

# CITY OF BURIEN, WASHINGTON

## RESOLUTION NO. 373

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### **A RESOLUTION OF THE CITY OF BURIEN, WASHINGTON, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH MERRILL/LEGACY AT BURIEN (MF), L.L.C. FOR THE PURPOSE OF GRANTING A 12-YEAR MULTIFAMILY HOUSING LIMITED PROPERTY TAX EXEMPTION.**

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WHEREAS, RCW 84.14 and BMC 19.45 authorize the city to grant limited multifamily housing tax exemptions; and

WHEREAS, on December 1, 2015, Kerry Nicholson, representing Merrill/Legacy at Burien (MF), L.L.C filed an application for a multifamily tax exemption; and

WHEREAS, the proposed project is located with in the designated residential target area as defined by BMC 19.45.020 [3]; and

WHEREAS, the proposed project includes the construction of approximately 229 for lease residential units; and

WHEREAS, on December 16, 2016 the City of Burien determined that the project, if developed as proposed, will meet the requirements for the exemption and conditionally approved a multifamily tax exemption for the Merrill/Legacy mixed-use development; and

WHEREAS the City's tax exemption program requires the Owner to enter into an agreement with the City regarding the terms and conditions of the project;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BURIEN, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The City Manager is hereby authorized to execute an agreement for a 12-year multifamily housing limited property tax exemption between the City of Burien and Merrill/Legacy at Burien (MF), L.L.C substantially in the form of the agreement attached hereto as Exhibit A. This agreement shall provide for the development of the above-described project in accord with certain terms and conditions, in consideration for which the property related to the new multi-family housing will be certified by the City as qualifying for a twelve-year property tax exemption.

Section 2. Effective Date. This resolution shall take effect immediately upon passage by the Burien City Council.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF BURIEN, WASHINGTON, AT A REGULAR MEETING THEREOF THIS 20<sup>TH</sup> DAY OF JUNE, 2016.

CITY OF BURIEN

/s/ Lucy Krakowiak, Mayor

ATTEST/AUTHENTICATED:

/s/ Monica Lusk, City Clerk

Approved as to form:

/s/ Lisa Marshall, City Attorney

Filed with the City Clerk: June 20, 2016

Passed by the City Council: June 20, 2016

Resolution No. 373

**MULTIFAMILY HOUSING LIMITED PROPERTY TAX EXEMPTION  
AGREEMENT**

**PILLAR-LEGACY 12-YEAR EXEMPTION**

THIS AGREEMENT (the “Agreement”) is entered into on the date signed below between Merrill/Legacy at Burien (MF), L.L.C, a Washington limited liability company, referred to as “Applicant,” and the City of Burien, Washington, a municipal corporation, referred to as “City” (collective referred to as the “Parties”).

RECITALS:

1. On December 1, 2015, pursuant to Chapter 84.14 RCW and Chapter 19.45 BMC, Applicant applied for a twelve-year property tax exemption, proposing a multi-unit housing project in the City’s Downtown Commercial (DC) zone which has been designated by the City Council as a residential target area for purposes of tax exemptions for multi-family housing;
2. Applicant submitted to the City both final and preliminary site plans and floor plans for new multi-family residential housing to be constructed and rented as part of a mixed-use project (the “Project”) located at 15045 5<sup>th</sup> Avenue SW, Burien, Washington, and described more specifically as follows:

**Property Legal Description**

Lot F, Burien Lot Line Adjustment 07-0895, recorded under recording number 200706269005, in King County, Washington.

hereinafter referred to collectively as the “Property”; and

3. The proposed Project consists of a mixed use building containing 229 multiple-family condominium units and 3,060 square feet of commercial space.
4. Pursuant to Chapter 19.45 BMC, the Project must meet all of the following criteria to be eligible for approval of its application for a property tax exemption:
  - (a) be located within the City’s Downtown Commercial (DC) zone;
  - (b) not displace existing residential tenants;
  - (c) construct a minimum of four new units;
  - (d) have at least 50 percent of the space designated for multi-family housing provide for rental or owner occupancy for at least one month;
  - (e) have new construction of multi-family housing scheduled to be completed within three years from December 17, 2015, the date of approval of the application;
  - (f) have design comply with the City’s Comprehensive Plan, building, housing and zoning codes and any other applicable regulations in effect on December 17, 2015, as well as BMC Title 15, and other standards and guidelines adopted by the City Council for the City’s Downtown Commercial zone;
  - (g) achieve a minimum residential density of 50 dwelling units per net acre;

(h) be a mixed use project that combines non-residential use with dwelling units, either in the same building, or in different buildings located on the same site.

