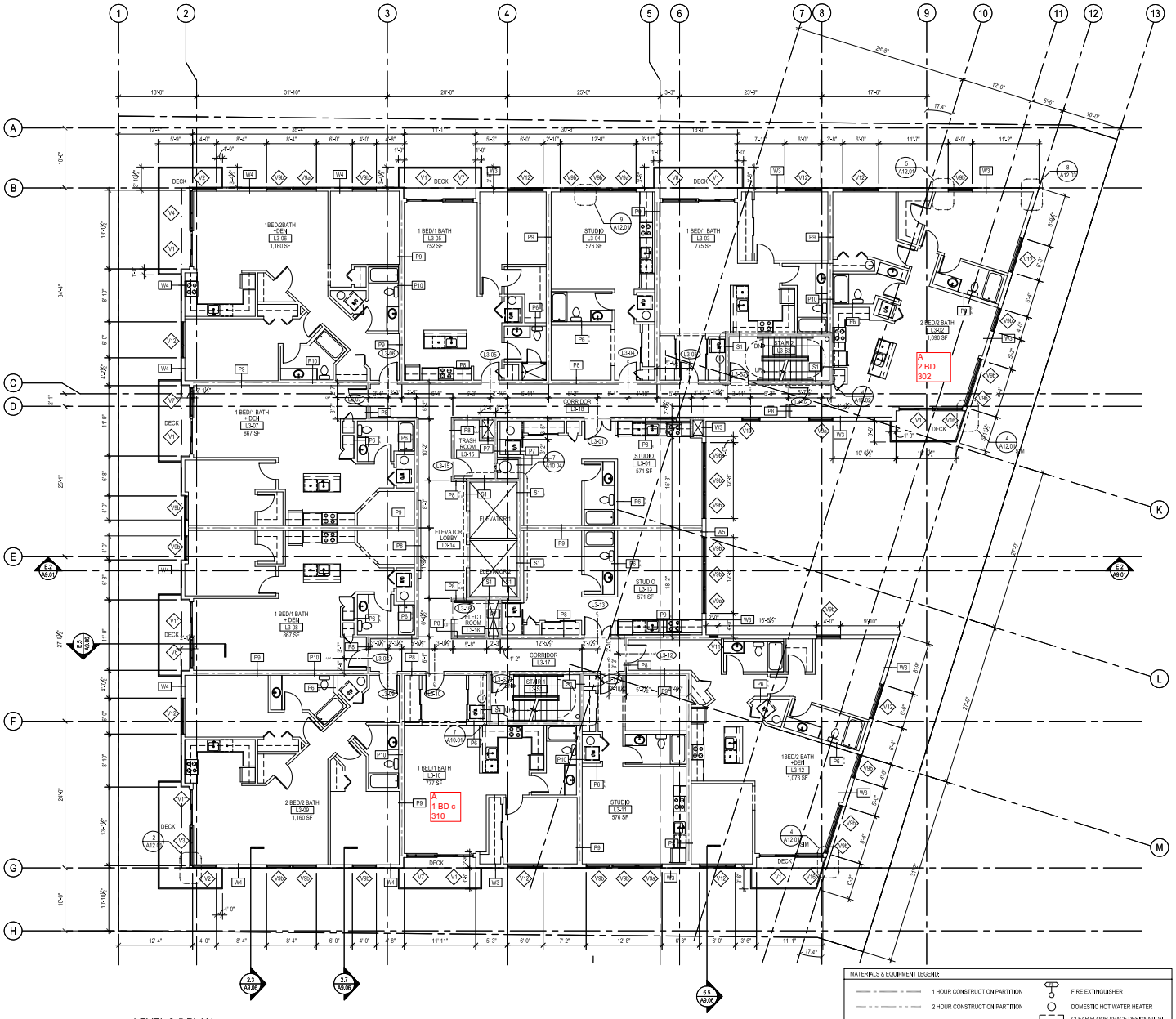
Name:	Consolidated Construction Documents
Date:	8.15.08
Job #:	27006
Permit #:	BLD07-01107
Drawing:	kl
Approval:	jdb

