

**MULTIFAMILY HOUSING
LIMITED PROPERTY TAX EXEMPTION AGREEMENT**

8-YEAR ()

12-YEAR (X)

THIS AGREEMENT is entered into this _____ day of _____, 20____ by and between Fourth Street Housing, LLC, hereafter referred to as “Applicant” and the City of Tumwater, Washington, a municipal corporation hereinafter referred to as the “City”.

WITNESSETH:

WHEREAS, the City has an interest in encouraging new construction or rehabilitation of multifamily housing in Residential Target Areas in order to reduce development pressure on single-family residential neighborhoods, to increase and improve affordable housing opportunities, and to encourage development densities supportive of economic development and transit use; and

WHEREAS, the City has, pursuant to the authority granted to it by Chapter 84.14 RCW, designated various Residential Target Areas for the provision of a limited property tax exemption for new multifamily residential housing; and

WHEREAS, the City has, through Tumwater Municipal Code (TMC) 3.30, enacted a program whereby property owners may qualify for a final certificate of tax exemption which certifies to the Thurston County Assessor that the Applicant is eligible to receive a limited property tax exemption; and

WHEREAS, Applicant is interested in receiving a limited property tax exemption for constructing 181 units of new multifamily housing, 37 units of which would comply with low to moderate income levels (80% to 115% of median income in the Littlerock Road District Subarea; and

WHEREAS, the Applicant is requesting an _____ eight (8) or a X twelve (12) year limited property tax exemption. (For the property to qualify for the twelve-year exemption, the Applicant commits to renting or selling at least twenty percent (20%) of the multifamily housing units constructed on the Site as housing units affordable for low or moderate-income households as defined by Section 3.30.015 TMC, and the property must satisfy that commitment and any additional affordability and income eligibility conditions adopted by the City. In the case of projects intended exclusively for owner occupancy, the minimum requirement of this subsection may be satisfied solely through housing affordable to moderate-income households as defined by Section 3.30.015 TMC.); and

WHEREAS, Applicant has submitted to the City preliminary site plans and floor plans for new multifamily residential housing to be constructed on property situated approximately at 1450 Odegard Road SW and described more specifically as follows:

Fourth Street Housing, LLC's The Kingswood Apartments (TUM-22-1630)

County Assessor's Parcel Number: 12703240100

Legal Description: Section 3 Township 17 N Range 2 W Willamette Median, Parcel C of BLA #7244 as recorded under Auditor's File Number 9107150153; excepting therefrom that portion dedicated to the City of Tumwater by Deed recorded under Auditor's File Number 4513690.

Street Address: 1450 Odegard Road SW

Herein referred to as the "Site", and

WHEREAS, the following exhibits, plans and forms are attached to this Agreement and incorporated herein by this reference:

- A. Fourth Street Housing, LLC's The Kingswood Apartments Application
- B. Building Plans

; and

WHEREAS, the City has determined that the improvements will, if completed and operated as proposed, satisfy the requirements for a final certificate of tax exemption; and

WHEREAS, the Tumwater Municipal Code requires an applicant for a limited property tax exemption to enter into an agreement, in which the applicant agrees to implement the proposed project on terms satisfactory to the Tumwater City Council so as to maintain the improvements' eligibility for the limited property tax exemption;

NOW, THEREFORE, in exchange for the City's consideration of Applicant's request for a final certificate of tax exemption, Applicant and the City mutually agree as follows:

1. Each of the recitals set forth above are by this reference fully incorporated into this Agreement.
2. The City agrees to issue Applicant a conditional certificate of acceptance of tax exemption.
3. Applicant shall construct on the Site multifamily residential housing substantially as described in the most recent site plans, floor plans, and elevations on file with the City as of the date of City approval of this Agreement. In no event shall such construction provide fewer than four new multifamily permanent residential units nor shall it provide fewer than half of its total residential units as permanent housing.
4. The Applicant further agrees that execution of this Agreement by the Mayor, or issuance of a conditional certificate by the City pursuant to TMC 3.30.070, in no way constitutes approval of proposed improvements on the Site or obligates the City to approve proposed improvements.
5. Applicant shall complete construction of the agreed upon improvements within three (3) years from the date the City issues the conditional certificate of acceptance of tax exemption or within any extension thereof granted by the City.
6. Applicant shall, upon completion of the improvements and upon issuance by the City of a temporary or permanent certificate of occupancy, file with the City the following:
 - A. A statement of expenditures made with respect to each multifamily housing unit and the total expenditures made with respect to the entire property;
 - B. A description of the completed work and a statement of qualifications for the exemption;
 - C. A statement that the work was completed within the required three-year period or any authorized extension; and
 - D. If applicable, a statement that the project meets the affordable housing requirements as described in TMC Chapter 3.30.
7. Upon Applicant's successful completion of the improvements in accordance with the terms of this Agreement, Applicant's filing of the materials described in Paragraph 6 above and payment of all fees, and upon the City's

approval of a final certificate of tax exemption, the City shall file the final certificate with the Thurston County Assessor and provide a copy to the Applicant. The Applicant shall cause this Agreement to be recorded in the real property records of Thurston County, Washington. The Applicant shall pay all fees and charges incurred in connection with such recording and shall provide the City with a copy of the recorded document.

8. Applicant shall, within thirty (30) days following the first anniversary of the City's filing of the final certificate of tax exemption and each year thereafter for a period of ____ eight (8) years or X twelve (12) years, file a notarized declaration with the City indicating the following:
 - A. A statement of occupancy and vacancy of the multifamily units during the previous year;
 - B. A certification that the Site continues to be in compliance with this Agreement and TMC Chapter 3.30 and, if applicable, that the Site has been in compliance with the affordable housing requirements as described in RCW 84.14.020 since the date of the approved certificate;
 - C. A description of any subsequent improvements or changes to the Site;
 - D. The total monthly rent by unit;
 - E. The income of each renter household at the time of initial occupancy; and
 - F. Any additional information requested by the city in regards to the units receiving a tax exemption.
9. City staff may also conduct on-site verification of the declaration referenced in Section 8 above.
10. Failure to submit the annual declaration in Section 8 above shall result in a review of the exemption per TMC 3.30.120.
11. If, during the term of any final certificate of tax exemption, Applicant converts to another use any of the new multifamily residential housing units constructed under this Agreement, Applicant shall notify the Thurston County Assessor and the City within sixty (60) days of such change in use. The City may, in its sole discretion, revoke and cancel the final Certificate of tax exemption effective on the date of Applicant's conversion of any of the multifamily residential housing units to another use. The Applicant hereby

covenants and agrees not to sell, transfer, or otherwise dispose of the project or any portion thereof without first providing a written statement executed by the purchaser that the purchaser understands the Applicant's duties and obligations under this Agreement and will enter into an agreement with the City for the continuation of those obligations. Such notice must be received by the City at least ten (10) working days prior to the close of escrow.

12. Applicant shall notify the City promptly of any transfer of Applicant's ownership interest in the Site or in the improvements made to the Site under this Agreement.
13. In addition to any other powers reserved to the City by law, the City may, in its sole discretion, cancel the final certificate of tax exemption should Applicant, its successors and assigns, fail to comply with any of the terms and conditions of this Agreement or for any other reason no longer qualifies for an exemption.
14. Notice and Appeal. Upon determining that a tax exemption is to be canceled, the City will notify the Applicant by mail, return receipt requested, of the determination to cancel the exemption. Pursuant to TMC 3.30.120, the Applicant may appeal the determination to the City hearing examiner within thirty (30) days by filing a notice of appeal with the city clerk, which notice must specify the factual and legal basis on which the determination of cancellation is alleged to be erroneous. The hearing examiner will affirm, modify, or repeal the decision of cancellation of exemption based on the evidence received. An aggrieved party may appeal the decision of the hearing examiner to the Thurston County superior court.
15. If the exemption is canceled for non-compliance, the 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 twenty percent (20%) of the difference calculated under subsection (1) 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 Chapter 3.30 TMC. The 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 improvements are constructed and attach at the time the portion of the Site 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 Site may become charged or liable. The 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. An additional tax unpaid on its due date is delinquent. From the date of delinquency until paid, interest must be charged at the same rate applied by law to delinquent ad valorem property taxes.

