Council Meeting: 09/17/2013
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.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Dawn Nelson, Planning Supervisor

Date: September 6, 2013

Subject: SLATER 116 CONDITIONAL CERTIFICATE FOR MULTIFAMILY PROPERTY TAX EXEMPTION, FILE HSG13-01106

RECOMMENDATION

Staff recommends that the City Council approves the enclosed resolution authorizing the Planning Director to:

- Enter into the contract included as Exhibit A with MSPT IV LLC for a potential multifamily housing property tax exemption; and
- Issue a conditional certificate of acceptance of tax exemption.

BACKGROUND DISCUSSION

The City of Kirkland first adopted the Multifamily Housing Property Tax Exemption program in May, 2004. It was initially part of the package of incentives developed to encourage the creation of affordable housing in multifamily and mixed use projects. With the mandatory affordable housing regulations created in December 2009, it is now a key part of the regulations that offset the cost of providing required affordable housing. In zones where affordable housing is not required, it remains as an incentive to encourage the creation of affordable housing. To date, it has been used twice: once in a voluntary situation and once as part of a project where affordable housing was required.

The regulations allow projects that include a minimum of four new multifamily units in defined geographic areas to request an exemption from the ad valorem taxes on the residential improvement value in exchange for providing affordable housing. The City allows an eight year exemption if at least 10 percent of the units in a project are affordable and a twelve year exemption if at least 20 percent of the units are affordable. The length of the exemption is established by RCW 84.14. The current regulations are included in KMC 5.88. Additional background information about the financial implications of the program is available on pages 4 and 5 of the June 7, 2011 City Council materials. The 2011 background materials were provided to support the Council's action to extend the tax exemption into the new

neighborhoods of Finn Hill, Juanita and Kingsgate, as well as make them available for the S. Kirkland Park and Ride project.

There are not many multifamily projects currently using the tax exemption. One example is a 52 unit rental project in the North Rose Hill Business District. However, multifamily development has been extremely slow in the last five years. There are several projects in the presubmittal and permit review process that will likely use the exemption in the next few years.

The Slater 116 project is a 4 story mixed use retail and residential development that was recently completed at 12340 NE 115th Place in the North Rose Hill business district (see Attachment 1). The business owner for the project is MSPT IV LLC. The project includes 108 residential apartments and approximately 10,000 square feet of retail space. The project includes a mix of open one-bedroom, one-bedroom and one-bedroom plus den units ranging in size from 607 square feet to 1,030 square feet. The 11 proposed affordable units include two open one-bedroom units, six one-bedroom units and three one-bedroom plus den units (see Attachment 2).

Affordable housing is not required as part of new residential development in the North Rose Hill business district and the multifamily housing property tax exemption program is creating affordable housing where it would not otherwise exist. The prescribed affordability level for rental projects in this situation is 80% of King County median income. The affordability provisions are required to remain in place for the life of the project and are secured by the agreement attached to the resolution.

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 September 5, 2013*

- Approval of resolution to enter into contract with City – *pending action by City Council on September 17, 2013*

Actions to occur following approval of the resolution:

- 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)

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

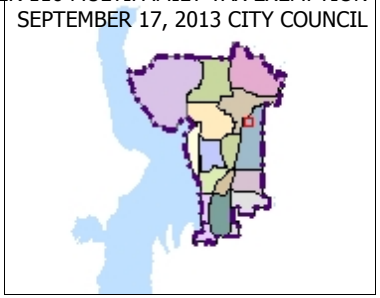
- Filing of final certificate of tax exemption with the King County Assessor

- Submittal of annual certification of compliance by property owner

ATTACHMENTS

1. Vicinity Map
2. Slater 116 Site Plan and Affordable Unit Layouts

SLATER 116 VICINITY MAP



Legend

- Address
- City Limits
- Grid
- QQ Grid
- Railroad
- Streets
- Parcels
- ComPlace Names
- Buildings
- Parks
- Schools
- z_Image09
  - Red: Band_1
  - Green: Band_2
  - Blue: Band_3

1: 1,558

0.0 0 0.02 0.05 Miles

NAD_1983_StatePlane_Washington_North_FIPS_4601_Feet

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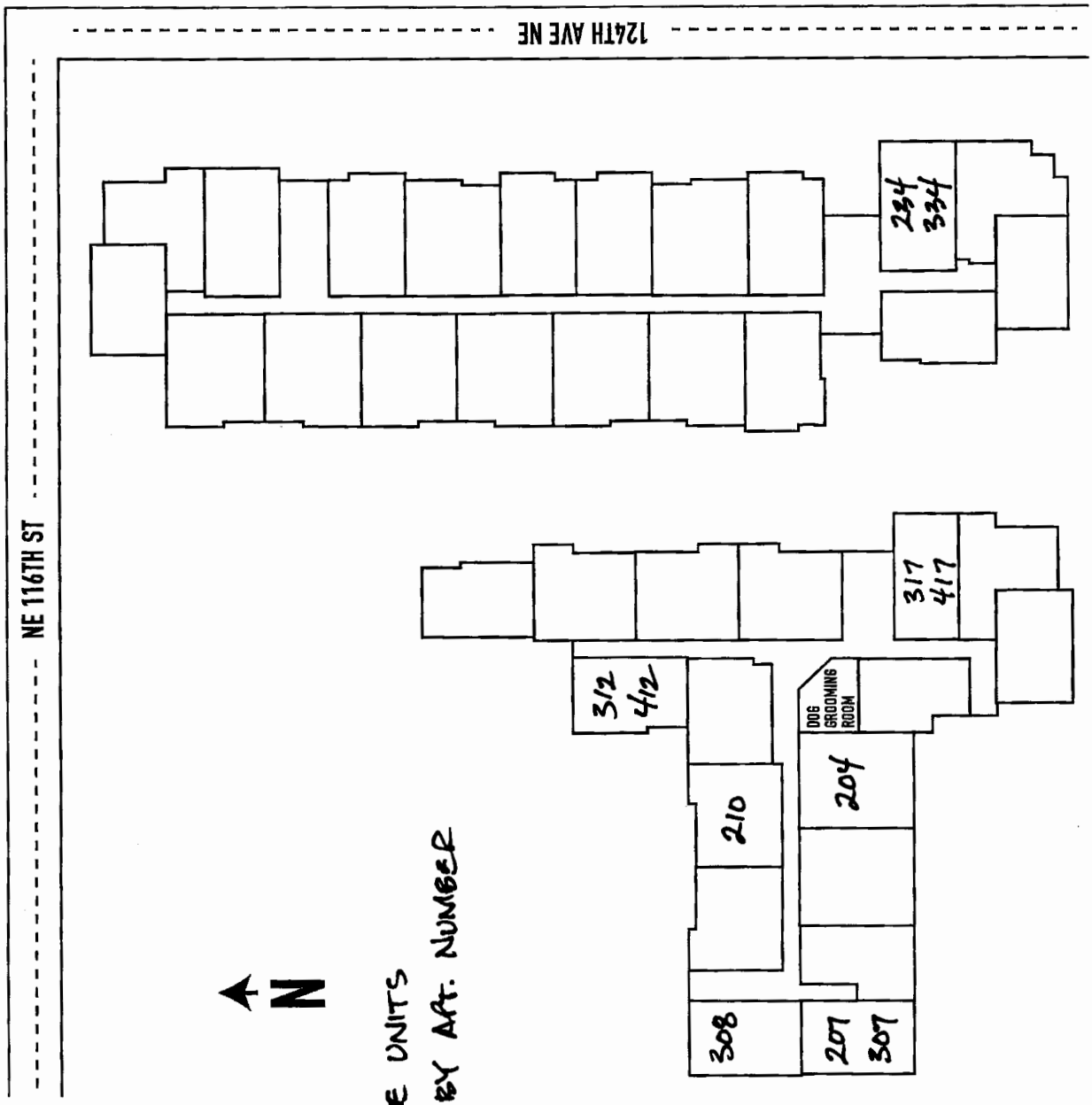
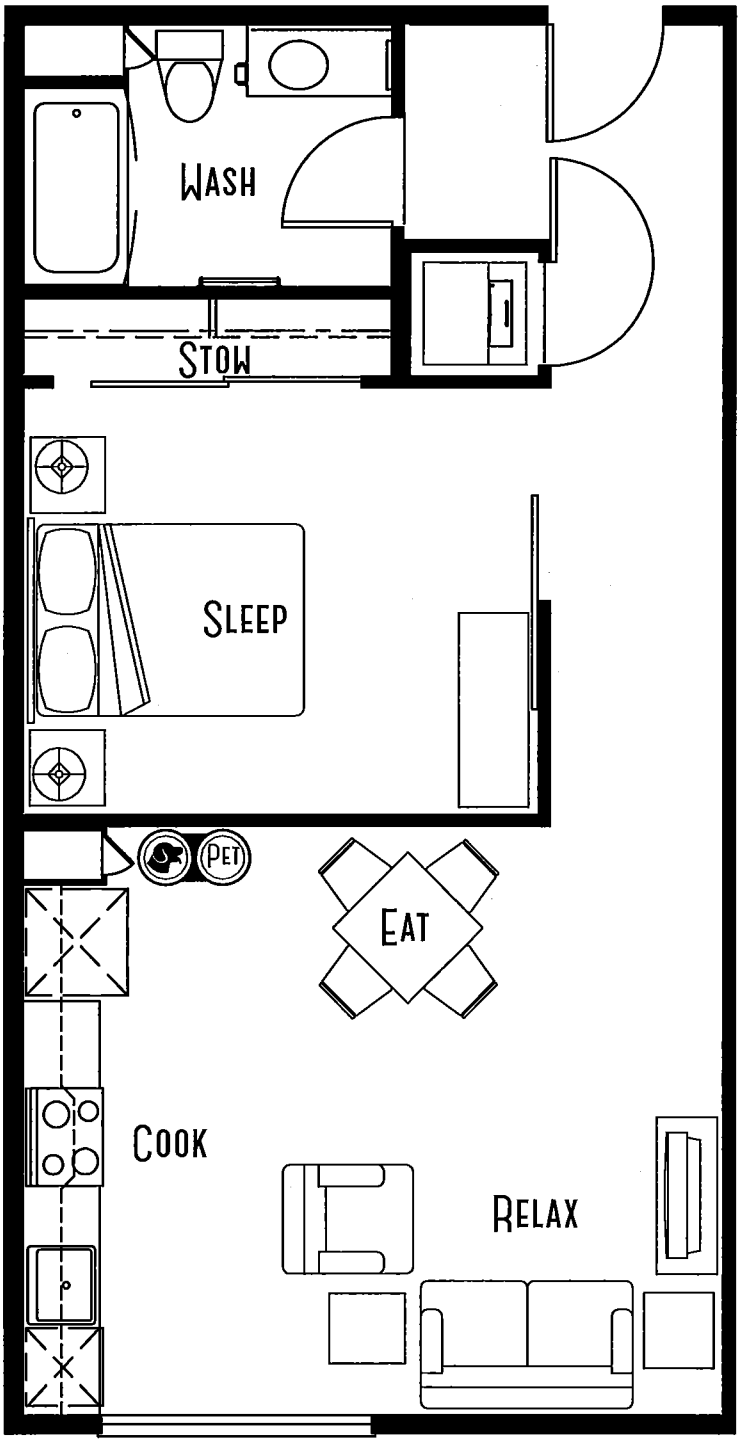
No warranties of any sort, including but not limited to accuracy, fitness or merchantability, accompany this product.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