Level 2 Plan

SHUGART BATES

A2.05

ATTACHMENT 3
LUNA SOL LLC
MARCH 2, 2010 CITY COUNCIL



01 LEVEL 3-5 PLAN
1/8" = 1'-0"

LEVELS 3-5 GENERAL NOTES:
1. ALL RESIDENTIAL UNIT INTERIOR WALLS PARTITION TYPE P6 UON
2. ALL RESIDENTIAL UNIT INTERIOR PLUMBING WALLS PARTINTION TYPE P6 UON
3. REFER TO ELEVATIONS AND WINDOW SCHEDULE FOR EXACT WINDOW COUNT
4. CORRIDOR AND DEMISING WALLS DIMENSIONED TO CENTER OF WALL
5. SEE STRL FOR ELEVATOR AND STAIR SHAFT CONSTRUCTION

MATERIALS & EQUIPMENT LEGEND:

- 1 HOUR CONSTRUCTION PARTITION
- 2 HOUR CONSTRUCTION PARTITION
- 3 HOUR CONSTRUCTION PARTITION
- CONCRETE WALL REF STRUCTURAL
- FIRE EXTINGUISHER
- DOMESTIC HOT WATER HEATER
- CLEAR FLOOR SPACE DESIGNATION FOR AREA OF REFUGE
- PAINT STRIPED CLEAR FLOOR SPACE DESIGNATION

SHUGART BATES

Luna Sol Building

11415 Slater Avenue NE
Kirkland, WA 98033

Owner
Base Capital, LLC
411 108th Avenue, Ste 1970
Bellevue, WA 98004
425.646.3030

Kim Faust
Kimf@basecapital.com

7565 REGISTERED ARCHITECT
JEFFERY DAVID BATES
STATE OF WASHINGTON

911 WESTERN AVE SUITE 446
SEATTLE, WASHINGTON 98104
206.467.1816 FAX 206.467.8272
WWW.SHUGARTBATES.COM

SHUGART BATES

Revisions	Date
Permit Submittal	11.09.08
1-Permit Resubmittal	3.13.08
2-Permit Revisions	5.07.08
3-Permit Revisions	7.10.08

Name:	Consolidated Construction Documents
Date:	8.15.08
Job #:	27006
Permit #:	BLD07-01107
Drawing:	kd
Approval:	jdb

Level 3-5 Plan

SHUGART BATES A2.06

Council Meeting: 03/02/2010
Agenda: Other Business
Item #: 8. h. (1).

RESOLUTION R-4805

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT TO ENTER INTO A CONTRACT WITH LUNA SOL, LLC, REGARDING A POTENTIAL MULTIFAMILY HOUSING PROPERTY TAX EXEMPTION AND APPROVING THE ISSUANCE OF A CONDITIONAL CERTIFICATE OF TAX EXEMPTION

WHEREAS, Luna Sol, LLC, has applied for a limited property tax exemption as provided for in Chapter 84.14 RCW and Chapter 5.88 KMC for multifamily residential rental housing ("Multifamily Housing") in the Totem Lake and North Rose Hill Target Area, and the Director of Planning and Community Development has approved the application; and

WHEREAS, Luna Sol has submitted to the City preliminary site plans and floor plans for new Multifamily Housing to be constructed as part of a fifty-two (52) unit mixed-use project on property situated at 11415 Slater Avenue NE in Kirkland, Washington; and

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

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

Section 1. The Director of the Department of Planning and Community Development is hereby authorized and directed to execute on behalf of the City of Kirkland an agreement substantially similar to that attached as Exhibit "A", which is entitled "MultiFamily Housing Limited Property Tax Exemption Agreement" and thereafter issue a Conditional Certificate of Acceptance of Tax Exemption

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2010.

Signed in authentication thereof this ____ day of _____, 2010.

_____
MAYOR

Attest:

_____
City Clerk

MULTIFAMILY HOUSING LIMITED PROPERTY TAX EXEMPTION AGREEMENT

THIS AGREEMENT, entered into this _____ day of _____, 20___, between the City of Kirkland, a State of Washington municipal corporation (hereinafter referred to as "City") and the Luna Sol, LLC**,** a Limited Liability Company (hereinafter referred to as "Applicant"), and incorporated attachments and exhibits, contains all terms and conditions agreed to by the City and the Agency to undertake the activities described herein.

RECITALS

1. Applicant has applied for a limited property tax exemption for eight years as provided for in Chapter 84.14 RCW and Chapter 5.88 KMC for multifamily residential rental housing ("Multifamily Housing") in the Totem Lake and North Rose Hill Target Area, and the Director of Planning and Community Development 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 fifty-two (52) unit mixed-use project (the "Project") on property situated at 11415 Slater Avenue NE in Kirkland, Washington ("Property), and as more particularly described in **Exhibit "A"** which is attached hereto, and incorporated by reference herein

3. Applicant is the owner of the Property; and

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

5. The City has determined that the Multifamily Housing will, if completed, occupied, and owned as proposed, satisfy the requirements for a Final Certificate of Tax Exemption.

