WHEN RECORDED, MAIL TO:

City of Mercer Island

Community Planning and Development Department

9611 SE 36th St

Mercer Island, WA 98040-3732

ATTN: Code Official

# WASHINGTON STATE COUNTY AUDITOR/RECORDER/S INDEXING FORM

|  |
| --- |
| **Document Title(s)** *(or transactions contained therein)*:  **DECLARATION OF AFFORDABLE HOUSING COVENANTS--** |
| **Reference Number(s) of Documents assigned or released:**  Additional reference numbers on page of document. |
| **Grantor(s)** *(Last name first, then first name and initials):*   1. \_Xing Hua Group LTD\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   Additional names on page of document. |
| **Grantee(s)** *(Last name first, then first name and initials):*   1. CITY OF MERCER ISLAND, WASHINGTON   Additional names on page of document. |
| **Legal Description** *(abbreviated form; i.e., lot, block, plat name, section-township-range)*:  Parcel 1 & 2 of Mercer Is. Short Plat No. 77-9-040\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Additional legal on Exhibit “A” of document. |
| **Assessor’s Property Tax Parcel Account Number(s):**  \_531510-1326 & 531510-1316\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

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

DECLARATION OF AFFORDABLE HOUSING COVENANTS

**Xing Hua**

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**DECLARATION OF AFFORDABLE HOUSING COVENANTS**

**Xing Hua**

THIS DECLARATION OF AFFORDABLE HOUSING COVENANTS (the “Covenant”) is made and entered into as of this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_, by and between the CITY OF MERCER ISLAND, WASHINGTON a Municipal Corporation of the State of Washington (the “City”); and XING HUA GROUP LTD, a Washington type of company/corporation (the “Owner”).

WITNESSETH:

This Covenant is predicated upon the following facts:

1. The Owner is the owner of property located at 2885 78th Ave SE in Mercer Island, Washington. Owner intends to develop said property by constructing and renting one hundred forty-six (146) dwelling units (the “Project”), subject to City approval and such other approvals by State and local agencies as required.
2. The Owner’s proposed Project shall include fifteen (15) affordable rental units for Moderate-Income Households (“Eligible Households,” as the term is defined below). Such affordable rental units shall consist of a range of number of bedrooms or studios that are comparable to units in the overall development**.**
3. The City finds that the Project will benefit the City by providing affordable rental housing for Eligible Households.
4. The Owner has indicated its willingness to accept certain conditions affecting the use of the Property. It is the purpose of this Covenant to set forth the conditions under which the City has approved the Project and to impose enforceable restrictions on the use and occupancy of the rental portion of the Project.
5. This Covenant is entered into pursuant to Mercer Island City Code (MICC) section 19.11.040, which implements the Affordable Housing policies of the City. MICC 19.11.040 provides a height bonus to property owners to encourage construction of affordable housing for low- and moderate-income households. Per MICC 19.11.040(B), “[i]n order to qualify as significant affordable housing and in order to qualify for bonus building height over two stories, a development that contains dwelling units must provide affordable housing units equal to at least ten percent of the total units in the development.” Further, per MICC 19.11.040(F), affordable housing units shall remain as affordable housing for a minimum of fifty (50) years from the date of initial owner occupancy for owner affordable units and for the life of the project for rental affordable housing units.

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

SECTION 1 — DEFINITIONS AND INTERPRETATION

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

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

**Affordable Rent Levels**

|  |  |
| --- | --- |
|  | **Percent of King County Median Income** |
| Moderate Income | 60% |

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

“City” means the City of Mercer Island, Washington.

“Completion Date” means the date of issuance of the Certificate of Occupancy**.**

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

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

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

**Maximum Household Incomes at Initial Occupancy**

|  |  |
| --- | --- |
| **Income Level** | **Percent of King County Median Income** |
| Moderate–Income | 60% |

“Household Income” means all income from all household members over the age of eighteen (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 household size assumed for purposes of calculating Affordable Rents as follows:

UNIT TYPE ASSUMED HOUSEHOLD SIZE

Studio 1 Person

1 Bedroom 1.5 Persons

2 Bedroom 3 Persons

3 Bedroom 4.5 Persons

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

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

“Owner” means Xing Hua Group LTD 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.