Notes



AFFORDABLE UNITS
INDICATED BY APT. NUMBER

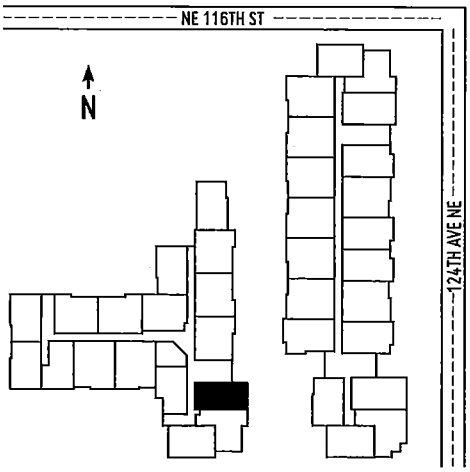


SLATER 116

APARTMENT | 317

1 BEDROOM/1 BATH

SQUARE FEET: 643



In our continuing effort to improve the design and function of our homes, we reserve the right to modify or change plans, specifications, features and prices without notice. All dimensions and sizes are approximate.

CONNECT | 116

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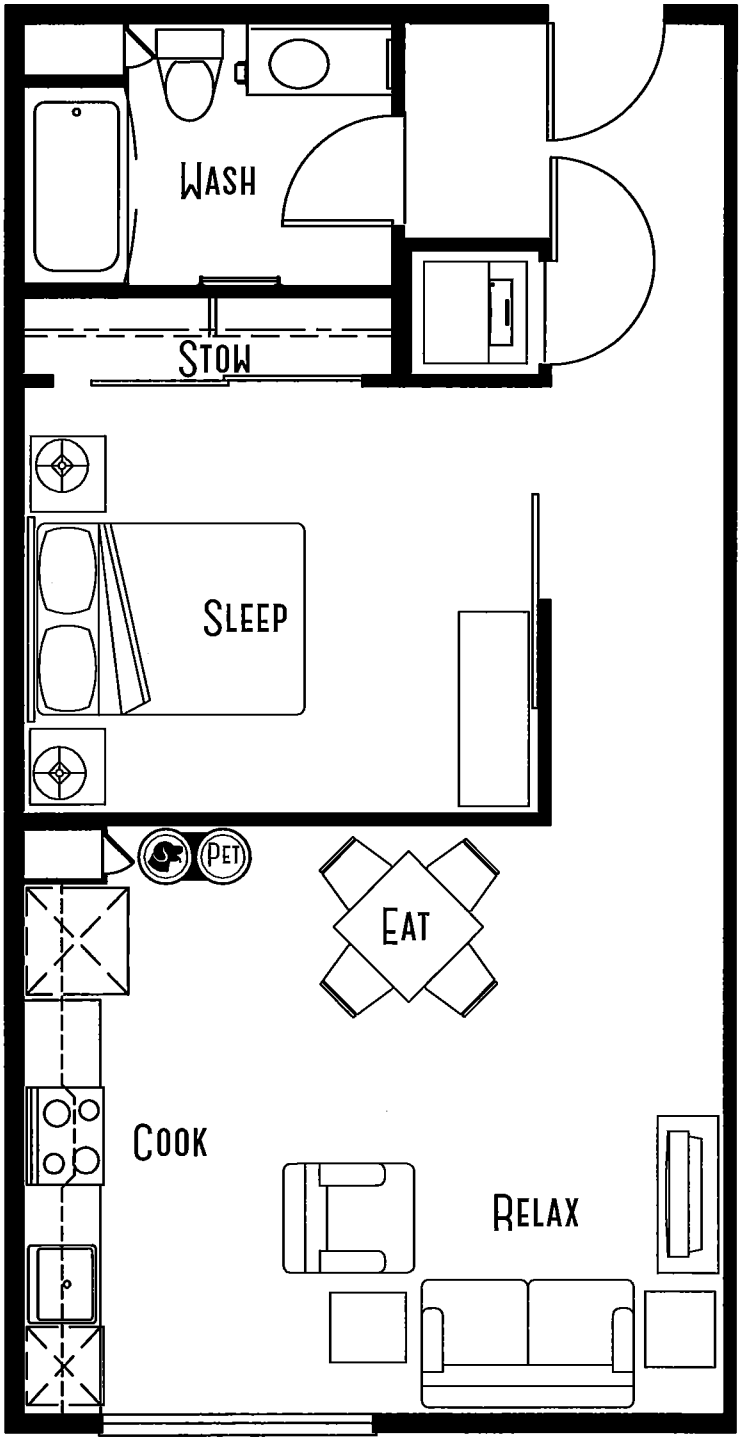
425.629.3633

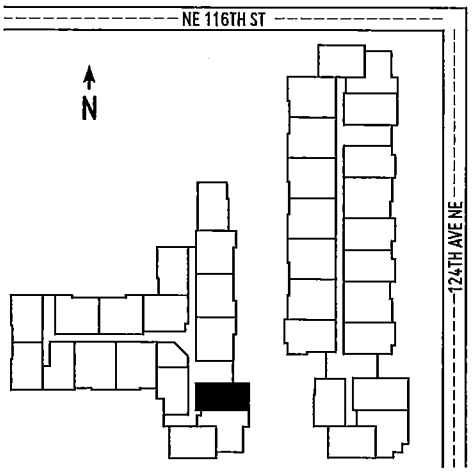


SLATER 116

APARTMENT | 417

1 BEDROOM/1 BATH

SQUARE FEET: 643



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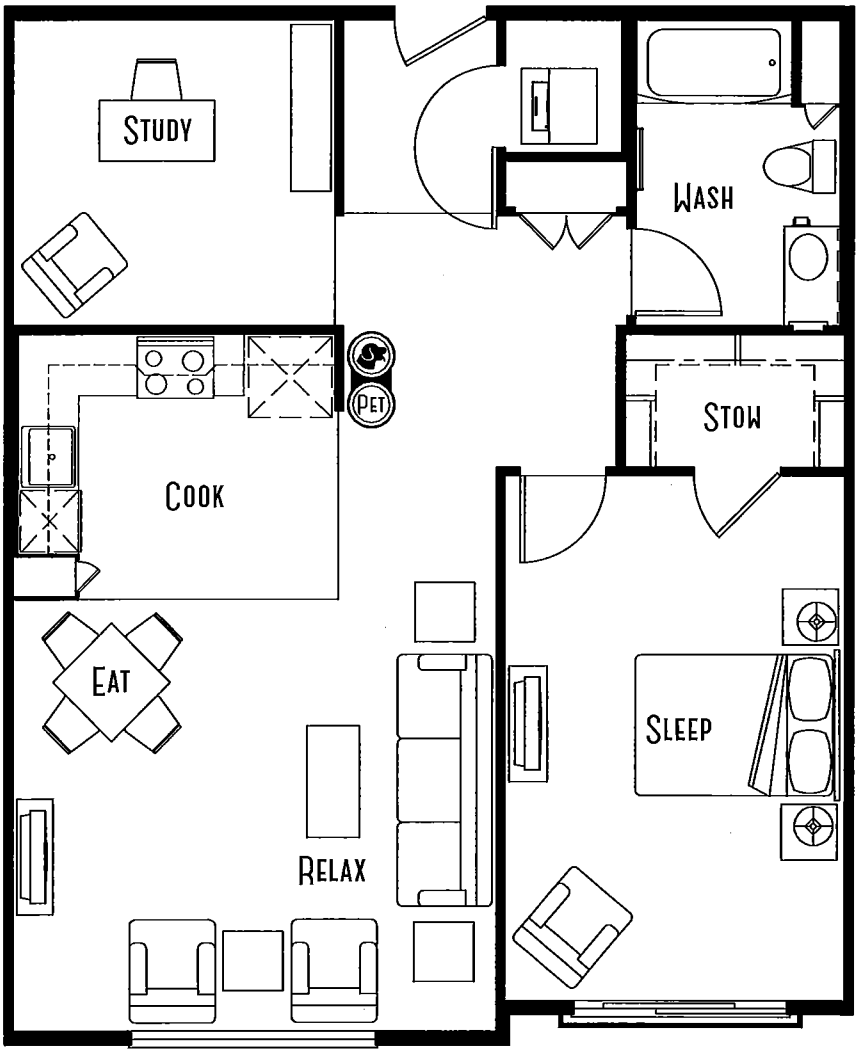
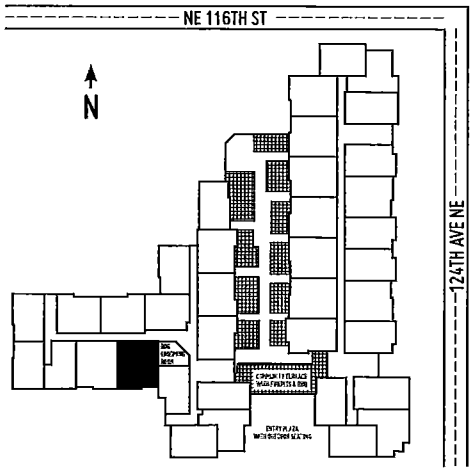