6. This Agreement is entered into pursuant to City Council action taken on __**(date of council action)**____.

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

1. Conditional Certificate of Acceptance of Tax Exemption.

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

2. Agreement to construct Multifamily Housing.

a. Applicant agrees to construct 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 occupancy, nor shall permanent residential rental housing comprise less than fifty percent of the gross floor area of the Project constructed pursuant to this Agreement.

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

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

3. Agreement to provide affordable housing.

Applicant agrees to provide five (5) Affordable Units, specifically available for Moderate Income Households affordable to households whose household annual income does not exceed eighty percent of the King County median household income, adjusted for household size, as determined by HUD, and no more than thirty percent of the monthly household income is paid for monthly housing expenses (rent and an appropriate utility allowance). The mix and configuration of housing units (e.g., studio, one-bedroom, two-bedroom, etc.) shall be substantially proportional to the mix and configuration of the total housing units in the project. The Owner agrees that the Affordable Units will consist of one (1) studio unit (minimum of 570 square feet), three (3) one-bedroom units (minimum of 750 square feet) and one (1) two-bedroom unit (minimum of 1050 square feet) designed substantially as approved in Design Review and subsequent Building Permit Review processes (DRC07-00005 and BLD07-01107).

4. Location and Design of Affordable Units/ Affordability Agreement.

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

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

Prior to issuing a certificate of occupancy, an agreement in a form acceptable to the city attorney 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 housing units shall be recorded with the King County department of records and elections. This agreement shall be a covenant running with the land and shall be binding on the assigns, heirs and successors of the applicant. Affordable housing units that are provided under this section shall remain as affordable housing for the life of the project.

5. Requirements for Final Certificate of Tax Exemption.

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

a. A statement of expenditures made with respect to the overall Project 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 Agreement;

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

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

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

6. Agreement to Issue Final Certificate.

The City agrees to file a Final Certificate of Tax Exemption with the King County Assessor within forty (40) days of submission of all materials required by paragraph 5, if Applicant has:

a. Successfully completed the Multifamily Housing in accordance with the terms of this Agreement and KMC chapter 5.88;

b. Filed a request for a Final Certificate of Tax Exemption with the Director and submitted the materials described in Paragraph 5 above;

c. Paid to the City a fee in the amount of $150.00 to cover the Assessor's administrative costs; and

d. Met all other requirements provided in KMC chapter 5.88 for issuance of the Final Certificate of Tax Exemption.

7. Annual Certification.

Within thirty (30) days after the first anniversary of the date the City filed the Final Certificate of Tax Exemption and each year thereafter , 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 of Tax Exemption; and

c. A statement that the Multifamily Housing continues to be in compliance with this Agreement and the requirements of KMC chapter 5.88; and

d. A description of any improvements or changes to the Project 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

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

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

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

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

8. No violations for duration of exemption.

For the duration of the exemption granted under KMC chapter 5.88, 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 22, 23, and 25 or other applicable law for which the Department of Planning and Community Development or its functional successor shall have issued a notice of violation, citation or other notification that is not resolved by a certificate of compliance, certificate of release, withdrawal, or another method that proves either compliance or that no violation existed, within the time period for compliance, if any, provided in such notice of violation, citation or other notification or any extension of the time period for compliance granted by the Director.

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

Applicant agrees to notify the Director within thirty (30) days of any transfer of Applicant's ownership interest in 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.

10. Cancellation of Exemption - Appeal.

a. The City reserves the right to cancel the Final Certificate of Tax Exemption 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 Agreement or with the requirements of KMC chapter 5.88, 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 KMC chapter 5.88. 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).