16. No modifications of the Agreement shall be made unless mutually agreed upon by the parties in writing.
17. The provisions, covenants, and conditions contained in this Agreement are binding upon the parties hereto and their legal heirs, representatives, successors, assigns, and subsidiaries.
18. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue for any action arising out of this Agreement shall be in Thurston County superior court.
19. 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 applicable and if the severable term prevents the City from receiving the benefits of having affordable housing as set forth in Chapter 84.14 RCW and Chapter 3.30 TMC, then this Agreement shall be deemed terminated, or may be terminated, as soon as possible in compliance with any applicable law.
20. The Applicant shall exercise reasonable diligence to comply with the requirements of this Agreement and shall correct any such noncompliance within sixty (60) calendar days after such noncompliance is first discovered by the Applicant or would have been discovered by the exercise of reasonable diligence, or within 60 calendar days after the Applicant receives notice of such noncompliance from the City, whichever is earliest; provided however, that such period for correction may be extended in writing by the City if the Applicant is exercising due diligence to correct the noncompliance. If such noncompliance remains uncured after such period, then the Applicant shall be in default and the City may deny or cancel the tax exemption pursuant to TMC 3.30 or take such other action at law or equity as may appear necessary or desirable to enforce the obligations, covenants, conditions and agreements of the Applicant under this Agreement.

21. A. The Applicant shall maintain complete and accurate records pertaining to the affordable housing units and shall, during regular business hours, permit any duly authorized representative of the City, to inspect the books and records of the Applicant pertaining to the affordable housing units, including the annual declaration, and if applicable, income documentation of households residing in affordable housing at the Site. The Applicant's failure to maintain such records or failure to allow inspection by the City or any duly authorized representative shall constitute a material default hereunder. The Applicant shall retain all records pertaining to the affordable housing units for at least six (6) years.
- B. The City and the Applicant hereby recognize and agree that the representations and covenants set forth herein may be relied upon by City and the Applicant. In performing its duties and obligations hereunder, the City may rely upon statements and declarations of the Applicant, and upon audits of the books and records of the Applicant pertaining to occupancy of the affordable housing units.
22. Notwithstanding anything in this Agreement to the contrary, the Applicant shall submit all documentation required by this Agreement on the forms designated by the City, which may be modified by the City from time to time. Applicant.
23. The Applicant 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, or on the basis of source of income as set forth in RCW 59.18.255, as now existing and as may be amended, in the lease, use, or occupancy of the affordable housing units or in connection with the employment or application for employment of persons for the operation and management of the Site.
24. A. The City and Applicant 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 Site by certain eligible households, and (ii) by furthering the public purposes of providing housing for low-income and moderate-income households as defined in TMC 3.30.015.
- B. The City and the Applicant hereby declare that the covenants and conditions contained herein shall bind and the benefits shall inure to,

respectively, the Applicant and all subsequent owners of the Site or any interest therein, and the City. Each and every contract, deed or other instrument hereafter executed conveying the Site 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.

25. The Applicant shall defend, indemnify, and hold the City, its officers, officials, employees, volunteers and its designee and any other party authorized hereunder to enforce the terms of this Agreement, harmless from any and all claims, injuries, damages, losses, or suits, including attorney fees, arising out of or resulting from this Agreement. This provision shall survive termination or expiration of this Agreement.
26. 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 Applicant and the City 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

City:
City of Tumwater
555 Israel Road SW
Tumwater, WA 98501

Applicant:
Forth Street Housing, LLC
PO Box 159
Arlington, WA 98223

Debbie Sullivan, Mayor

Signature
Name Printed: Glenn Wells
Title: Principal

Approved as to form:

Karen Kirkpatrick, City Attorney

State of Washington

County of _____

This record was acknowledged before me on _____ by
_____.as _____.of
_____.

(Signature)

Notary Public in and for the State of Washington.

My appointment expires _____.

Date:_____

State of Washington

County of Thurston

I certify that I know or have satisfactory evidence that Debbie Sullivan is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the Mayor of the City of Tumwater to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated:_____

(Signature)

Notary Public in and for the State of Washington.

My appointment expires _____.