APARTMENT | 204

1 BEDROOM/1 BATH

SQUARE FEET: 884



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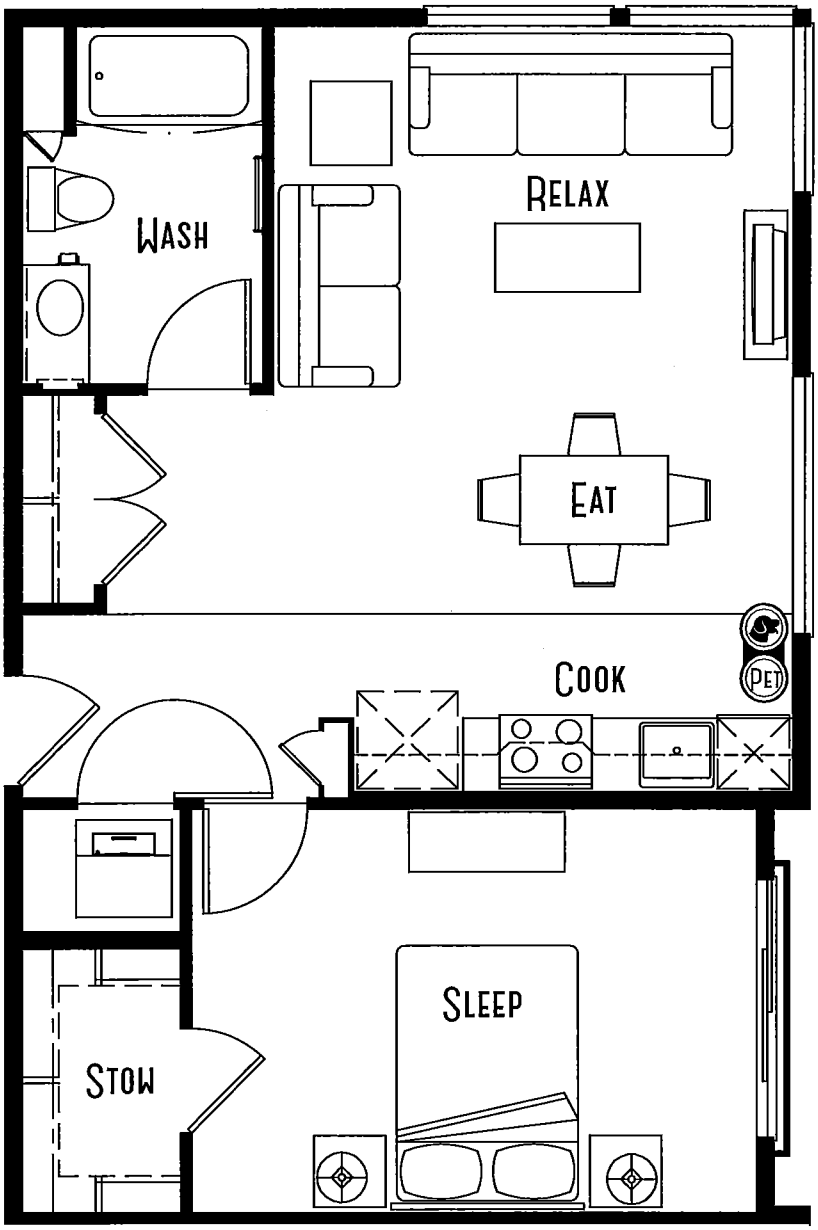
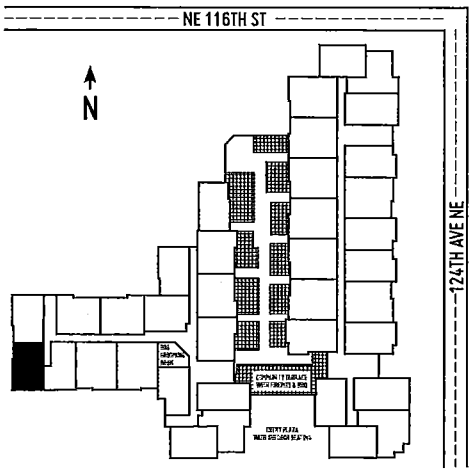


APARTMENT | 207

1 BEDROOM/1 BATH

SQUARE FEET: 661



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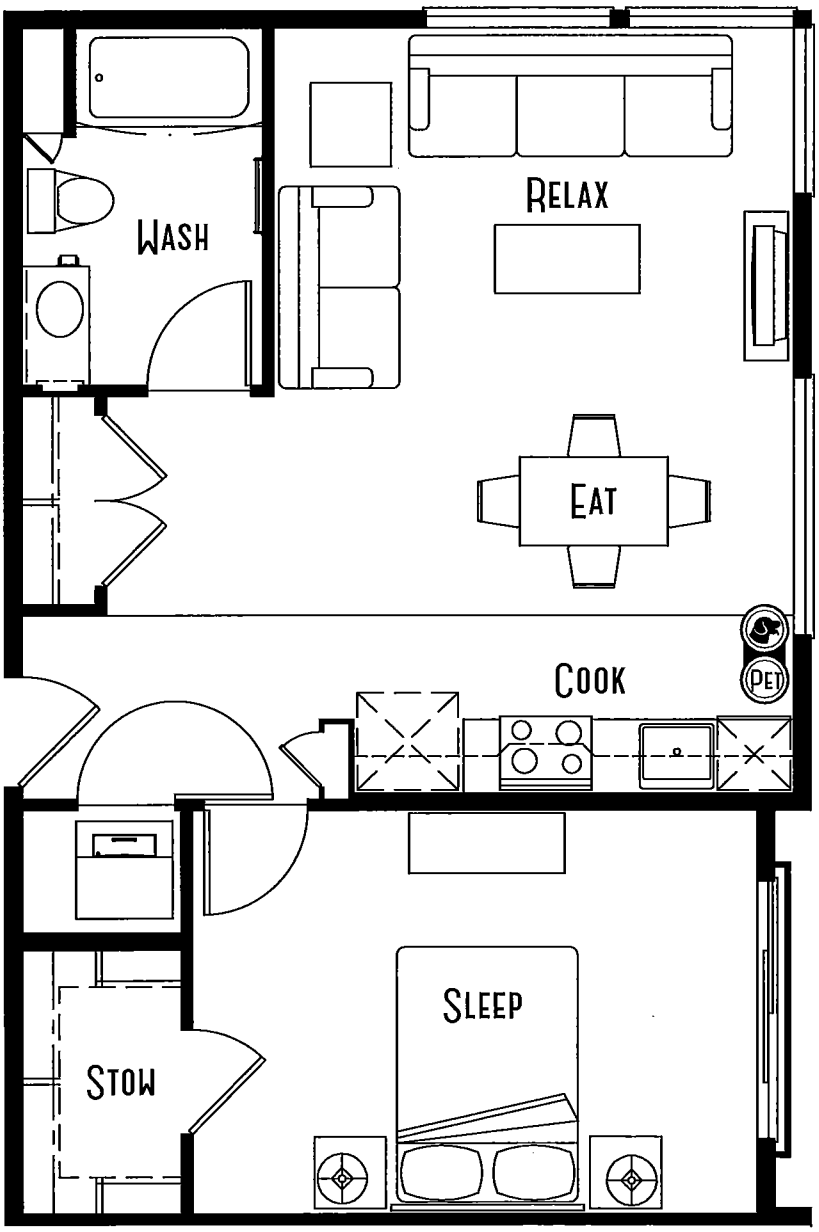
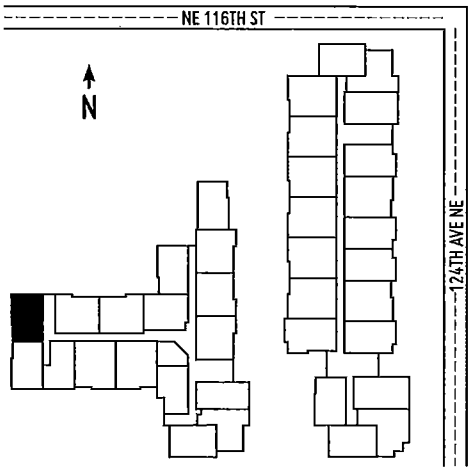