11. Amendments.

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

12. Binding Effect.

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

13. Audits and Inspection of Records.

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

14. Notices.

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

APPLICANT: Luna Sol, LLC
11415 Slater Avenue, Suite 100
Kirkland, WA 98033
Tel: 425-250-0494
Attn: Kim Faust

CITY: City of Kirkland
Planning Department
City of Kirkland
123 5th Avenue
Kirkland, WA 98033
Attention: Planning Director

15. Severability.

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

16. Exhibits.

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

Exhibit A Legal Description
Exhibit B Project Site Plan
Exhibit C Designation of Affordable units
Exhibit D Regulatory Agreement and Covenant

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

THE CITY OF KIRKLAND APPLICANT

By:_____ _____ By: _____
Planning Director

Approved as to Form

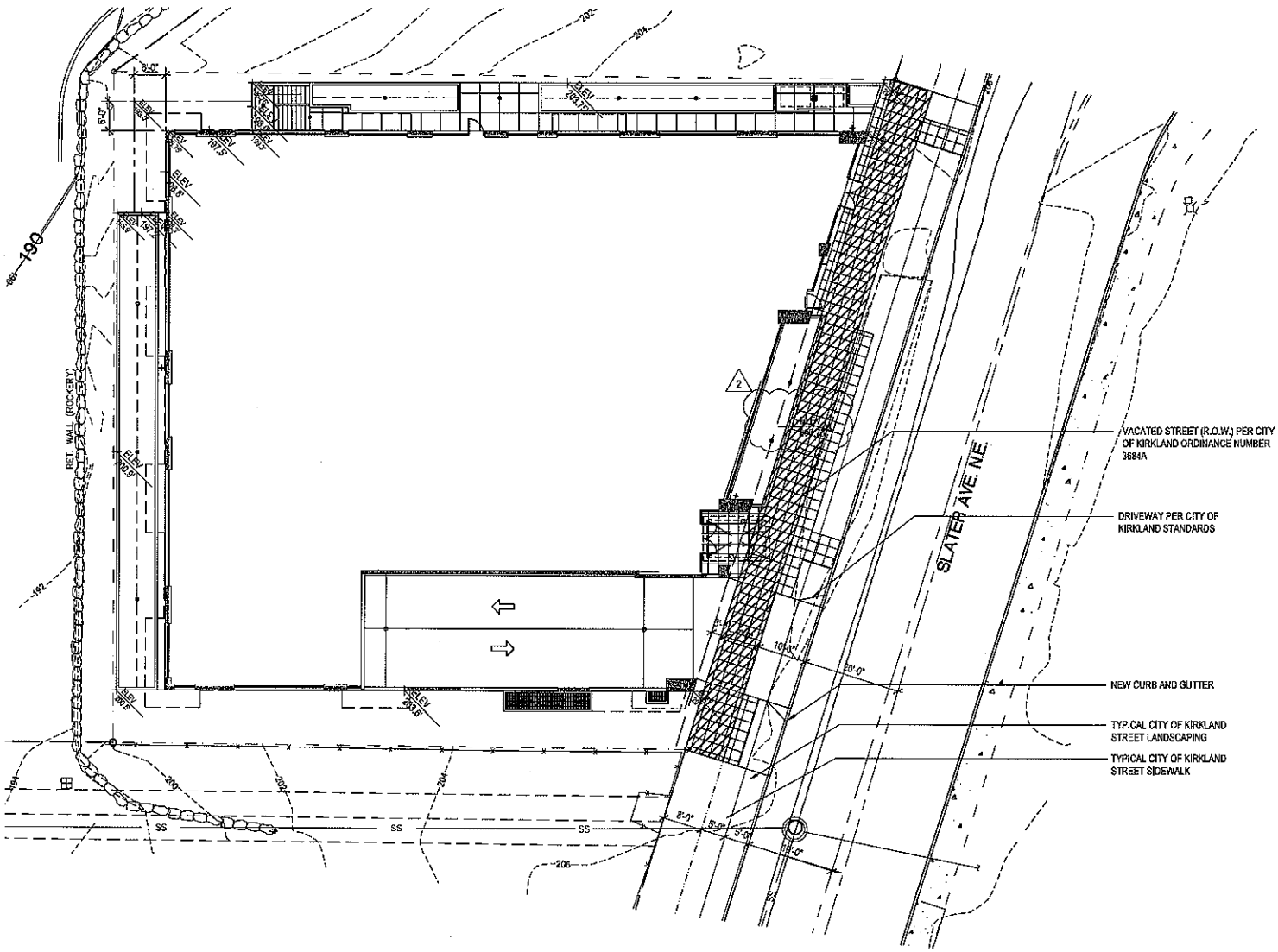
_____
City Attorney

EXHIBIT A

LEGAL DESCRIPTION

LOT 1, KING COUNTY SHORT PLAT NUMBER 778140; RECORDED UNDER RECORDING NUMBER 7912100778, SAID SHORT PLAT BEING A PORTION OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 26 NORTH, RANGE 5 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON;

TOGETHER WITH THAT PORTION OF SLATER AVENUE NORTHEAST VACATED PURSUANT TO CITY OF KIRKLAND ORDINANCE NUMBER 3684A, A COPY OF WHICH WAS RECORDED UNDER RECORDING NUMBER 9904281126 AND UNDER 19930830000656, WHICH ATTACHED BY OPERATION OF LAW.



