

**CITY OF BURIEN
AGENDA BILL**

Agenda Subject: Motion to approve Resolution No. 286 authorizing the City Manager to execute agreements with the Burien Town Square LLC regarding Multifamily Limited Property Tax Exemptions.		Meeting Date: February 2, 2009
Department: Community Development	Attachments: 1. Resolution No. 286 2. Memo to City Council 3. Tax Exemption Decision Documents 4. MFR Housing Limited Property Tax Agreement	Fund Source: N/A Activity Cost: N/A Amount Budgeted: N/A Unencumbered Budget Authority: N/A
Contact: David Johanson, AICP, Senior Planner		
Telephone: (206) 248-5522		
Adopted Work Plan Priority: Yes No X	Work Plan Item Description: N/A	
PURPOSE/REQUIRED ACTION: The purpose of this agenda item is for Council to consider granting the City Manager authority to sign Multifamily Housing Limited Property Tax Exemptions for each of the three phases of the Burien Town Square development.		
BACKGROUND (Include prior Council action & discussion): In January 2004, the Council passed Ordinance 413 establishing the multi-family tax exemption section of the zoning code. The primary purposes of the legislation are to encourage the creation of multiple-family units within Burien's urban center, which currently is deficient in residential living opportunities. Constructing housing near retail and transit opportunities results in a more active downtown and is a longstanding land use goal found in Burien's Comprehensive Plan. On March 22, 2007, Burien Town Square LLC filed an application for a limited property tax exemption. On May 8, 2007, the City issued a determination confirming the proposed project meets the qualifying criteria of BMC 19.45.030 (see attachment 2). The decision document contains an analysis of the criteria that must be met before the City may grant a tax exemption. The tax exemption applies to all mixed use parcels included in the Burien Town Square project. Three tax exemption agreements have been drafted, each applying to a specific phase of the development. The three phases are as follows: the first is Parcel 1 (former Gottschalks), the second is Parcel 5 (former Bartell Drugs), third and finally are Parcels 4 & 6 (former City Hall). This is the first request for a multi-family housing limited property tax exemption since adoption of the ordinance. The tax exemption applies only to the residential portions of the project. Property taxes still will be collected on the land and other improvements, including the new commercial space. After discussion at the January 12, 2009 City Council study session the City Council requested more information on the program. Please see attached memo responding to those inquiries.		
OPTIONS (Including fiscal impacts): 1. Authorize the City Manager to sign the Limited Property Tax Exemption Agreements. 2. Do not authorize the City Manager to sign the Limited Property Tax Exemption Agreements and provide specific direction to staff to modify the agreements. 3. Do not authorize the City Manager to sign the Limited Property Tax Exemption Agreements.		
Administrative Recommendation: Approve Resolution No. 286.		
Committee Recommendation: N/A		
Advisory Board Recommendation: N/A		
Suggested Motion: I move to adopt Resolution No. 286 authorizing the City Manager to sign multi-family limited property tax agreements for town square phases I, II and III.		
Submitted by: David Johanson, AICP		
Administration _____	City Manager _____	
Today's Date: January 27, 2009	File Code: R:\CC\Agenda Bill 2009\020209cd-1 UPMFRTaxExemptionAgreement.docx	

CITY OF BURIEN, WASHINGTON

RESOLUTION NO. 286

A RESOLUTION OF THE CITY OF BURIEN, WASHINGTON, AUTHORIZING THE COMMUNITY DEVELOPMENT DIRECTOR TO EXECUTE AN AGREEMENT WITH BURIEN TOWN SQUARE, LLC FOR THE PURPOSE OF GRANTING A MULTIFAMILY HOUSING LIMITED PROPERTY TAX EXEMPTION.

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

WHEREAS, on March 22, 2007, Matt Burton, representing Burien Town Square, LLC filed an application for a multifamily tax exemption; and

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

WHEREAS, the proposed project includes the construction of approximately 404 for sale residential units; and

WHEREAS, on May 8, 2007 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 Burien Town Square project; 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 multifamily housing limited property tax exemption between the City of Burien and Burien Town Square Parcel 1, LLC and RECP/UP Burien II, LP substantially in the form of the agreements attached hereto as Exhibit A. These agreements 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 ten-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 ____ DAY OF JANUARY, 2009.