5. Pursuant to RCW 84.14.020 and RCW 84.14.060, for the Property to qualify for a twelve-year exemption, the Applicant must also commit to renting or selling at least twenty percent of the multifamily housing units as affordable housing units to low and moderate-income households, and the Property must satisfy that commitment and any additional affordability and income eligibility conditions adopted by the City Council.

6. The City Council did not impose any additional affordability and income eligibility conditions beyond the requirements already imposed by state law when the Council adopted requirements for consideration for property tax exemption in Chapter 19.45 BMC.

7. Under Chapter 19.45 BMC, for the Property to qualify for a twelve-year property tax exemption, twenty percent of the units must be “affordable housing” rented to low and moderate-income households, where the household’s monthly housing costs, including utilities other than telephone, do not exceed thirty percent of the household’s monthly income.

8. Burien is a city in a “high cost area” as defined by RCW 84.14.010, which means a county where the third quarter median house price for the previous year as reported by the Washington center for real estate research at Washington State University is equal to or greater than one hundred thirty percent of the statewide median house price published during the same time period.

9. For cities located in high-cost areas, a “low-income household” means a household that has an adjusted income at or below one hundred percent of the median family income adjusted for family size, for King County. See BMC 19.45.010 and RCW 84.14.010.

10. For cities located in high-cost areas, a “moderate-income household” means a household that has an adjusted income of more than one hundred percent, but at or below one hundred fifty percent of the median family income adjusted for family size for King County. See BMC 19.45.010 and RCW 84.14.010.

11. The median household income applicable in Burien, as established by the United States Housing and Urban Development, Fiscal Year 2016 Income Limits Summary, is \$90,300.

12. Based on the United States Housing and Urban Development, Fiscal Year 2016 Income Limits Summary, in Burien, to qualify as affordable for a low-income household of one person, rent cannot exceed \$1,583; for a two person-household, rent cannot exceed \$1,808; for a three-person household, rent cannot exceed \$2,033.

13. Based on the United States Housing and Urban Development, Fiscal Year 2016 Income Limits Summary, in Burien, to qualify as affordable for a moderate-income household

of one person, rent cannot exceed \$2,374; for two-person household, rent cannot exceed \$2,711; for a three-person household, rent cannot exceed \$3,049.

14. The Applicant provided a letter outlining the Applicant's intent to comply with affordability requirements by providing a total of 46 units that would be made available at rents that do not exceed the maximum rents qualifying as affordable noted above.

15. Of the 46 units that Applicant has proposed as affordable units, two units will be studios accommodating one-person households, 36 units will be one-bedroom units accommodating two-person households, and eight units will be two-bedroom units accommodating three-person households.

16. After confirming that the mix of 46 units that Applicant is proposing as "affordable" represents 20 percent of the total 229 housing units, and that the 46 units includes some units that will be offered at rents affordable to low-income and moderate-income households, the City concluded that Applicant has committed to meeting the affordability requirements in state law and city code.

17. After confirming that no existing rental housing building that contained four or more occupied dwelling units was demolished on the Property within 12 months prior to Applicant's submission of its application for the twelve-year property tax exemption, the City concluded that no residential tenants had been displaced.

18. Pursuant to BMC 19.45.030, the Director of Community Development ("Director") reviewed Applicant's application and determined that the Project is eligible for issuance of a conditional certificate of tax exemption provided that the Applicant enters into a contract with the City that City Council approves.

19. On December 17, 2015, the Director of Community Development approved Applicant's Application for a twelve-year property tax exemption.

20. The Applicant is the owner of Property, including the apartment project.

21. The Parties understand and agree that the Applicant, or its successors in interest, intends to create apartments for rent within the Project and that the rights, duties, and obligations of this Agreement and the Property Tax Exemption Certificates will be assigned to the owner of the apartment project.

NOW, THEREFORE, in consideration of the above recitals and 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 resolution of the City Council, to issue a Conditional Certificate of Acceptance of Tax Exemption for the Project (“Conditional Certificate”). The 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 BMC 19.45.030.7. Applicant understands and agrees that this Agreement and the Conditional Certificate based thereon pertain to the Project complying with the Project eligibility requirements of BMC 19.45.030.4 and that in the event that the Project ceases to comply with those requirements or conditions of the land use or building permit approvals, this Agreement shall not be binding on the Parties and any Conditional Certificate issued pursuant to this Agreement shall be rendered invalid.

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, subject to such modifications thereto as may be required to comply with applicable codes and ordinances, including the design review process.