01 SITE PLAN
1" = 10'-0"

SHUGART BATES

Luna Sol Building

11415 Slater Avenue NE
Kirkland, WA 98033

Owner
Base Capital, LLC
411 108th Avenue, Ste 1970
Bellevue, WA 98004
425.646.5030

Kim Faust
Kimf@basecapital.com

7585 REGISTERED ARCHITECT JEFFREY DANE BATES STATE OF WASHINGTON

SHUGART BATES
811 WESTERN AVE, SUITE 404
SEATTLE, WASHINGTON 98104
P: 206.264.7744 F: 206.903.9373
WWW.SHUGARTBATES.COM

EXHIBIT B

Revisions	Date
Permit Submittal	11.09.06
1-Permit Resubmittal	3.13.08
2-Permit Revisions	5.07.08
3-Permit Revisions	7.10.08

Name:	Consolidated Construction Documents
Date:	8.18.08
Job #:	27006
Permit #:	BLD07-01107
Drawing:	lcl
Approval:	jdb

Site Plan

A1.01

R-4805

EXHIBIT C

DESIGNATION OF AFFORDABLE UNITS

Unit Number	Unit Type	Unit Size (sq. ft)
201	Studio	571
210	One Bedroom	777
310	One-Bedroom	777
205	One-Bedroom	752
302	Two-Bedroom	1,090

See Attached Floor Plan

EXHIBIT D

LUNA SOL, KIRKLAND

REGULATORY AGREEMENT AND DECLARATION

OF RESTRICTIVE COVENANTS

SECTION 1 - DEFINITIONS AND INTERPRETATION
SECTION 2 - RESIDENTIAL RENTAL PROPERTY
SECTION 3 - AFFORDABLE UNITS FOR ELIGIBLE HOUSEHOLDS
SECTION 4 - REPORTING REQUIREMENTS
SECTION 5 - SECTION 8 CERTIFICATE HOLDERS
SECTION 6 - LEASE PROVISIONS
SECTION 7 - SALE OR TRANSFER OF 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 - SEVERABILITY

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

REGULATORY AGREEMENT DECLARATION
OF RESTRICTIVE COVENANTS

THIS REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (the "Agreement") is made and entered into as of this _____day of _____, 20___, by and between the CITY OF KIRKLAND, a Municipal Corporation of the State of Washington (the "City"); and Luna Sol, LLC, a Limited Liability Company (the "Owner").

WITNESSETH:

A. This Agreement is predicated upon the following facts:

1) The Owner is the owner of property located at 11415 Slater Avenue NE, City of Kirkland. Owner intends to develop said property by constructing and renting mixed use development with fifty-two (52) rental 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 five (5) affordable rental units for Moderate Income Households (Eligible Households). Such affordable rental units shall be of such bedroom size and quality as are in proportion to the overall proportion of bedroom sizes and quality of all of the rental units in the project.

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

4) Applicant has applied for a limited property tax exemption for eight years as provided for in Chapter 84.14 RCW and Chapter 5.88 KMC for multifamily residential rental housing ("Multifamily Housing") in the Totem Lake and North Rose Hill Target Area, and the Director of Planning and Community Development has approved the application;

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

6) This Agreement is entered into pursuant to City Council action taken on _____.

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 Rents" means a monthly housing expense, including if applicable a Utility Allowance, which is no greater than 30% of the monthly median income for Eligible Households within the Seattle Metropolitan Statistical Area (Seattle MSA), as shown in the following chart, as adjusted for Household Size. The maximum Affordable Rents shall be adjusted no more than once every 12 months and such adjustment shall be by a factor equivalent to adjustments in the Seattle MSA Median Income.

Applicable Median Income Level

Affordable Rent Level	
Moderate Income	80%

"Affordable Units" means the five (5)units in the Rental Project as selected by the Owner and as approved by the City, as set forth in Exhibit B, and reserved for occupancy by Eligible Households pursuant to Section 3,adjusted for household size.

"City" means the City of Kirkland.