APARTMENT | 308

1 BEDROOM/1 BATH

SQUARE FEET: 661



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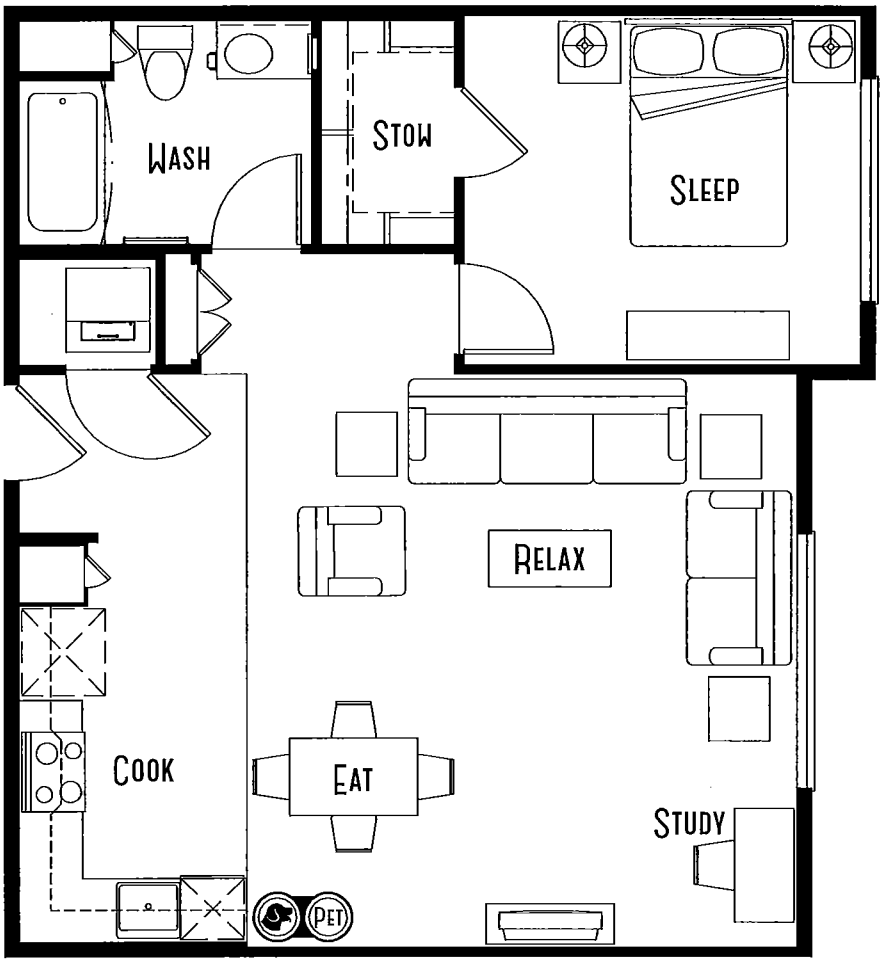
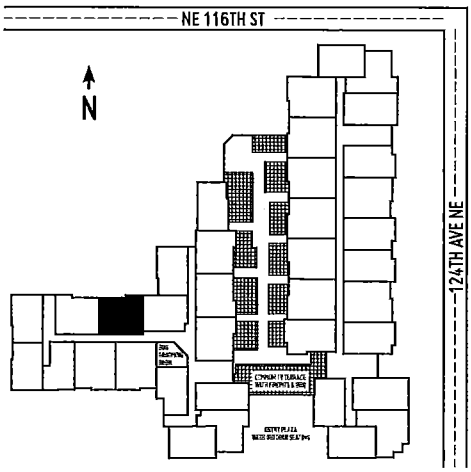


APARTMENT | 210

1 BEDROOM/1 BATH

SQUARE FEET: 734



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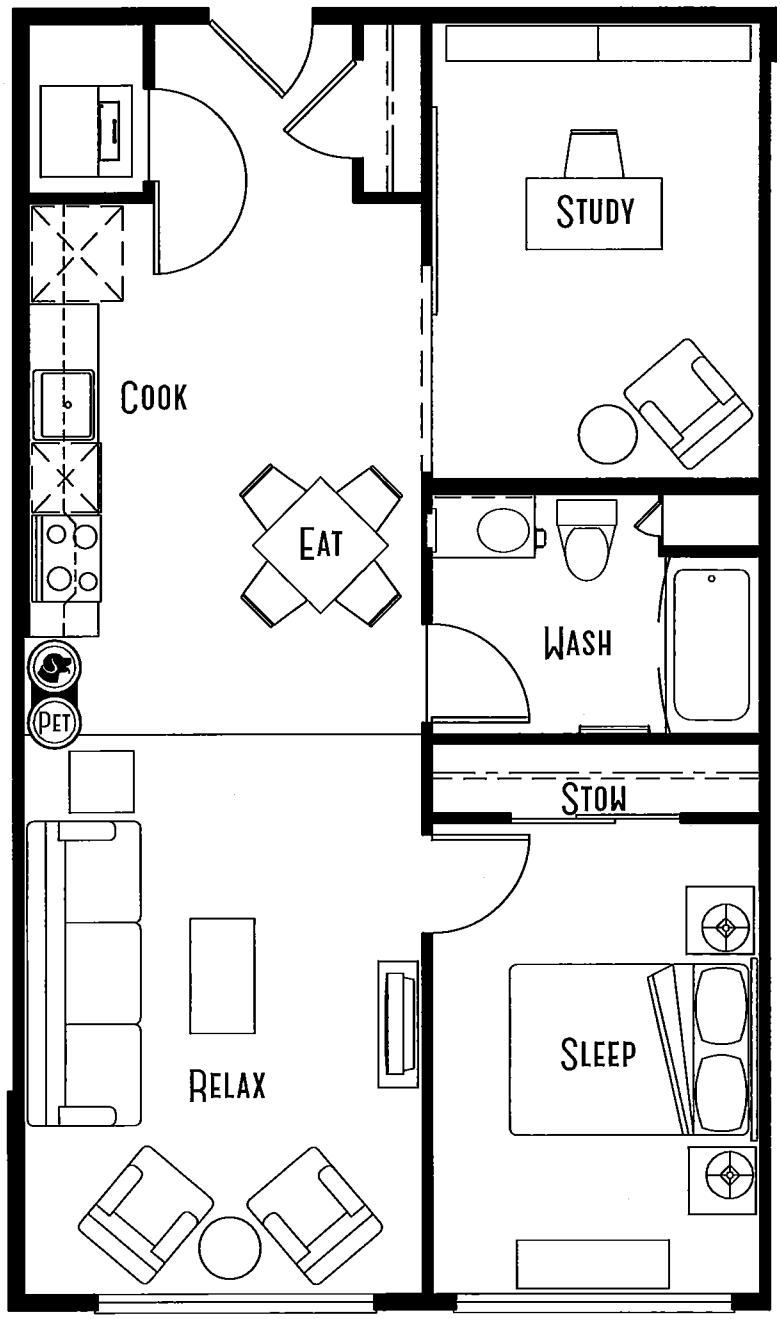
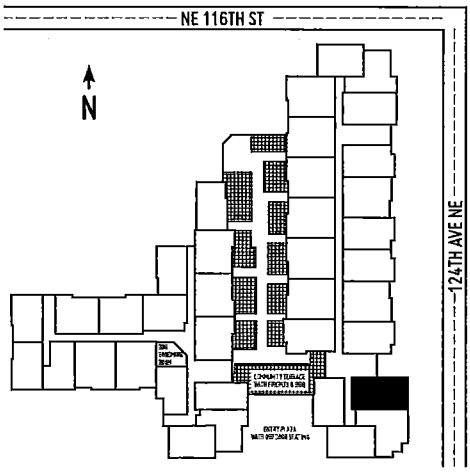