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

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

SECTION 2 — RESIDENTIAL RENTAL PROPERTY

1. General Description. The Owner will acquire and construct the Project for purposes of providing multi-family rental housing and commercial uses, and the Owner shall own, manage, and operate (or cause the management and operation of) the Project to provide multi-family rental housing comprising a building or structure or several inter‑related buildings or structures, each consisting of more than one dwelling unit and commercial 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.
2. 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. Further, Affordable Units may not be smaller than other units with the same number of bedrooms within the Project, unless the City’s Code Official determines that rooms within the affordable units provide adequate space for their intended use. In no case shall the Affordable Units be more than ten percent smaller than the market-rate units having the same number of bedrooms in the Project, or less than 500 square feet if a studio unit, 600 square feet if a one-bedroom unit, 800 square feet if a two-bedroom unit, 1,000 square feet if a three-bedroom unit, or 1,200 square feet if a four-bedroom unit, whichever is less. Further, the interior finish of the Affordable Units shall, at a minimum, be comparable to entry level rental or ownership housing in the development.
3. Conversion to Condominium. In the event the Project is proposed for conversion to condominium, owner-occupied, or non-rental residential use, the Owner must submit to the City for its review a plan for preserving the Affordable Units. The City can consider options which would convert the Affordable Units to owner occupancy by Eligible Households. The Owner must receive authorization from the City prior to conversion to condominium, owner-occupied, or non-rental residential use. This section does not waive the Owner’s obligations to comply with any other law or regulations pertaining to conversion to ownership use.

SECTION 3 — AFFORDABLE UNITS FOR ELIGIBLE HOUSEHOLDS

Number and Tenure of Affordable Units. The Owner shall lease or rent, or make available for lease or rental, to the general public, all of the Affordable Units in the Project. The Affordable Units shall be available for occupancy in a time frame comparable to the availability of the rest of the dwelling units in the Project. The tenure of the Affordable Units shall be the same as the tenure of the rest of the dwelling units in the Project.

1. The Owner shall designate all of the Affordable Units, reserved for occupancy by Eligible Households, as follows:

**Dwelling Units**

|  |  |  |
| --- | --- | --- |
| **Unit Type (Bedrooms)** | **Affordable Units** | **Total Units** |
| Studio/Open 1-bedroom | 3 | 24 |
| 1-bedroom | 9 | 88 |
| 2-bedroom | 3 | 31 |
| 3-bedroom | 0 | 3 |
| Total | 15 | 146 |

1. Designation/Re-designation of Affordable Units.
   1. The Owner agrees to rent the dwelling units designated in **Exhibit B** as Affordable Units. Units so designated shall have substantially the same equipment and amenities as other dwelling units in the Project with the comparable number of rooms. The Affordable Unit(s) shall be intermingled with all other dwelling units and shall have a unit mix generally proportionate to the overall mix of units in the Project. The City or its Designee shall approve or deny the proposed Affordable Units based upon the criteria set forth in this section.
   2. The Owner, from time to time, may propose to change the particular units designated as Affordable Units, provided that at all times at least ten percent of all of the residential units in the Project are designated as Affordable Units, and provided that at all times the same unit mix is retained. The Owner shall notify the City or its Designee of the proposed change in writing for the City’s or its Designee’s approval. The City or its Designee will review the proposed changes and shall approve or deny the proposed changes based upon the criteria set forth in this Section.
2. Affordable Units Rent Level. The monthly rent for the Affordable Units occupied by Eligible Households shall not exceed the applicable Affordable Rent, and for each specific tenant, shall be adjusted no more than once every twelve (12) months, and in no event within the first twelve months of occupancy.
3. 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.
4. Equal Access to Common Facilities. Tenants in the Affordable Units shall have equal access to enjoyment of all common facilities of the Project.
5. 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 King County Median Income set forth in the table below, adjusted for Household Size. At time of annual recertification, a household will remain eligible for an Affordable Unit as long as Household Income does not exceed the Maximum Recertification Income set forth in the table below, adjusted for Household Size. If at the time of recertification Household Income exceeds the Maximum Recertification Income limit for the income level initially qualified for by a household, then within 90 days either such household must pay market rent and the next available comparable market rate unit must be rented as an Affordable Unit; or the household must vacate the unit, unless otherwise prohibited by law, to make it available for an Eligible Household.