CITY OF BURIEN

Joan McGilton, Mayor

ATTEST/AUTHENTICATED:


Monica Lusk, City Clerk

Approved as to form:

Christopher D. Bacha,
Kenyon Disend, PLLC
Interim City Attorney

Filed with the City Clerk: January 7, 2009
Passed by the City Council: January ____, 2009
Resolution No. 286

**CITY OF BURIEN, WASHINGTON
MEMORANDUM**

DATE: January 13, 2009
TO: Mayor Joan McGilton and Members of the City Council
FROM: David Johanson, AICP, Senior Planner 
SUBJECT: Responses to City Council inquires regarding the multi-family limited property tax exemption program.

The purpose of this memo is to respond to inquiries made by the City Council at your January 12, 2009 study session regarding the multi-family limited property tax exemption program. Below you will find a list of questions raised at your study session followed by a staff response.

- 1) What is the current taxing status of the town square parcels and is the project under construction being taxed on an incomplete structure?

Staff response: According to King County Department of Assessments, large construction projects are taxed based on a percentage of completion in the previous year. King County records indicate there are improvements for parcel 1 and they are being taxed accordingly. It is anticipated that construction will be complete in March of 2009 and a new valuation will be applied to their 2010 values. The remaining parcels show little to no improvement value with the exception of the former City Hall, which has a land improvement value of approximately \$74,000.

- 2) Are other taxing jurisdictions affected by the tax exemption program?

Staff response: Yes the exemption does reduce the total property taxes collected for the entire development project; however there are other considerations when determining the total effect of the program on the property taxes collected.

The tax exemption only applies to the multi-family improvements; taxes will still be collected on the land and other improvements on site. Other improvements are typically in the form of new commercial construction.

In mixed use developments the multi-family portions of a development tend to support the financial viability of projects and without the tax exemption a mixed use project may not be constructed. The result is that associated commercial or office development may not be constructed and therefore the city would not benefit from the additional valuations of new commercial development. Additionally construction or rehabilitation of mixed use projects has net positive impact on land values in the vicinity.

- 3) When the ordinance was adopted what was the response from the other taxing jurisdictions?

Staff response: The City Council meeting minutes from the public hearing held on September 13, 2004 there was testimony from King County Fire District 2 in favor of the proposed ordinance. The Fire District Commissioner stated that the district was unanimous in believing that the city needs the tax abatement tool to bring development to the Community.

- 4) Is the multi family limited property tax exemption referenced and/or included in the DDA agreement with Urban Partners?

Staff Response: Yes, section 10.6 of the DDA references the City tax exemption ordinance. The agreement states that the City program shall remain in full force and effect and shall not be repealed. The developer acknowledges the limits of the tax exemption program and that they are responsible for applying for the exemption in accordance with the terms and conditions as established in the ordinance.



Notice of Decision

City of Burien 15811 Ambaum Blvd. SW (Suite C) Burien, Washington 98166-3066

Date	May 8, 2007
Applicant	Matt Burton, Burien Town Square LLC.
Proposal	Multi-family tax exemption for the Burien town square project.
File No.	PLA 07-0564
Location	460 SW 152 nd Street Burien, WA 98166
Tax Parcel Nos.	192304-9016, 192304-9328, 192304-9359, 192304-9366
Decision	Approval of the request for tax exemption for multi-family housing with conditions.
Appeals	The City of Burien has issued the decision described above. Parties of record may appeal this decision to the City Council pursuant to Burien Municipal Code Section 19.45.030.6.C. The deadline for filing a written Notice of Appeal with the City Clerk is prior to 5:00 p.m. on May 22, 2007 . Copies of the "Notice of Appeal" document may be obtained at the Department of Community Development. There is a non-refundable filing fee of \$262 for the submittal of an appeal. For more information please contact the project planner (see below).
Property Tax Revaluation	Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation. For more information, please contact the King County Assessor's Office at (206) 296-7300.
Project Planner	David Johanson, AICP Department of Community Development City of Burien 15811 Ambaum Blvd. SW (Suite C) Burien, WA 98166 Phone: (206) 248-5522 E-Mail: DavidJ@burienwa.gov
Attachments	Conditions of approval

Conditions of approval

PLA 07-0564

Burien Town Square multi-family tax exemption request

The applicant's request for a tax exemption for multi-family housing is approved subject to the following conditions:

1. All project phases shall comply with all city guidelines and standards prior to issuance of the final certificate of multi-family tax exemption including but not limited to existing permits and future applications that are subject to applicable requirements contained in the Burien Municipal Code (including but not limited to the Zoning Code, Building Code and Fire Code). It is the responsibility of the applicant to ensure compliance with the various provisions contained in these documents.
2. Pursuant to BMC 19.45.030.6.A, the applicant shall complete all construction no later than 3 years from date of City Council approval of a contract, or BMC section 19.45.030(7), extensions of conditional certificates.