SLATER 116

APARTMENT | 234

1 BEDROOM/1 BATH

SQUARE FEET: 773



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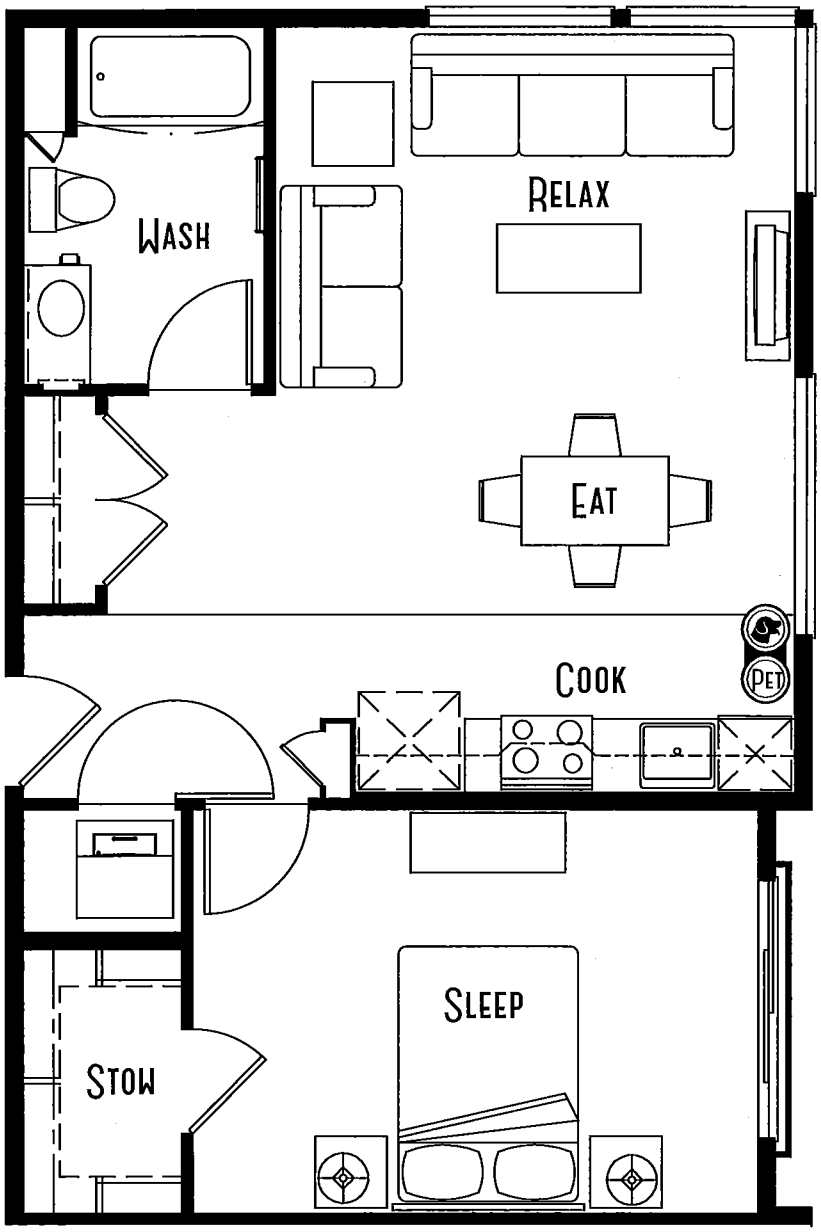
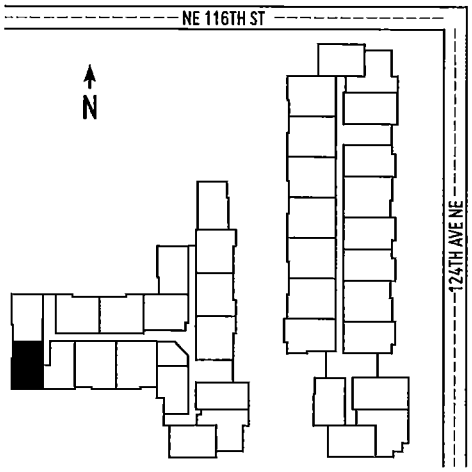


APARTMENT | 307

1 BEDROOM/1 BATH

SQUARE FEET: 661



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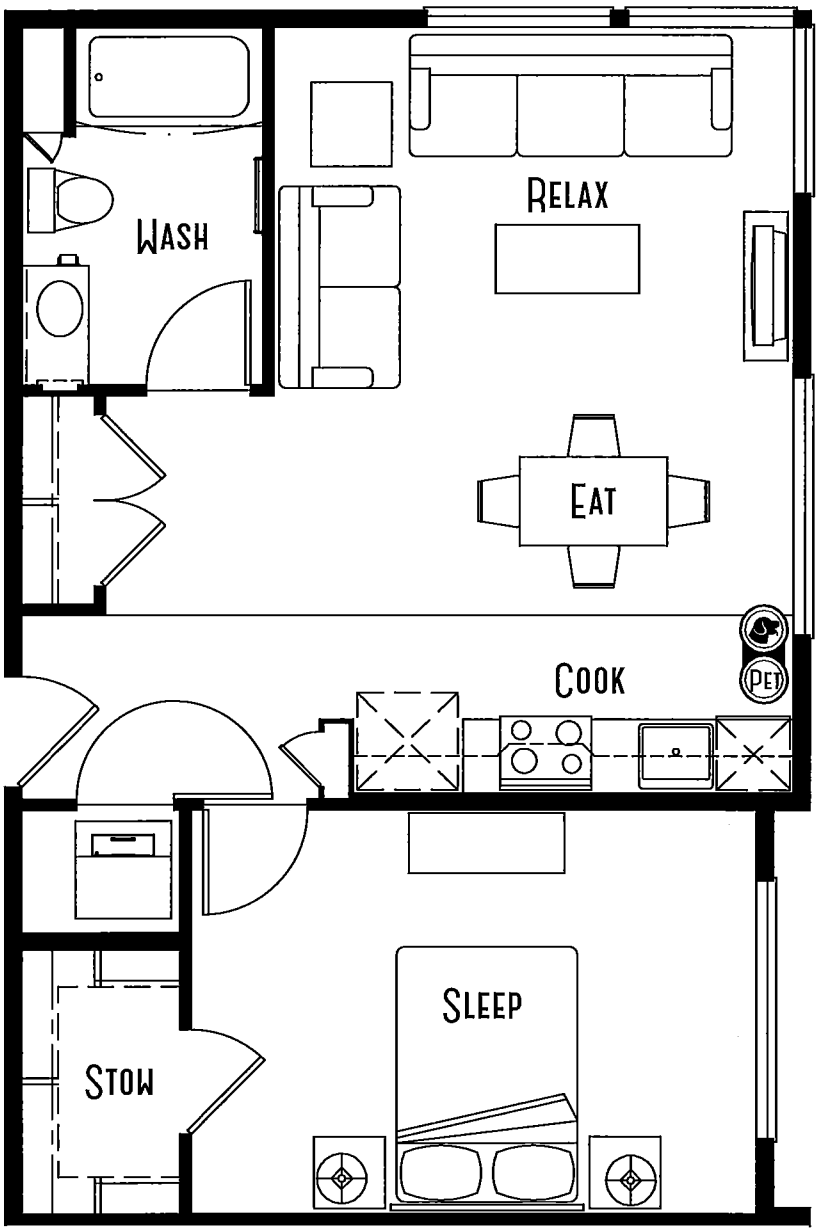
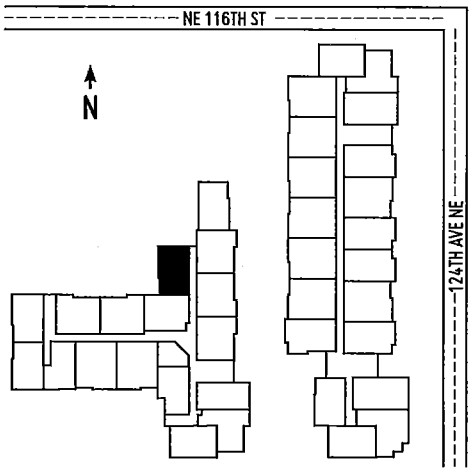


APARTMENT | 312

1 BEDROOM/1 BATH

SQUARE FEET: 661



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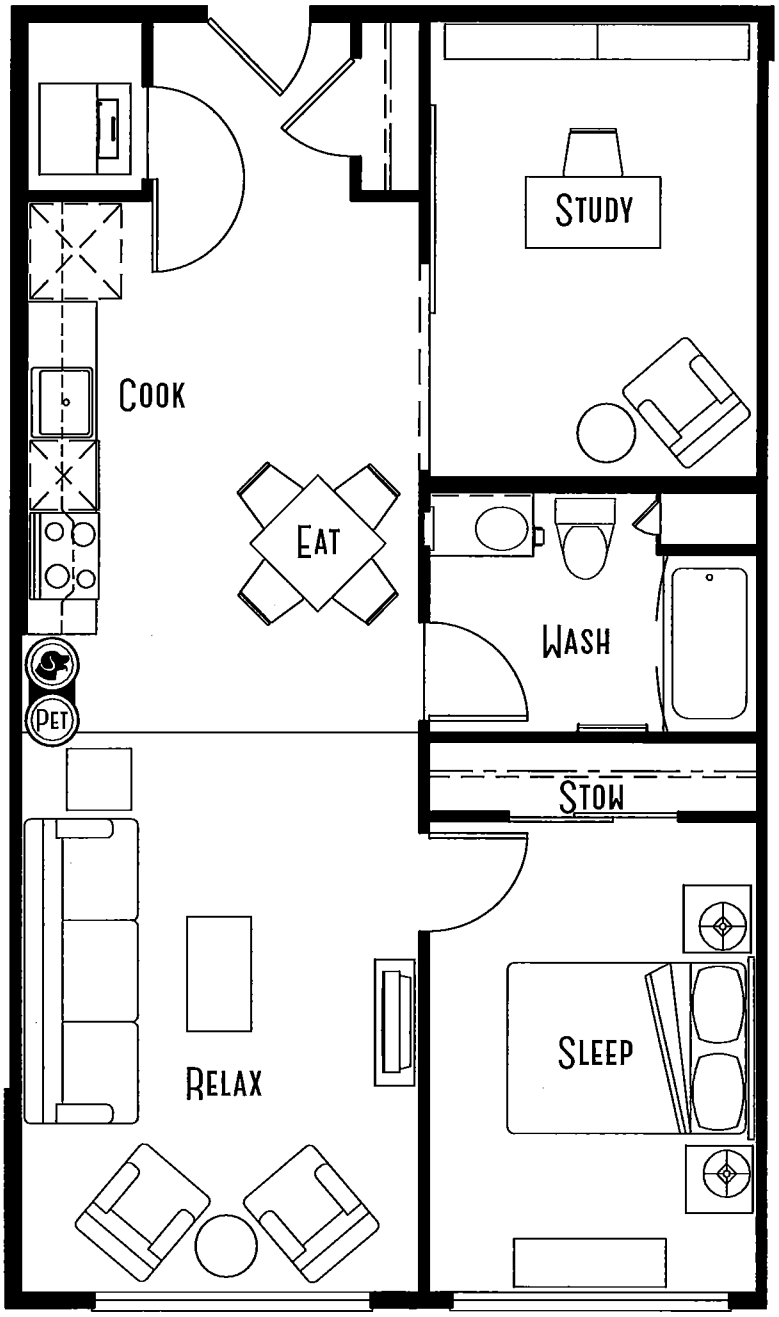
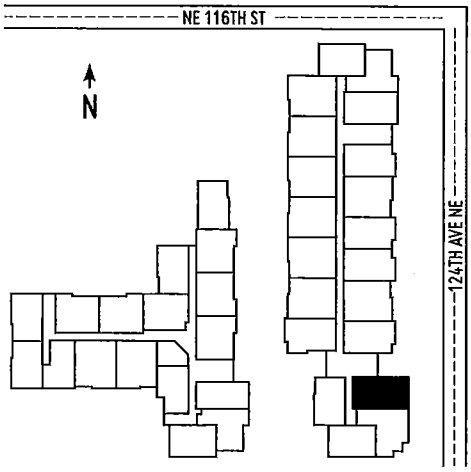