**Percent of King County Median Income**

|  |  |  |
| --- | --- | --- |
| Income Level | **Maximum Income at Initial Occupancy** | **Maximum Recertification Income** |
| Moderate Income | 60% | 80% |

1. 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 2–4 Persons

3 Bedroom 3–6 Persons

SECTION 4 — REPORTING REQUIREMENTS

1. Notice of Occupancy Permit. The Owner shall notify the City’s Designee of receipt of the first occupancy permit for the Project within thirty (30) calendar days of the permit’s issuance.
2. Mailing List. The City or its Designee maintains a mailing list of households interested in occupying Affordable Units. From time to time the City or its Designee will provide to the Owner the names of persons from the mailing list. In determining which eligible applicants shall be rented Affordable Units, the Owner shall, subject to Section 4.C. below, reasonably consider persons on the mailing list, and when they were placed on the mailing list.
3. Completion of Certificate of Household Eligibility. Prior to allowing any household to occupy any Affordable Unit, the Owner shall require the prospective tenant to complete a Certificate of Household Eligibility that shall be substantially in the form set forth in **Exhibit C**. The Owner shall also undertake a good faith effort to verify the applicant’s Household Income, as reported on the completed Certificate. The Owner’s obligation to verify the reported Household Income shall be limited to requesting copies of and reviewing the applicant’s federal income tax returns, unless the Owner has actual knowledge, or reason to believe, that the information provided by the applicant is materially inaccurate. In the event federal income tax returns are not available, the Owner shall verify Household Income using wage or salary statements, or other income records that the City or its Designee may consider appropriate.
4. Annual Recertification of Residents.
   1. On an annual basis, the Owner shall require all households occupying Affordable Units to complete and return to the Owner an updated Certificate of Household Eligibility. The Owner shall undertake a good faith effort to verify the reported Household Income, as reported in the completed Certificate. The Owner’s obligation to verify the Household Income shall be limited to obtaining a copy of and reviewing the tenant’s federal income tax returns, unless the Owner has actual knowledge or reason to believe that the information provided by the household is materially inaccurate. In the event federal income tax returns are not available, the Owner shall verify Household Income using wage or salary statements, or other income records the City or its Designee may consider appropriate.
   2. The Owner shall file certifications with the City or its Designee, by attachment to the Annual Project Certification required pursuant to Subsection E of this Section. The City or its Designee may investigate independently to verify certifications submitted by the Owner.
5. Annual Project Certification. After the Completion Date and until 90% of the rental units are occupied, the Owner shall, on a quarterly basis, file with the City or its Designee an Annual Project Certification, in substantially the form of **Exhibit D**.  Thereafter, the Owner shall file such certification annually on or before March 31st, which must set forth the required information for the preceding year.
6. 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 EligibleHouseholds residing in the Project. The Owner’s failure to maintain such records or failure to allow examination by the City or any duly authorized representative shall constitute a default hereunder.
7. Form of Certification. Notwithstanding anything in this Section to the contrary, the Owner shall submit all documentation required by this Section on the forms designated herein, which may be modified by the City or its Designee from time to time. Changes to forms by the City or its Designee shall not significantly enlarge the Owner’s obligations hereunder.

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

SECTION 5 — SECTION 8 CERTIFICATE HOLDERS

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

SECTION 6 — LEASE PROVISIONS

1. It is the Owner’s responsibility to screen and select tenants for desirability and credit worthiness. Except as restricted in this Covenant, such selection is within the Owner’s discretion. If written management policies exist, or exist in the future, with respect to the Project, the City or its Designee may review such written policies and may require changes in such policies, if necessary, so that they comply with the requirements of this Covenant.
2. All leases for Affordable Units shall contain clauses wherein each individual lessee: (i) certifies the accuracy of the statements made in the Certificate of Household Eligibility, (ii) agrees that the household income and other eligibility requirements shall be deemed substantial and material obligations of the tenancy, and (iii) agrees that misrepresentation in the certification is a material breach of the lease, entitling the Owner to terminate the lease for the Affordable Unit.

SECTION 7 — SALE OR TRANSFER OF THE PROJECT

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

SECTION 8 — TERM

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

SECTION 9 — NO DISCRIMINATION

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

SECTION 10 — COVENANTS RUN WITH LAND

1. 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.
2. The City and the Owner hereby declare that the covenants and conditions contained herein shall run with the land and shall bind and the benefits shall inure to, respectively, the Owner and their successors and assigns and all subsequent owners of the Project or any interest therein, and the City and its successors and assigns, all for the Qualified Project Period. Except as provided in Section 12 of this Covenant, each and every contract, deed, or other instrument hereafter executed conveying the Project or any portion thereof or interest therein shall contain an express provision making such conveyance subject to the covenants and conditions of this Covenant, provided however, that any such contract, deed, or other instrument shall conclusively be held to have been executed, delivered, and accepted subject to such covenants and conditions, regardless of whether or not such covenants and conditions are set forth or incorporated by reference in such contract, deed, or other instrument.