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 BMC Titles 14, 15, 17 and 19. Applicant further agrees that approval of this Agreement by the City Council, its execution by the Director of Community Development, or issuance of a Conditional Certificate by the City pursuant to BMC 19.45 is for the sole purpose of authorizing issuance of a Certificate(s) of Tax Exemption and in no way constitutes approval of proposed improvements on the Property with respect to applicable provisions of BMC Titles 14, 15, 17 and 19 or obligates the City to approve proposed improvements. Issuance of a Certificate of Tax Exemption by the City pursuant to or under authority of this Agreement, Chapter 19.45 BMC, or Ch. 18.14 RCW, shall **NOT** constitute or be construed as a representation or warranty, express or implied, by the City that such issuance complies with applicable laws and no liability shall attach to the City, its officers and officials (elected and appointed), employees, or agents with respect thereto.

c. Applicant agrees that the multifamily housing component of the Project will be completed within three years from December 17, 2015, the date of approval of Applicant’s Application by the Director of Community Development, unless extended by the Director for cause as provided in BMC 19.45.030.7.

3. Agreement to meet affordable housing requirements.

a. The Applicant commits to renting at least 20 percent of the total number of multiple-family housing units in this Project as “affordable housing” units to “low and moderate-income households” as required by RCW 84.14.020, RCW 84.14.060, and Chapter 19.45 BMC.

- b. Of the 229 multiple-family housing units that Applicant will construct, Applicant will set rents for at least 34 units that does not exceed the maximum rent to make them “affordable housing” to “moderate income households” in King County, as defined in this Section.
- c. Of the 229 multiple-family housing units that Applicant will construct, Applicant will set rents for at least 12 units that does not exceed the maximum rent to make them “affordable housing” to “low-income households” in King County, as defined in this Section.
- d. Affordability/”affordable housing” for a moderate-income household shall be measured based on whether the amount of rent plus utilities (except telephone) falls at or below 30 percent of up to 150 percent of median household income, adjusted for family size, in King County as established by the United States Housing and Urban Development agency’s published measure for the applicable fiscal year.
- e. Affordability/”affordable housing” for a low-income household shall be measured based on whether the amount of rent plus utilities (except telephone) falls at or below 30 percent of up to 100 percent of the median household income, adjusted for family size, in King County as established by the United States Housing and Urban Development agency’s published measure for the applicable fiscal year.
- f. The Applicant shall meet the minimum affordability requirements in state law and Burien Municipal Code for every year of the twelve-year property tax exemption. To the extent there are any inconsistencies between state law and the BMC, state law definitions and requirements shall apply.
- g. Applicant shall ensure that affordability requirements are met by ensuring that rents are set and adjusted to account for changes in what constitutes median household income for King County so that at least 34 units are “affordable housing” to “moderate-income households.”
- h. Applicant shall also ensure that affordability requirements are met by ensuring that rents are set and adjusted as necessary so that at least 12 units are “affordable housing” to “low-income households.”

4. Requirements for Final Certificate of Tax Exemption.

Applicant may, upon completion of the multifamily housing component of the Project and upon issuance by the City of a temporary or permanent certificate of occupancy, request a Final Certificate of Tax Exemption for the 229 units that constitute the multifamily housing phase of the Project. The request shall be in writing directed to the City’s Department of Community Development and be accompanied by 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 qualification for the exemption;

- c. A statement that the work has been completed within three years of the issuance of the conditional certificate of tax exemption or any authorized extension and in compliance with the terms of this Agreement;
- d. A certification by the owner of the Property that the Property has not changed use;
- e. A certification by the owner of the Property that the Property has been in compliance with the affordable housing requirements as described in RCW 84.14.020 since the date of approval by the city of the conditional certificate of tax exemption.
- f. A description of changes or improvements constructed after issuance of the certificate of tax exemption;
- g. Any additional information requested by the Director of Community Development in regards to the units receiving a tax exemption.

5. Agreement to Issue Final Certificate.

The City agrees to file a Final Certificate of Tax Exemption for Phase I, with the King County Assessor within fourteen (14) days of the Director determining that the Project has been completed within the authorized time period described in paragraph 1 of this Agreement, and that the Project has been completed in accordance with the following requirements:

- a. Constructed the multifamily housing component of the Project by or before December 17, 2018 and in accordance with other requirements of this Agreement in paragraph 2;
- b. Fulfilled the affordable housing requirements in state law and Chapter 19.45 BMC and further described in paragraph 3 of this Agreement;
- c. Filed a request for a Final Certificate of Tax Exemption with the Community Development Department and submitted all the materials described in paragraph 4 of this Agreement;
- d. Paid to the City a fee to cover the Assessor's administrative costs;
- e. On or before November 30 on an annual basis after the date of issuance of the temporary certificate of tax exemption, provided a report containing the following information to facilitate the City's compliance with reporting requirements in state law:
  - (i) The total number and type of units produced or to be produced by the Project;
  - (ii) The number and type of units produced or to be produced meeting affordable housing requirements;