SLATER 116

APARTMENT | 334

1 BEDROOM/1 BATH

SQUARE FEET: 773



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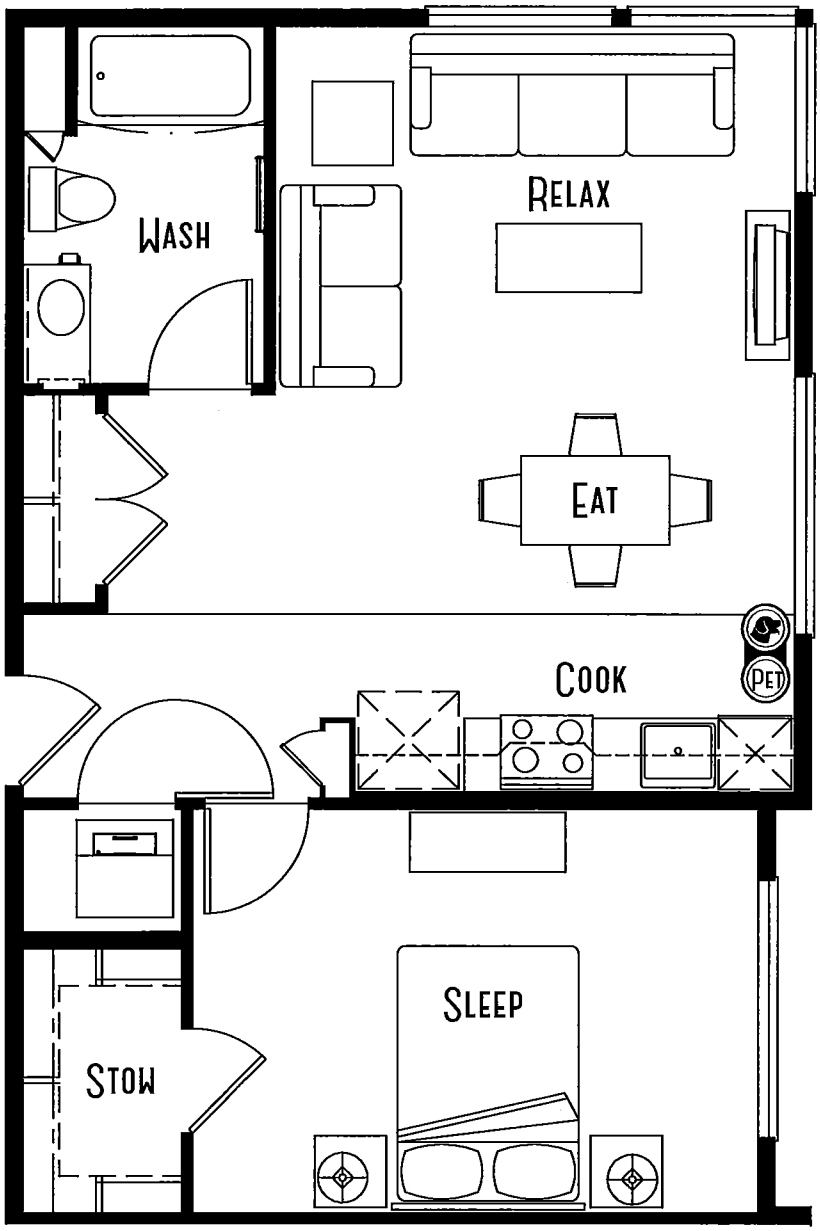
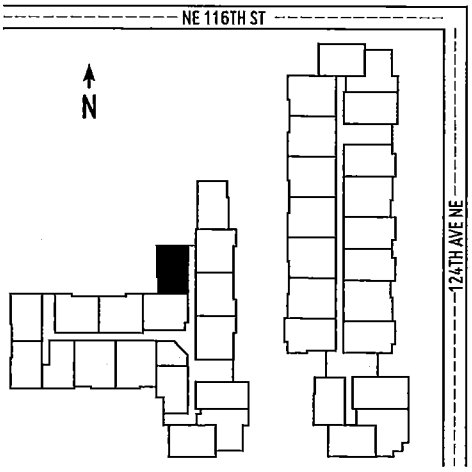


APARTMENT | 412

1 BEDROOM/1 BATH

SQUARE FEET: 661



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Council Meeting: 09/17/2013
Agenda: Other Business
Item #: 8. h. (1).

RESOLUTION R-4998

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 MSPT IV LLC, REGARDING A POTENTIAL MULTIFAMILY HOUSING PROPERTY TAX EXEMPTION AND APPROVING THE ISSUANCE OF A CONDITIONAL CERTIFICATE OF TAX EXEMPTION

WHEREAS, MSPT IV 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/North Rose Hill Target Area, and the Director of Planning and Community Development has approved the application; and

WHEREAS, MSPT IV has submitted to the City preliminarily site plans and floor plans for new Multifamily Housing to be constructed as part of a one hundred eight (108) unit mixed use project on property situated at 12340 NE 115th Place, 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 _____, 2013.

Signed in authentication thereof this ____ day of _____, 2013

_____
MAYOR

Attest:

_____
City Clerk

MULTIFAMILY HOUSING LIMITED PROPERTY TAX EXEMPTION AGREEMENT

THIS AGREEMENT, entered into this _____ day of _____, 2013, between the City of Kirkland, a State of Washington municipal corporation ("City") and the MSPT IV LLC ("Applicant"), and incorporated attachments and exhibits, contains all terms and conditions agreed to by the City and the Applicant to undertake the activities described herein.

RECITALS

1. Applicant has applied for a limited property tax exemption as provided for in Chapter 84.14 RCW and Chapter 5.88 KMC for multifamily residential rental housing ("Multifamily Housing") in the Totem Lake Residential Target Area, and the City's Director of Planning and Community Development ("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 108-unit project ("Project") on property situated at 12340 NE 115th Place 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. No existing rental housing building that contained four (4) or more occupied dwelling units was demolished on the Property within 18 months prior to Applicant's submission of its application for limited property tax exemption; and

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 _____.

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 (4) new dwelling units designed for permanent residential rental or ownership

occupancy, nor shall permanent residential housing comprise less than fifty percent (50%) of the gross floor area of the 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 21, 22, 23, and 25 or other applicable law. Applicant further agrees that approval of this Agreement by the City Council, its execution by the Director, or issuance of a Conditional Certificate by the City pursuant to KMC chapter 5.88.060 in no way constitutes approval of proposed improvements on the Property with respect to applicable provisions of KMC Titles 21, 22, 23, and 25 or other applicable law or obligates the City to approve proposed improvements.

c. Applicant agrees that the Multifamily Housing 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 eleven (11) "Affordable Units" for rent, specifically available for Low and Moderate Income Households as shown in the following table, and affordable to households whose household annual income does not exceed the percent of the King County median household income given in the table, adjusted for household size, as determined by HUD, and no more than thirty percent (30%) of the monthly household income is paid for monthly housing expenses (rent and an appropriate utility allowance).

	Percent of King County Median Income		
	Income for Determining Maximum Housing Expense	Maximum Income at Initial Occupancy	Number of Affordable Units
Moderate Income	80%	80%	11

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

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 eleven (11) 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 Units shall at a minimum include standard features and result in a totally finished and livable home.

Prior to issuing a certificate of occupancy, an agreement in a form acceptable to the city attorney ("Affordability Covenant") and substantially in the form of Exhibit 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 department of records and elections. After recording the Affordability Covenant, in the event of conflict between it and this Agreement, the Affordability Covenant will control. 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 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 Affordable Units. In the event a condominium conversion occurs during the period of the property tax exemption and owner-occupied Affordable Units are provided at the affordability levels as defined in Section 5.88.020(a) or that have such other comparable level of affordability as provided for in the city's affordable housing multifamily tax exemption incentive program, as regulated through Chapter 112 of the Kirkland Zoning Code, per Section 6 of this Agreement, the Affordable Units 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 of Tax Exemption as provided in Section 10 of this Agreement.