"Completion Date" means the date of the completion of the acquisition, construction, purchase, reconstruction and equipping, as the case may be, of the Project by the Owner.

"Eligible Household" means one or more adults and their dependents who certify that they meet the qualifications for eligibility set forth below in this definition, Section 3.F of this Agreement, and as set forth in the Certificate of Household Eligibility attached hereto as Exhibit "C" and incorporated by reference herein, and who certify that their incomes do not exceed the applicable percent of the median household income for the Seattle MSA, as set forth in this definition and Section 3.F of this Agreement, adjusted for household size, as published by the United States Department of Housing and Urban Development (HUD).

M**aximum Percent of Median Income at Occupancy**

Income Level	
Moderate Income	80%

"Property Tax Exemption Agreement" means that agreement titled Multifamily Housing Limited Property Tax Exemption Agreement between the City of Kirkland and Owner dated _____.

"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:

UNIT TYPEAVERAGE HOUSEHOLD SIZE

Studio 1 Person

1 Bedroom	2	Persons
2 Bedroom	3	Persons
3 Bedroom	4	Persons

"Lender" means HUD/FHA, Veterans Administration ("VA"), Federal National Mortgage Association ("FNMA"), Federal Home Loan Mortgage Corporation ("FHLMC"), or another party 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.

"Median Income" means the median income for the Seattle MSA as most recently determined by the Secretary of Housing and Urban Development under Section 8(f)(3) of the United States Housing Act of 1937, as amended. In the event that HUD no longer publishes median income figures for King County, the city may use or determine such other method as it may choose to determine the King County median income, adjusted for household size. (from KMC 5.88.090)

"Owner" means Luna Sol, LLC, a Limited Liability Company, and its successors and assigns, and any surviving, resulting or transferee entity.

"Owner Representative" means the persons 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, 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 Project Site, 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.

"Project Site" means the project 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.

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

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

"Required Rental Period" means, with respect to the Affordable Units, the Qualified Project Period.

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

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

Studio	$37
One Bedroom	$56
Two Bedroom	$74

The base year for these allowance figures is 2009. The allowance figures will be adjusted annually based on changes in the Consumer Price Index-U.S. Cities Average- All Urban Consumers. If water, garbage and/or sewage are paid for directly by the tenant, the affordable rent levels will be further reduced by the typical cost to the tenant of such utilities, or a set allowance established by the City.

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

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

SECTION 2 - RESIDENTIAL RENTAL PROPERTY

A. General Description The Project will be acquired and/or constructed for purposes of providing a mixed use development that includes multi-family rental housing and the Owner shall own, manage and operate (or cause the management and operation of) the rental portion of the Project to provide multiple family rental housing comprised of a building or structure or several inter-related buildings or structures, each consisting of more than one dwelling unit and facilities functionally related and subordinate thereto, and no other facilities. As used herein facilities functionally related and subordinate to the Project shall include facilities for use by the tenants, including, for example, other 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.

B. Similar Quality Construction All of the dwelling units in the Project shall be constructed of similar quality, 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 approval a plan for preserving the Affordable Units. The City can consider options which would convert the Affordable Units to owner occupancy by Eligible Households. This section does not waive the owner's obligations to comply with any other law or regulations pertaining to conversion to ownership use.

SECTION 3 - AFFORDABLE UNITS FOR ELIGIBLE HOUSEHOLDS

A. Number of Affordable Units. All of the Affordable Units in the Project shall be leased or rented, or available for lease or rental, to the general public, and, the Owner shall designate all of the Affordable Units, reserved for occupancy by Eligible Households, as follows:

Median Income Level	**Affordable Units**
Moderate Income	5
Total	5

The mix and configuration of Affordable Units (e.g., studio, one-bedroom, two-bedroom, etc.) shall be substantially proportional to the mix and configuration of the total housing units in the project, and will consist of one (1) studio unit (minimum of 570 square feet), three (3) one-bedroom units (minimum of 750 square feet) and one (1) two-bedroom unit (minimum of 1050 square feet).

B. Designation/Redesignation of Affordable Units. The Affordable Units shall be those units indicated in Exhibit B. 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 Units shall be intermingled with all other dwelling units and shall retain the same unit mix identified in paragraph "A" of this section The City shall base its approval or disapproval of the proposed Affordable Units upon the criteria set forth in this section.