SECTION 11 — ENFORCEMENT

1. Enforcement Provisions. The Owner shall exercise reasonable diligence to comply with the requirements of this Covenant and shall correct any such noncompliance within sixty (60) days after such noncompliance is first discovered by the Owner or 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 Covenant, 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 or its Designee shall not divulge such information to any third party unless required by law or unless the same is necessary to enforce the City’s rights hereunder; and
   3. Take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants, conditions, and agreements of the Owner under this Covenant.
   4. The Owner hereby grants to the City or the Designee the option, upon Owner’s default under this Covenant, for the Qualified Project Period to lease up to ten percent of the units in the Project as mutually selected by the City or its Designee and the Owner for the purpose of subleasing such units to Eligible Households, but only to the extent necessary to comply with the provisions of this Covenant. The City or its Designee may lease from the Owner the units at the Affordable Rent level less a reasonable management fee to reimburse the City or its Designee for any expenses incurred in connection with such sublease. The City or its Designee may terminate its lease of the units in the Project upon determination that the Owner is no longer in default pursuant to this Covenant.
2. Assignment of Rents. Owner hereby assigns to the City or the Designee the right to receive the rents due or collected during the entire period an Affordable Unit or Units are occupied in violation of this Covenant. Any funds collected shall be deposited into the City’s housing fund for use consistent with the City’s affordable housing policies, plans, or initiatives. Owner shall be responsible for all costs to the City, including reasonable attorney fee, to recover such rents.
3. Hold Harmless. The Owner shall defend, indemnify, and hold the City, its officers, officials, employees, volunteers, and its Designees and any other party authorized hereunder to enforce the terms of this Covenant, harmless from any and all claims, injuries, damages, losses, or suits, including attorney fees, arising out of, in connection with, or resulting from this Covenant.
4. No Third-Party Beneficiaries. The provisions of this Covenant and of the documents to be executed and delivered in connection herewith are and will be for the benefit of the Owner, the City, and its Designee only and are not for the benefit of any third party (including, without limitation, any tenants or tenant organizations), and accordingly, no third party shall have the right to enforce the provisions of this Covenant or of the documents to be executed and delivered in connection herewith.

SECTION 12 — SUBORDINATION, TERMINATION, RIGHTS RESERVED BY HUD

1. Notwithstanding any provision in this Covenant to the contrary, all of the provisions of this Covenant shall terminate and have no further force and effect upon the occurrence of one of the following events:
   1. Foreclosure of a HUD/FHA insured loan is initiated under which the Project is held as a security.
   2. Title to the Project is acquired by Lender or HUD/FHA by deed in lieu of foreclosure of the Deed of Trust.
   3. Title to the Project is acquired by HUD/FHA, Veterans Administration (“VA”), Federal National Mortgage Association (“FNMA”), Federal Home Loan Mortgage Corporation (“FHLMC”) or another party upon foreclosure of a deed of trust or mortgage (“Deed of Trust”) insured, made or held by HUD/FHA, VA, FNMA, FHLMC; or an institutional, third-party lender or investor (collectively, “Lender”).
   4. The Deed of Trust, if insured by HUD/FHA, is assigned to HUD/FHA.

Notwithstanding anything in this Covenant to the contrary, enforcement of this Covenant shall not serve as a basis for (i) default under the Deed of Trust insured by HUD/FHA or any other Lender, or (ii) an acceleration of the loan secured by the Deed of Trust (“Loan”), or result in any claim against the Project, the Loan proceeds, any reserve or deposit required by HUD/FHA or any other Lender in connection with the Loan transaction or the rents or other income from the Project other than from available surplus cash as that term is defined by HUD/FHA or any other Lender.