5. Requirements for Final Certificate of Tax Exemption.

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

a. A statement of expenditures made with respect to the overall Project 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 an exemption period of eight (8) years with the King County Assessor within forty (40) days of submission of all materials required by paragraph 5, if Applicant has:

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

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

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

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

7. Annual certification.

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

a. A statement of the occupancy and vacancy of the Multifamily Housing units 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; and

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

(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 21, 22, 23, and 25 or other applicable law for which the Department of Planning and Community Development or its functional successor shall have issued a notice of violation, citation or other notification that is not resolved by a certificate of compliance, certificate of release, withdrawal, or another method that proves either compliance or that no violation existed, within the time period for compliance, if any, provided in such notice of violation, citation or other notification or any extension of the time period for compliance granted by the Director.

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

Applicant agrees to notify the Director within thirty (30) days of any transfer of Applicant's ownership interest in 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: MSPT IV LLC
11415 Slater Avenue NE, Suite 100
Kirkland, WA 98033
Attn: Jackie Hizzey

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

15. Severability.

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

16. 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 Affordability Covenant**

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

THE CITY OF KIRKLAND

_____
Eric R. Shields
Its: Planning Director

APPLICANT

_____
Kelly Price
Its: Manager

Approved as to Form

_____
City Attorney

EXHIBIT A

LEGAL DESCRIPTION

LOTS 2 AND 3, ALTERATION OF LOT LINE NO. LL-98-83, RECORDED UNDER RECORDING NUMBER 9811249010, 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; EXCEPT THE EAST 8 FEET CONVEYED TO THE CITY OF KIRKLAND BY DEED RECORDED UNDER RECORDING NUMBER 20040115000414; TOGETHER WITH THAT PORTION OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 26 NORTH, RANGE 5 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTH QUARTER CORNER OF SAID SECTION 33; THENCE NORTH 88°36'29" WEST ALONG THE NORTH LINE THEREOF, 384.64 FEET; THENCE SOUTH 00°51'09" WEST PARALLEL WITH THE NORTH-SOUTH CENTERLINE OF SAID SECTION 33, 311.51 FEET, MORE OR LESS, TO THE SOUTH LINE OF THE NORTH 311.5 FEET OF SAID SUBDIVISION AND THE BEGINNING OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 78.00 FEET AND THE TRUE POINT OF BEGINNING; THENCE SOUTHWESTERLY ALONG SAID CURVE AN ARC DISTANCE OF 73.67 FEET THROUGH A CENTRAL ANGLE OF 54°06'55" TO A POINT OF TANGENCY; THENCE SOUTH 54°58'04" WEST, 112.00 FEET, MORE OR LESS, TO THE NORTH LINE OF LOT 1 IN SHORT PLAT NUMBER 778140, ACCORDING TO THE SHORT PLAT RECORDED UNDER RECORDING NUMBER 7912100778; THENCE SOUTH 88°36'29" EAST ALONG SAID NORTH LINE, 159.02 FEET TO THE WESTERLY LINE OF SLATER AVENUE NORTHEAST; THENCE NORTHEASTERLY ALONG SAID MARGIN, 138.48 FEET, MORE OR LESS, TO THE SOUTH LINE OF THE NORTH 311.5 FEET OF SAID SUBDIVISION; THENCE NORTH 88°36'29" WEST ALONG SAID SOUTH LINE, 84.70 FEET TO THE TRUE POINT OF BEGINNING; (ALSO KNOWN AS LOT 2 OF UNRECORDED KING COUNTY LOT LINE ADJUSTMENT NUMBER 982059) TOGETHER WITH AN UNDIVIDED INTEREST IN THAT PORTION OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 26 NORTH, RANGE 5 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, KNOWN AS THE "COMMON OWNERSHIP ACCESS TRACT A" AS DESCRIBED AND DELINEATED IN DECLARATION RECORDED UNDER RECORDING NUMBER 8401190381, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTH QUARTER CORNER OF SAID SECTION 33; THENCE NORTH 88°36'29" WEST ALONG THE NORTH LINE THEREOF, 384.64 FEET; THENCE SOUTH 0°51'09" WEST PARALLEL WITH THE NORTH-SOUTH CENTERLINE OF SAID SECTION 33, 60.0 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH 0°51'09" WEST 251.51 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 78.00 FEET; THENCE ALONG SAID CURVE AN ARC DISTANCE OF 73.67 FEET THROUGH A CENTRAL ANGLE OF 54°06'55" TO A POINT OF TANGENCY; THENCE SOUTH 54°58'04" WEST 112.00 FEET; THENCE SOUTH 0°51'09" WEST 136.00 FEET; THENCE NORTH 88°36'29" WEST 43.00 FEET; THENCE NORTH 0°51'09" EAST 135.60 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF OF 43.00 FEET; THENCE ALONG SAID CURVE AN ARC DISTANCE

OF 40.61 FEET THROUGH A CENTRAL ANGLE OF 54°06'55" TO A POINT OF TANGENCY; THENCE NORTH 54°58'04" EAST 112.00 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 35.00 FEET; THENCE ALONG SAID CURVE AN ARC DISTANCE OF 33.06 FEET THROUGH A CENTRAL ANGLE OF 54°06'55" TO A POINT OF TANGENCY; THENCE NORTH 0°51'09" EAST 251.91 FEET TO THE SOUTHERLY MARGIN OF THAT ADDITIONAL RIGHT OF WAY CONVEYED TO THE STATE OF WASHINGTON FOR STATE ROAD 405; THENCE SOUTH 88°36'29" EAST 43.00 FEET TO THE TRUE POINT OF BEGINNING. (ALSO KNOWN AS "NEW LOT 1", CITY OF KIRKLAND ALTERATION OF LOT LINE NO. LL-00-68, AS RECORDED UNDER RECORDING NUMBER 20020314002030) TOGETHER WITH THAT PORTION OF VACATED SLATER AVENUE, BY CITY OF KIRKLAND ORDINANCE NUMBER 4094, RECORDED UNDER RECORDING NUMBER 20070913002289; AND TOGETHER WITH EASEMENTS AS PROVIDED FOR IN DOCUMENT RECORDED JANUARY 19, 1984, UNDER RECORDING NUMBER 8401190381.

EXHIBIT B
SITE PLAN

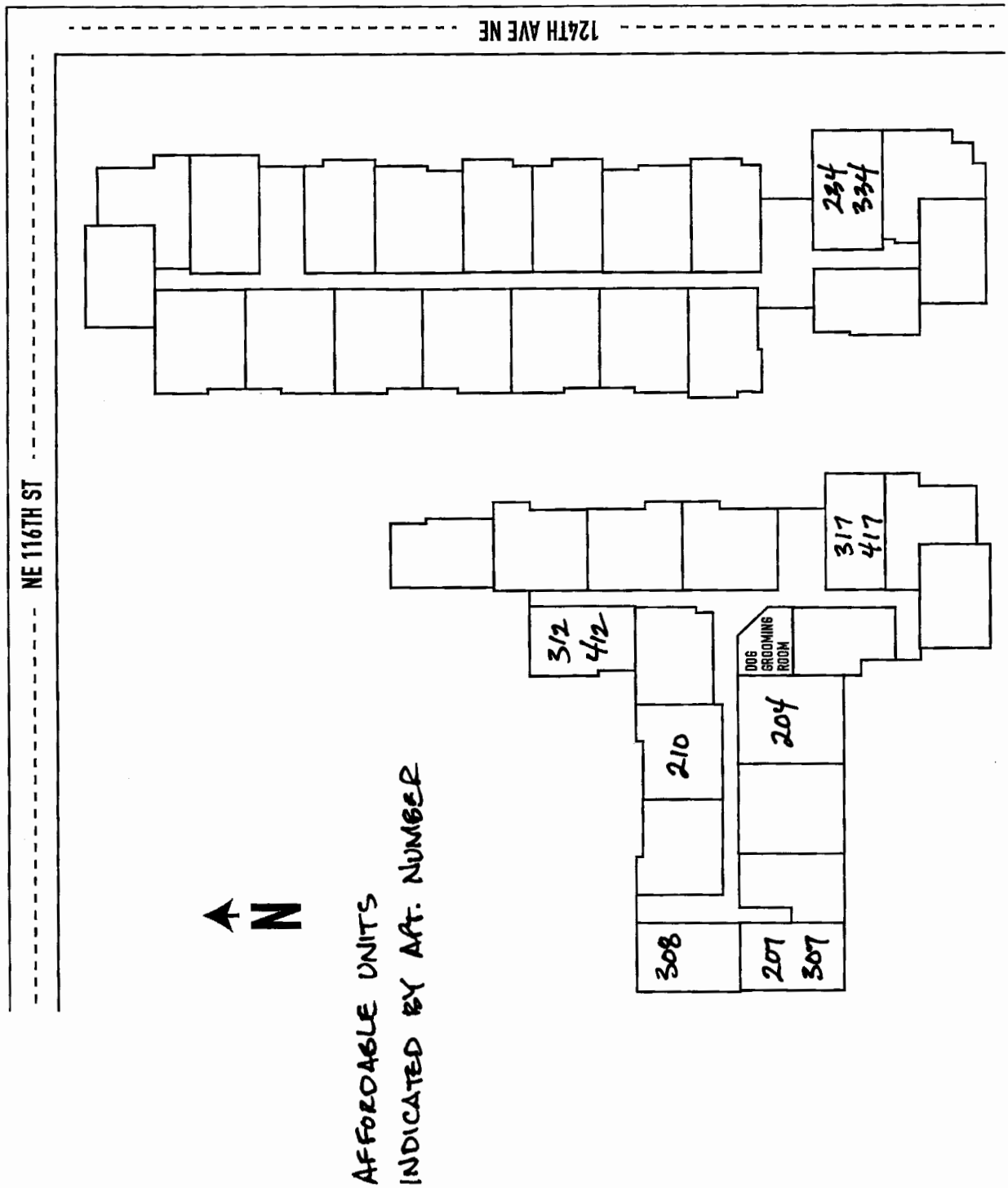

EXHIBIT C

DESIGNATION OF AFFORDABLE UNITS

Unit Number	Unit Type	Unit Size (sq ft)
204	1-bedroom + den	870
207	1-bedroom	661
210	1-bedroom	734
234	1-bedroom + den	793
307	1-bedroom	661
308	1-bedroom	661
312	1-bedroom	668
317	Open 1-bedroom	643
334	1-bedroom + den	793
412	1-bedroom	668
417	Open 1-bedroom	643