CITY OF BURIEN, WASHINGTON

Department of Community Development

15811 Ambaum Blvd. SW Ste. C, Burien, Washington 98166

Phone: (206) 241-4647 Fax: (206) 248-5539

MULTI-FAMILY TAX EXEMPTION

DECISION

FOR

Burien Town Square – Parcels 1, 4, 5 and 6

File No.: PLA 07-0564

Project Name: Burien Town Square

Applicant: Matt Burton, Burien Town Square LLC.

Location: 460 SW 152nd Street
Burien, WA 98166

Request: Multi-family tax exemption for the Burien town square project.

Parcel Nos.: 192304-9016, 192304-9328, 192304-9359, 192304-9366

Project Planner: David Johanson, AICP
Senior Planner

Date: May 8, 2007

Decision: Approval of the request for tax exemption for multi-family housing with conditions.

I. INTRODUCTION

A. PROJECT SUMMARY

The Burien Town Square project consists of four parcels to be redeveloped as a mixed use project that includes a combination of residential and commercial uses. The site is located in the downtown commercial zone. The project area is bordered by SW 152nd Street and SW 150th Street on the south and north sides respectively and 6th Avenue SW and 4th Avenue SW on the west and east sides (see Attachments 1 & 2). Parcel 6 is located on the west side of 6th Avenue SW but is considered a part of the development "site" (see Attachment 2). The total project will include approximately 404 "for sale" residential units along with approximately 51,100 square feet of retail/commercial space. The project is being developed in phases and is expected to be complete by April 2010.

II. FINDINGS OF FACT AND CONCLUSIONS

A. COMPLIANCE WITH PROJECT ELIGIBILITY REQUIREMENTS

Pursuant to BMC 19.45.030(4) a proposed project requesting the a multi-family tax exemption must meet the following requirements;

1. **Location:** The project must be located within a residential target area, as designated in BMC section 19.45.020(3).
 - a. Facts: The project is located within the DC zone which is designated as a residential target area as in stated BMC section 19.45.020(3).
 - b. Conclusion: The project meets the criteria.
2. **Tenant Displacement Prohibited.** The project must not displace existing residential tenants of structures that are proposed for redevelopment.
 - a. Facts: The parcels included in the project do not have structures housing residential tenants.
 - b. Conclusion: The project meets the criteria.
3. **Size.** The project must include at least four residential units of multi-family housing within a residential structure or as a part of a mixed-use development.
 - a. Facts: The project proposes a total of 404 residential units in a mixed unit development.
 - b. Conclusion: The project meets the criteria.
4. **Permanent Residential Housing.** At least 50 percent of the space designated for multi-family housing must be provided for permanent residential occupancy, as defined in Section 19.45.010.
 - a. Facts: The project proposes a total of 404 residential units all of which will be for sale units.
 - b. Conclusion: The project meets the criteria.
5. **Proposed Completion Date.** New construction multi-family housing and rehabilitation improvements must be scheduled to be completed within three years from the date of approval of the application.

The density calculations for each phase of the project are as follows;

Phase I - Parcel 1 = $124/(1.5\text{ac} * 59\%) = 140$ dwelling units per acre

Phase II - Parcel 4 = $107/(1.21\text{ac} * 72\%) = 122$ dwelling units per acre

Phase III - Parcels 5 & 6 = $173/(2.05\text{ac} * 59\%) = 140$ dwelling units per acre**

** - Parcels 5 and 6 are considered the third phase of the project and therefore the achieved density calculations have been combined

b. Conclusion: The project meets the criteria.

8. **Mixed Use Development**. The project shall be a mixed use project as defined by BMC19.10.350.

a. Facts: BMC 19.10.350 defines "mixed use" as a project or building that combines non-residential use with dwelling units, either in the same building, or in different buildings located on the same site. The project proposes a total of 404 residential units along with 51,118 square feet of commercial space.

b. Conclusion: The project meets the criteria.

III. APPEALS

The following is a summary of the deadlines and procedures for appeals. The applicant wishing to file or respond to this decision should contact the Department of Community Development for further procedural information.

The applicant may appeal this decision to the City Council (BMC 19.45.030.6.C). The Decision of the Director is final and conclusive unless within **14 days** of issuance of the Notice of Decision, which shall be before 5 PM on **May 22, 2007**, the applicant files a written statement of appeal with the City Clerk.