1. Notwithstanding anything in this Covenant to the contrary:
   1. All of the provisions of this Covenant are subordinate and subject to the Deed of Trust, the Loan, and all documents relating to the Loan (“Loan Documents”), if any, as well as all applicable HUD/FHA mortgage insurance regulations, related HUD/FHA administrative requirements, Section 8 of the U.S. Housing Act of 1937, as amended, and the regulations thereunder, as amended, and the rights of the Lender thereunder. In the event of any conflict between this Covenant and the provisions of any applicable HUD/FHA mortgage insurance regulations, related HUD/FHA administrative requirements, Section 8 of the U.S. Housing Act of 1937, as amended, and the regulations thereunder, as amended, the applicable HUD/FHA mortgage insurance regulations, related HUD/FHA administrative requirements, Section 8 of the U.S. Housing Act of 1937, as amended, and the regulations thereunder, as amended, will control.
   2. Lender shall take no role in monitoring compliance with state and federal use and occupancy requirements; nor shall Lender be required to provide notice to third parties of actions under the Deed of Trust, if any.
   3. The Owner, its successors or assigns, will take all steps necessary to comply with this Covenant; provided that the Owner, its successors or assigns, shall not be required to take action prohibited by, or to refrain from action required by Lender, pursuant to the National Housing Act (as amended), applicable HUD/FHA mortgage insurance regulations, related administrative requirements, Section 8 of the Housing Act of 1937, as amended, and the regulations thereunder, as amended, or the Loan and the Loan Documents.

SECTION 13 — ESTOPPEL CERTIFICATE

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

SECTION 14 — AGREEMENT TO RECORD

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

SECTION 15 — RELIANCE

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

SECTION 16 — GOVERNING LAW

This Covenant shall be governed by and construed in accordance with the laws of the State of Washington, except to the extent such laws conflict with the laws of the United States or the regulations of federally insured depository institutions or would restrict activities otherwise permitted in relation to the operation of federally insured depository institutions. Code sections from the RCW and the MICC referenced in this Covenant shall refer to those in effect on the date of this Covenant. Any suit to enforce this Covenant or otherwise arising out of this Covenant shall be brought either in King County Superior Court or United States District Court, Western District of Washington.

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 Covenant 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 Covenant shall be amended only by a written instrument executed by the parties hereto or their respective successors in title, and duly recorded in the real property records of King County, Washington. 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: Community Planning and Development Department

City of Mercer Island

9611 SE 36th St

Mercer Island, WA 98040-3732

Attn: Code Official

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: Xing Hua Group LTD

6770 Churchill St

Vancouver BC V6P5B1

Attn: Guo Hai Lu

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 — FEE WAIVER REQUIREMENTS

Pursuant to MICC 19.17.090, MICC 19.18.070, and MICC 191.19.070, the Owner received fee waivers in the approximate amount of $72,166.40 as consideration for the provision of affordable units in the Project. In the event at any time during the term of this Covenant, the Affordable Units are not provided pursuant to the provisions of this Covenant, the City retains the right to require the Owner to pay to the City all fees that were waived at the rate prevailing at the time the City determines the Project is no longer conforming to the affordability requirements of this Covenant. This provision shall survive termination of the Covenant if such occurs prior to expiration of the Qualified Project Period.

SECTION 21 — SEVERABILITY

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

SECTION 22 — CONSTRUCTION

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

SECTION 23 — TITLES AND HEADINGS

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

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

Owners: City:

name Jessi Bon

Its: title Its: City Manager

Approved as to Form:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Bio Park

City Attorney

STATE OF WASHINGTON }

} ss.

COUNTY OF KING }

On this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, known to me to be the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of the CITY OF MERCER ISLAND, WASHINGTON 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 he or she was authorized to execute said document.

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

Notary Public in and for the State of Washington.

Print Name

Residing at

My commission expires

STATE OF WASHINGTON }

} ss.

COUNTY OF KING }

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

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

Notary Public in and for the State of Washington.

Print Name

Residing at

My commission expires

**EXHIBIT A**

LEGAL DESCRIPTION

PARCELS 1 AND 2 OF MERCER ISLAND SHORT PLAN NUMBER 77-9-040, RECORDED OCTOBER 25, 1977 UNDER RECORDING NUMBER 7710250620, IN KING COUNTY, WASHINGTON

**EXHIBIT B**

DESIGNATION OF AFFORDABLE UNITs

|  |  |  |
| --- | --- | --- |
| **Unit Number** | **Unit Type** | **Unit Size**  **(sq ft)** |
| 243 | Open 1/Studio | 537 sf |
| 308 | Open 1/Studio | 509 sf |
| 243 | Open 1/Studio | 508 sf |
| 202 | 1 bedroom | 699 sf |
| 213 | 1 bedroom | 723 sf |
| 230 | 1 bedroom | 699 sf |
| 247 | 1 bedroom | 741 sf |
| 302 | 1 bedroom | 699 sf |
| 316 | 1 bedroom | 699 sf |
| 339 | 1 bedroom | 699 sf |
| 435 | 1 bedroom | 699 sf |
| 438 | 1 bedroom | 699 sf |
| 248 | 2 bedroom | 964 sf |
| 317 | 2 bedroom | 965 sf |
| 400 | 2 bedroom | 964 sf |
|  |  |  |
|  |  |  |
|  |  |  |

See attached diagram(s).