- (iii) The actual development cost of each unit produced;
  - (iv) The total monthly rent of each unit produced;
  - (v) For each of the units receiving a tax exemption, the income of each current renter household at the time of that renter's initial occupancy and a summary of this information.
- f. Met all other requirements in Chapter 84.14 RCW and Chapter 19.45 BMC for issuance of the Final Certificate of Tax Exemption.
5. Annual Certification and Annual Report. Applicant, until such time as the exemption has expired or been terminated, shall have responsibility for the following:
- a. 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 a period of twelve (12) years, Applicant agrees to file a certification or declaration with the Director of Community Development, verified upon oath or affirmation, with respect to the accuracy of the information provided therein, containing the following:
    - i. A statement of the occupancy and vacancy of the multifamily housing units during the previous year;
    - ii. A statement that the multifamily housing has not changed use since the date of filing of the Final Certificate of Tax Exemption; and
    - iii. A statement that the multifamily housing continues to be in compliance with this Agreement;
    - iv. A description of any improvements or changes to the Project made after the filing of the Final Certificate or the previous certification.
  - b. On or before November 30 on an annual basis after the date of issuance of the temporary certificate of tax exemption, and for 12 years after issuance of the final certificate of tax exemption, provide a report containing the following information:
    - (i) The total number and type of units produced or to be produced by the Project;
    - (ii) The number and type of units produced or to be produced meeting affordable housing requirements;
    - (iii) The actual development cost of each unit produced;
    - (iv) The total monthly rent of each unit produced;
    - (iv) For each of the units receiving a tax exemption, the income of each current renter household at the time of that renter's initial occupancy and a summary of this information.

Cooperate with the City to ensure compliance with state laws, including reporting requirements in RCW 84.14.100 as amended, regarding units receiving a tax exemption.

6. No violations for duration of exemption.

For the duration of the exemption granted under BMC Chapter 19.45, the Applicant agrees that the Project and the Property will have no material violations of applicable zoning requirements, land use regulations, and building and housing code requirements contained in BMC Titles 15 and 19 for which the Department of 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 otherwise, 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 of Community Development.

7. 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 the Property. Upon transfer of interest of Applicant's ownership interest, an assignment of this Agreement shall be recorded in the records of King County, and the new Property Owner shall assume all of Applicant's obligations under this Agreement and be entitled to all benefits afforded by this Agreement. Applicant 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 penalty pursuant to State law.

8. Cancellation of Exemption - Appeal.

a. Subject to the appeal rights and other provisions set forth in this Agreement and BMC 19.45, the City reserves the right to cancel the Final Certificate of Tax Exemption if at any time the multifamily housing no longer complies with the terms of this Agreement or with the requirements of BMC Chapter 19.45, or with Chapter 84.14 RCW.

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 BMC chapter 19.45. Applicant acknowledges that, pursuant to RCW 84.14.110, any additional tax owed, together with interest and penalty, become a lien on the Property and attach at the time the Property or 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(s) may appeal the determination in accordance with BMC 2.20.

9. 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 BMC 19.45.

10. 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.

11. Recording of Agreement.

The Director shall cause to be recorded, or require Applicant to record, in the real property records of the King County Department of Records and Elections, this Agreement and any other documents as will identify such terms and conditions of eligibility for exemption as the Director deems appropriate for recording, including requirements under this chapter relating to affordability.

12. 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 BMC chapter 19.45 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 21 calendar days' written notice by the City.

13. 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 delivered by overnight courier delivery service, 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: Merrill/Legacy at Burien (MF), L.L.C.  
1938 Fairview Avenue E. Suite 300  
Seattle, WA 98102  
Phone: 206-676-5600 Fax: (206) 676-5353  
Attn.: William D. Pettit III

CITY: City of Burien  
Department of Community Development  
400 SW 152<sup>nd</sup> Street Ste. 300  
Burien, Washington 98166  
Phone: (206) 248-5510 Fax: (206) 439-5539  
Attention: Director

14. Incorporation of Recitals.

The recitals stated above are incorporated herein by this reference as though fully set forth in this Agreement.

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 which can be given effect without the conflicting terms or clause, and to this end, the terms of the Agreement are declared to be severable.



STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared \_\_\_\_\_, known to me to be the **R.D. Merrill Real Estate Holdings, LLC, the managing member of RDM Housing Strategies V, LLC, the managing member of Merrill/Legacy at Burien (MF), LLC**, the limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company, for the purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_.  
My commission expires \_\_\_\_\_.

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared \_\_\_\_\_, known to me to be the **R.D. Merrill Real Estate Holdings, LLC, the managing member of RDM Housing Strategies V, LLC, the managing member of Merrill/Legacy at Burien (MF), LLC**, the limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company, for the purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_.  
My commission expires \_\_\_\_\_.