The Owner, from time to time, may propose to change the particular units declared as Affordable Units provided that at all times at least five (5) of all of the residential units are designated as Affordable Units, and provided that at all times the same unit mix is retained. The Owner shall notify the City of the proposed change in writing for the City's approval. The City will review the proposed changes and shall base its approval or disapproval of the proposed changes based upon the criteria set forth in this section.

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

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

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

F. Qualifying Eligible Household Income for Affordable Units at Initial Occupancy and

Recertification. Qualifying Eligible Household Income at time of occupancy may not exceed the applicable percent of Seattle MSA median income set forth in the chart below, adjusted for Household Size. At time of annual recertification, a household will remain eligible for an Affordable Unit as long as Household Income does not exceed the applicable percent of median income, adjusted for household size**.** In the event, at the time of recertification, Household Income exceeds the maximum recertification income limit for the income level they initially qualified for then the Household must within 90 days either: pay market rent and the next available comparable market rate unit must be rented as an Affordable Unit; or vacate the unit, unless otherwise prohibited by law, to make it available for a qualified Moderate Income Household.

Maximum permitted Income Levels

Eligible Households	**Maximum Initial Income**	**Maximum Recertification Income**
Moderate Income	80%	100%

G. This section left intentionally blank

H. No Preference to Any Class or Group The Owner shall not give preference to any particular class or group in renting the dwelling units in the Project, except to the extent that dwelling units are required to be occupied by Eligible Households and as otherwise provided for in this Section.

SECTION 4 - REPORTING REQUIREMENTS

A. Notice of Occupancy Permit Within thirty (30) days of issuance of final inspection, and if applicable any occupancy permits, the Owner shall notify the City's Planning and Community Development Department [Attn: Housing Planner] or its assignee, of receipt of an occupancy permit.

B. City Mailing List The City maintains a mailing list of households interested in occupying Affordable Units. From time to time the City or its assignee, will provide to the Owner the names of persons from the City's 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 City's mailing list, and when they were placed on the City's mailing list.

C. Completion of Certificate of Household Eligibility Prior to allowing any household to occupy any Affordable Unit, 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, Household Income shall be verified by wage or salary statements, or other income records that the City may consider appropriate. In the event a household is receiving Section 8 assistance, the requirements of this

Section 4.C and Section 4.D of this Agreement can be met through providing documentation associated with complying with the Section 8 program.

D. Annual Recertification of Residents On an annual basis, the Owner shall require all households occupying an Affordable Unit 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 Statement. 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, Household Income shall be verified by wage or salary statements, or other income records that the City may consider appropriate.

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

E. Annual Project Certification After the Project is available for occupancy and until 90% of the rental units are occupied, the Owner shall, on a quarterly basis, file with the City an Annual Project Certification, in substantially the form of Exhibit "D". Thereafter, during the term of the Regulatory Agreement, such certification shall be filed annually on or before March 31st and shall set forth the required information for the preceding year.

F. Maintain Complete Records The Owner shall maintain complete and accurate records pertaining to the Affordable Units, and shall permit any duly authorized representative of the City to inspect the books and records of the Owner pertaining to the incomes of Eligible Households residing in the Project. Failure to maintain such records, or failure to allow examination by the City shall constitute a default hereunder.

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

H. Annual Reporting Requirements. The Agency shall submit to the City or its designee annual monitoring reports for the Project. Such reports shall be in a form and content specified by the City, and shall be submitted annually for the Qualified Project Period**.** The City will use the monitoring reports to determine compliance with affordability. The annual reports will be due by March 31st of each year and will be the basis for verification of the continued affordability of the units and documentation of service to the eligible client group(s).

SECTION 5 - SECTION 8 CERTIFICATE HOLDERS

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

SECTION 6 - LEASE PROVISIONS

A. It is the Owner's responsibility to screen and select tenants for desirability and credit worthiness. 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 may review such written policies and may require changes in such policies, if necessary, so that they comply with the requirements of this Agreement.

B. All leases for Eligible Households shall contain clauses wherein each individual lessee: (i) certifies the accuracy of the statements made in the Income Certification, (ii) agrees that the household income and other eligibility requirements shall be deemed substantial and material obligations of his 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 Agreement. Such notice must be received by the City at least 10 days prior to the close of escrow.