EXHIBIT D

SLATER 116

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
SECTION 21 — CONSTRUCTION
SECTION 22 — TITLES AND HEADINGS

EXHIBITS

"A" LEGAL DESCRIPTION OF PROPERTY
"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 MSPT IV LLC, a Washington 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 12340 NE 115TH Place, Kirkland, Washington. Owner intends to develop said property by constructing and renting one hundred eight (108) 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 eleven (11) affordable rental units for Moderate-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 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 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.

5) This Agreement is entered into pursuant to Section 5.88 of the Kirkland Municipal Code, which implements the Affordable Housing policies of the City of Kirkland.

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 and parking for a minimum of one car, which is no greater than thirty percent (30%) of the monthly median income for Eligible Households within the Seattle-Bellevue, WA HUD Metro FMR ("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 twelve (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 eleven (11) 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, 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, as that date shall be certified as provided in Section 4.

"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, Section 3.F of this Agreement, and as set forth in the Certificate of Household Eligibility attached hereto as Exhibit C and incorporated by reference herein, and who certify that their Household Income does not exceed the applicable percent of the Median Income for the Seattle 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").

Maximum Percent of Median Income at Occupancy

Income Level	
Moderate Income	80%

"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 TYPE	AVERAGE 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 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.

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

"Owner" means MSPT IV 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.

"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.

"Utility Allowance" means that portion of housing expenses for utilities. Therefore, Affordable Rents are calculated assuming payment of all utilities (not including phone, internet service, or cable or satellite television) by the 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	$38
One Bedroom	$57
Two Bedroom	$76
Three Bedroom	$95

The base year for the ARCH utility allowance figures is 2013. The allowance figures will be adjusted annually based on changes in the Consumer Price Index—U.S. Cities Average—All Urban Consumers. If water, garbage and/or sewage are paid for directly by the tenant, the

affordable rent levels will be further reduced by the typical cost to the tenant of such utilities, or a set allowance established by the City or its Designee.

SECTION 2 — RESIDENTIAL RENTAL PROPERTY

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

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, which approval shall not be unreasonably withheld, conditioned or delayed. 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	11

B. Designation/Re-designation of Affordable Units. Prior to issuance of a Building Permit, the Owner shall submit to the City or its Designee for the City's or its Designee's approval a certificate in writing of such designation of Affordable Units. (See 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 be of a unit mix comparable to the overall mix of units in the Project. The City or its Designee 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 eleven (11) 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 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 rent for the Affordable Units occupied by Eligible Households shall not exceed the applicable Affordable Rents, and for each specific tenant, shall be adjusted no more than once every twelve (12) months, and in no event within the first twelve (12) months of occupancy.

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 Median Income set forth in the chart below, adjusted for Household Size. If applicable pursuant to the provisions of Section 4.D, at time of annual recertification, a household will remain eligible for an Affordable Unit as long as Household Income does not exceed the Maximum Recertification Income set forth in the chart below, adjusted for Household Size. If at the time of recertification Household Income exceeds the Maximum Recertification Income limit for the income level initially qualified for by a household, then such household must within 90 days either pay market rent and the next available comparable market rate unit must be rented as an Affordable Unit; or vacate the unit, unless otherwise prohibited by law, to make it available for an Eligible Household.

Maximum Permitted Income Levels

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

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

Unit Size	Household Size
Studio	1–2 Persons
1 Bedroom	1–2 Persons
2 Bedroom	1–4 Persons
3 Bedroom	2–6 Persons

SECTION 4 — REPORTING REQUIREMENTS

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

B. City Mailing List. The City maintains a mailing list of households interested in occupying Affordable Units. From time to time the City or its Designee will provide to the 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. In the event the Affordable Units are restricted to Eligible Households pursuant to Section 3.D of this Agreement, 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 or its Designee may consider appropriate.

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 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, Household Income shall be verified by wage or salary statements, or other income records the City or its Designee may consider appropriate.

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

E. Annual Project Certification. After the Completion Date and until 90% of the rental units are occupied, 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, during the term of this Regulatory Agreement, such certification shall be filed annually on or before March 31st and shall set forth the required information for the preceding year.

F. Maintain Complete Records. The 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. Failure to maintain such records or failure to allow examination by the City or any duly authorized representative shall constitute a default hereunder.

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

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 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 or its Designee may review such written policies and may require changes in such policies, if necessary, so that they comply with the requirements of this Agreement.

B. In the event income certifications are required pursuant to Section 4.C of this Agreement, all leases for Eligible Households shall contain clauses wherein each individual lessee: (i) certifies the accuracy of the statements made in the Certificate of Household Eligibility, (ii) agrees that the household income and other eligibility requirements shall be deemed substantial and material obligations of the tenancy, and (iii) agrees that misrepresentation in the certification is a material breach of the lease, entitling the 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 or its Designee at least 10 days prior to the close of escrow.

SECTION 8 — TERM

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

SECTION 9 — NO DISCRIMINATION

The 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 the City 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 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 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 this Regulatory Agreement or enforcement of this Regulatory Agreement. 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 Regulatory Agreement.

4) The Owner hereby grants to the City or the Designee the option, upon Owner's default under this Regulatory Agreement, for the Qualified Project Period to lease up to eleven (11) 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 Agreement. 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 Agreement.

B. Hold Harmless. The Owner hereby agrees to pay, indemnify and hold the City and its Designee and any other party authorized hereunder to enforce the terms of this Regulatory Agreement harmless from any and all costs, expenses and fees, including all attorneys' fees which may be incurred by the City or the Designee or any other party in enforcing or attempting to enforce this Regulatory Agreement following any default hereunder on the part of the Owner, 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.

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

SECTION 12 — SUBORDINATION, TERMINATION, RIGHTS RESERVED BY HUD

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

(1) Foreclosure of a HUD/FHA insured loan is initiated under which 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 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 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"), if any, as well as all applicable HUD/FHA mortgage insurance regulations, related HUD/FHA administrative requirements, Section 8 of the U.S. Housing Act of 1937, as amended and the regulations thereunder, as amended, and the rights of the Lender thereunder. In the event of any conflict between this Agreement and the provisions of any applicable HUD/FHA mortgage insurance regulations, related HUD/FHA administrative requirements, Section 8 of the U.S. Housing Act of 1937, as amended, and the regulations thereunder, as amended the applicable HUD/FHA mortgage insurance regulations, related HUD/FHA administrative requirements, Section 8 of the U.S. Housing Act of 1937, as amended, and the regulations thereunder, as amended will control.

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

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

(4) The Owner will take all steps necessary to comply with this Agreement; provided that the Owner 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 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 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. 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 and/or its Designee without the need for a further written document attaching the revised exhibit and striking prior versions of the exhibit. In the event of conflict between versions of Exhibits B, the version maintained by the City or its Designee as the then-current version, signed by Owner and City or its Designee, shall prevail.

SECTION 19 — NOTICE

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

If to the City: Planning Department-Housing Planner
City of Kirkland Mail Stop CHPL
123 Fifth Avenue
Kirkland, WA 98033

With a copy to the Designee
A Regional Coalition for Housing (ARCH)
16225 NE 87th Street, Suite A-3
Redmond, WA 98052
Attn: Housing Planner

If to the Owner: Jackie Hizzey, CFO
Main Street Property Group LLC
11415 Slater Avenue NE, Suite 100
Kirkland, WA 98033

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

SECTION 20 — SEVERABILITY

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

SECTION 21 — CONSTRUCTION

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

SECTION 22 — TITLES AND HEADINGS

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

the construing this document or any provision hereof or in ascertaining intent, if any question of intent shall arise.

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

Owners:

_____
Kelly Price
Its Manager

City:

_____
Kurt Triplett
Its: City Manager

Approved as to Form:

_____
City Attorney

STATE OF WASHINGTON }
} ss.
COUNTY OF KING }

On this _____ day of _____, 201___, 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 _____, 201___.

_____
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 _____, 201___, 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 MSPT IV LLC, 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 _____, 201__.

_____
Notary Public in and for the State of Washington.

Print Name _____

Residing at _____

My commission expires _____