**eXHIBIT C**

FORM OF CERTIFICATE OF HOUSEHOLD ELIGIBILITY

******

|  |
| --- |
| Together Center Campus  16225 NE 87th Street, Suite A-3 ♦ Redmond, WA 98052  (425) 861-3677 ♦ Fax: (425) 861-4553  WEBSITE: [www.archhousing.org](file://ci.bellevue.wa.us/data/PCD_ARCH/ARCH_Shared/Land%20Use%20and%20Special%20Projects/Land%20Use-Fee%20Waiver%20Incentive%20Contracts/1-Boilerplates/Boiler_Rental/www.archhousing.org) |

CERTIFICATION OF HOUSEHOLD ELIGIBILITY

I, , and I , , as applicants for rental of the following Affordable unit, do hereby represent and warrant that my/our adjusted annual income is

$

Project:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Project Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Unit # No. of Bedrooms: Household size \*: Disabled: Yes / No

Household Members:

, Age , Age

, Age , Age

, Age , Age

The attached computation is $ , and includes all income I/we received for the date I/we execute a rental agreement for an affordable unit, or the date on which I/we will initially occupy such unit, whichever is earlier.

This affidavit is made with the knowledge that it will be relied upon by the City to determine maximum income for eligibility. I/We warrant that all information set forth in this Certification of Household Eligibility is true, correct and complete based upon information I/We deem reliable, and that the estimate contained in the preceding paragraph is reasonable and based upon such investigation as the undersigned deemed necessary. I/we will assist the Owner in obtaining any information or documents required to verify the statements made in this Certification.

I/We acknowledge that I/we have been advised that the making of any misrepresentation or misstatement in this affidavit will constitute a material breach of my/our agreement with the Owner to lease the unit and will entitle the Owner to prevent or terminate my/our occupancy of this unit by institution of an action for eviction or other appropriate proceedings.

I/We do hereby swear under penalty of perjury that the foregoing statements are true and correct.

Applicant Applicant

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Mailing Address Phone

**INCOME COMPUTATION**

"Household income" includes all items listed below, from all household members over the age of 18. Income of dependents over 18, who reside in the unit for less than four (4) months of the year will not be counted toward household income.

For the previous 12-month period, indicate income received from the following sources:

|  |  |  |
| --- | --- | --- |
| a) | The full amount, before any payroll deductions, of wages, salaries, overtime pay, commissions, fees, tips, bonuses and other compensation for personal services, and payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay and any earned income tax credit to the extent that it exceeds tax liability; | a) \_\_\_\_\_\_\_\_\_\_ |
| b) | Net income from operations of a business or profession or net income of any kind from real or personal property; | b) \_\_\_\_\_\_\_\_\_\_ |
| c) | Interest and dividends; | c) \_\_\_\_\_\_\_\_\_\_ |
| d) | The full amount of periodic payments received from Social Security, pensions, retirement funds, annuities, insurance policies, disability or death benefits, alimony, child support, or any similar type of periodical payments, and any regular contributions or gifts from persons not residing in the unit; | d) \_\_\_\_\_\_\_\_\_\_ |
| e) | Public assistance payments; | e) \_\_\_\_\_\_\_\_\_\_ |
| f) | Regular and special allowances and pay of a member of the Armed Forces who is a spouse or head of the family. | f) \_\_\_\_\_\_\_\_\_\_ |
|  | TOTAL | $ \_\_\_\_\_\_\_\_\_\_ |

(NOTE: The following are not considered income: occasional, infrequent gifts of money; one-time payments from insurance policies or an inheritance settlement; scholarships or student loans for tuition, fees or books; foster child care payments; the value of Food Stamp coupons; hazardous duty pay to a member of the Armed Forces; relocation payments; assistance received under the Low Income Home Energy Assistance Program or any similar program).

**EXHIBIT D**

FORM OF annual project certification