On appeal, the Director's decision will be upheld unless the applicant can show that there is no substantial evidence on the record to support the Director's decision. The City Council's decision on appeal will be final.

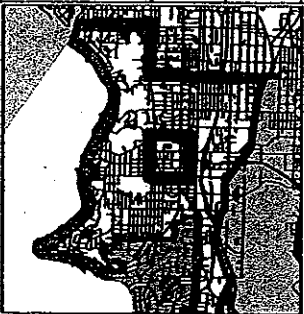
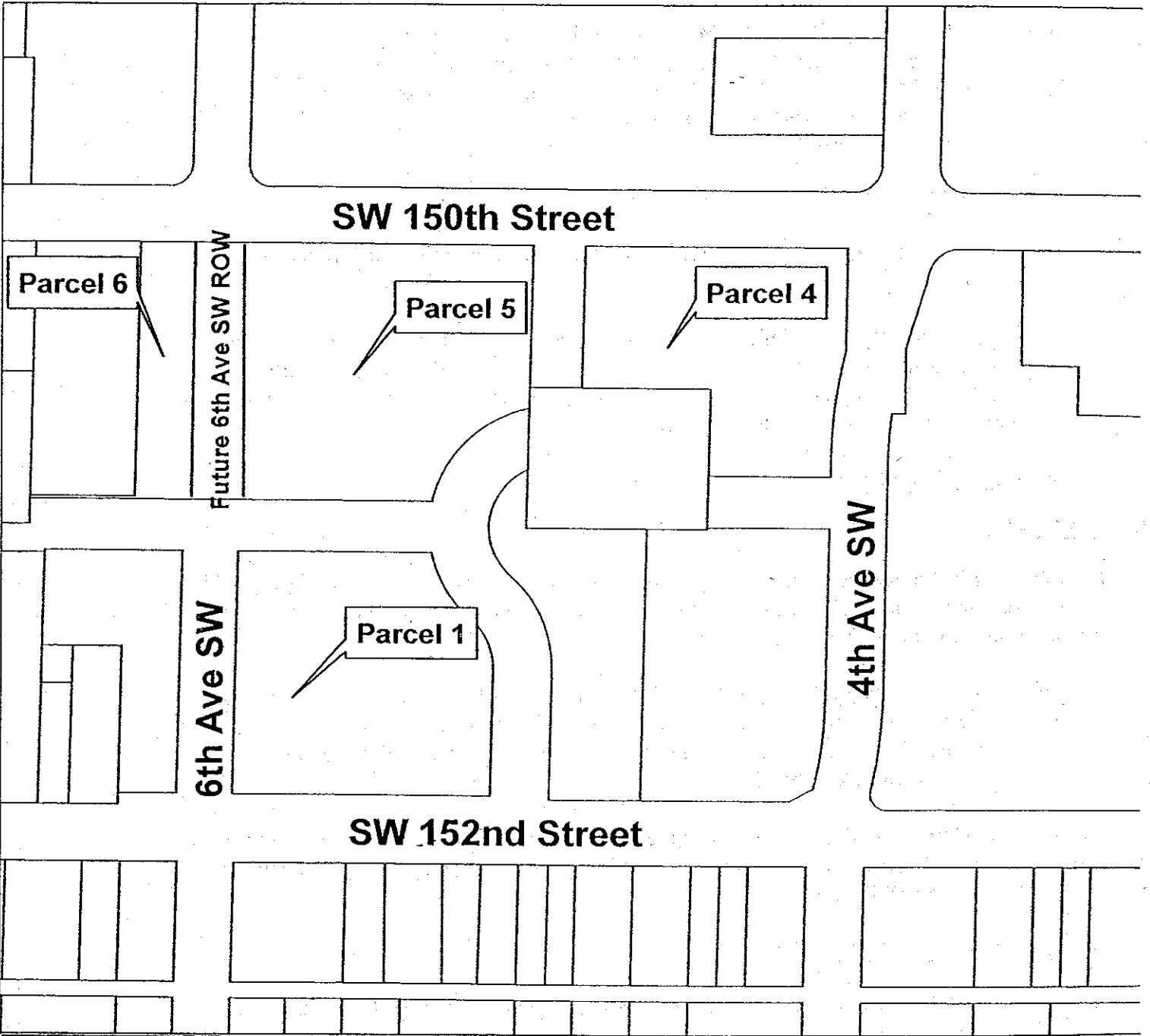
IV. DURATION OF EXEMPTION

BMC 19.45.030.2 states that the value of improvements qualifying under the chapter will be exempt from ad valorem property taxation for ten successive year beginning January 1st of the year immediately following the calendar year of issuance of the Final Certificate of Tax Exemption.