SECTION 8 - TERM

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

SECTION 9 - NO DISCRIMINATION

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

SECTION 10 - COVENANTS RUN WITH LAND

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

The City and the Owner hereby declare that the covenants and conditions contained herein shall bind and the benefits shall inure to, respectively, the Owner and their successors and assigns and all subsequent owners of the Project or any interest therein, and the City and its successors and assigns, all for the Qualified Project Period. Except as provided in Section 12 of this Regulatory Agreement, 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 Agreement, provided however, that any such contract, deed or other instrument shall conclusively be held to have been executed, delivered and accepted subject to such covenants and conditions, regardless of whether or not such covenants and conditions are set forth or incorporated by reference in such contract, deed or other instrument.

SECTION 11 - ENFORCEMENT

A. Enforcement Provisions The Owner shall exercise reasonable diligence to comply with the requirements of this Agreement and shall correct any such noncompliance within sixty (60) days after such noncompliance is first discovered by the Owner or would have been discovered by the exercise of reasonable diligence, or within 60 days after the Owner receives notice of such noncompliance from the City or its assignee; 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 Regulatory Agreement, or enjoin any acts or things which may be unlawful or in violation of the rights of the City hereunder; it being recognized that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of the Owner's default;

2) Have access to, and inspect, examine and make copies of, all of the books and records of the Owner pertaining to the Project. Provided, however, the City 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 Regulatory Agreement.

4) The Owner hereby grants to the City or its assignee the option, upon Owner's default under this Regulatory Agreement, for the Qualified Project Period to lease up to five (5) of the units in the Project as mutually selected by the City 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 Agreement. The City shall lease from the Owner the units at the Affordable Rent level less a reasonable management fee to reimburse the City for any expenses incurred in connection with such sublease. The City may terminate its lease of the units in the Project upon determination that the Owner is no longer in default pursuant to this Agreement.

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

request of the Owner.

SECTION 12 - SUBORDINATION, TERMINATION, RIGHTS RESERVED BY HUD

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

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

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

(3) Title to subject 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 Agreement to the contrary, enforcement of this Agreement shall not serve as a basis for (i) default under the Deed of Trust insured by HUD/FHA or any other Lender, or (ii) an acceleration of the loan secured by the Deed of Trust ("Loan"), or result in any claim against 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 subject project other than from available surplus cash as that term is defined by HUD/FHA or any other Lender.

B. Notwithstanding anything in this Agreement to the contrary:

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

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

(3) No amendment to this Agreement will be effective without the prior written consent of Lender.

(4) The Owner, its successors or assigns, will take all steps necessary to comply with this Agreement; 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 Agreement, or if there are such violations or defaults, the nature of the same.

SECTION 14 - AGREEMENT TO RECORD

The Owner shall cause this Regulatory Agreement 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 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 Tenant Eligibility unless the Owner has actual knowledge or reason to believe that such Certificates are inaccurate.

SECTION 16 - GOVERNING LAW

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

SECTION 17 - NO CONFLICT WITH OTHER DOCUMENTS

The Owner warrants that it has not executed and will not execute, any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event the requirements of this Regulatory Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

SECTION 18 - AMENDMENTS

This Regulatory Agreement shall be amended only by a written instrument executed by the parties hereto or their respective successors in title, and duly recorded in the real property records of King County, Washington.

SECTION 19 - NOTICE

All notices, certificates or other communications shall be deemed delivered on the second day following the date on which the same have been mailed by certified or registered mail, postage prepaid, return receipt requested, at the addresses specified below, or at such other addresses as may be specified in writing by the parties hereto:

If to the City: Planning Department
Attn: Housing Planner
City of Kirkland
123 5th Avenue
Kirkland, WA 98033

If to the Owner: Luna Sol, LLC
11415 Slater Avenue, Suite 100
Kirkland, WA 98033
Tel: 425-250-0494
Attn: Kim Faust

SECTION 20 - SEVERABILITY

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

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

Owners: Luna Sol, LLC

_____

_____
Its:

City: City of Kirkland

_____

_____
Its: City Manager

Approved as to Form:

_____
City Attorney

STATE OF WASHINGTON }
} ss.
COUNTY OF KING }

On this _____ day of _____, 20___, personally appeared before me _____ 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 _____ of 20___.

_____
Notary Public in and for the State of Washington.
Print Name_____
Residing at_____
My commission expires _____

STATE OF WASHINGTON }
} ss.
COUNTY OF KING }

On this _____ day of _____, 20___, before me, the undersigned, 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 WHEROF I have given under my hand and official seal this ____ day of _____ of 20___.

_____
Notary Public in and for the State of Washington.
Print Name_____
Residing at_____
My commission expires _____