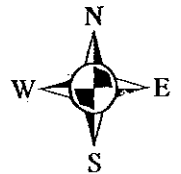
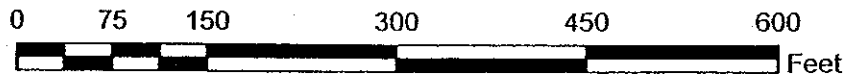
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PLA 07-0564

Burien Town Square LLC
Multi-family Tax Exemption Request



Area of Detail



Burien Town Square Multi-Family Limited Tax Exemption Decision

File No. PLA -07-0564

Attachments 2 through 10 are available upon request

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MULTIFAMILY HOUSING LIMITED PROPERTY TAX EXEMPTION AGREEMENT

PHASE ONE

THIS AGREEMENT (the “Agreement”) is entered into on the date signed below between Burien Town Square Parcel 1, L.L.C., a Delaware limited liability company, by Burien Town Square, LLC, its managing member, 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. Burien Town Square, LLC, (“Applicant”) prior to July 22, 2007, applied for a limited ten-year property tax exemption certificate as provided for in Chapter 84.14 RCW and BMC Chapter 19.45 for a three-phased multifamily residential housing development project in the Designated Target Area as stated in BMC 19.45.020.3; and
2. Applicant submitted to the City both final and preliminary site plans and floor plans for new multi-family residential housing to be constructed as part of a phased mixed-use project (the “Project”) on property generally situated between SW 152nd Street and SW 150th Street and between 6th Avenue SW and 4th Avenue SW (Identified in the Applicant's planning as Parcels 1, 4, 5 and 6) in Burien, Washington, and described more specifically as follows:

Parcel 1

Lot B, Burien Lot Line Adjustment 05-1169, recorded under recording number 2005121900014, in King County, Washington.

Parcel 4

Lot E, Burien Lot Line Adjustment 05-1169, recorded under recording number 2005121900014, in King County, Washington.

Parcel 5

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

Parcel 6

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

hereinafter referred to collective as the “Property” and individually as Parcel 1, Parcel 4, Parcel 5 and Parcel 6; and

3. The proposed Project consists of three phases and includes the parcels as described in section 2 above. The first phase (“Phase I”) is on Parcel 1 which will be a mixed use building containing 124 multiple-family condominium units and 19,700 square feet of

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commercial retail space. The second phase (“Phase II”) will occur on Parcels 5 and 6 which will be a mixed use building containing approximately 171 multiple-family condominium or apartment units along with approximately 24,000 square feet of commercial space and 11 townhome units. The third phase (“Phase III”) will occur on parcel 4, and will be a mixed use development containing either 107 multi-family condominium or apartment units over approximately 12,000 square feet of commercial retail or 35,000 square feet of multi-tenant office over approximately 24,000 square feet of retail and a one level 20,000 square foot retail project with surface parking.

4. 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 limited property tax exemption; and

5. The City has determined that each phase of the Multifamily Housing component of the Project will, if completed, occupied, and owned substantially as proposed, satisfy the requirements for a Final Certificate of Tax Exemption. The Director of Community Development has, therefore, approved the application as to each phase of the Project; and

6. This rights, duties and obligations of Applicant have been assigned by the Applicant to Burien Town Square Parcel 1, L.L.C., and apply solely to the Phase I of the Project. References to Applicant in this Agreement shall hereinafter mean and refer to Burien Town Square Parcel 1, L.L.C., and its successor(s) in interest, as assignee of the Applicant.

7. The Applicant is the owner of Parcel 1. An affiliate of Applicant is the owner of Parcels 4, 5 and 6.

8. The Parties understand and agree that the Applicant, or its successors in interest, intends to create condominium units designated for separate ownership or apartments for rent within each Project Phase and that the rights, duties, and obligations of this Agreement and the Property Tax Exemption Certificates will be assigned to each of the successor unit owners or the owners of apartment projects. Further, the Applicant intends to include within the Condominium Declaration an obligation for each successor owner of each condominium unit to designate the unit-owners association for the condominium created for each Project Phase, to undertake to comply with the continuing obligations of this Agreement, including by way of example and not limitation, the reporting and certification requirements pursuant to Section 5 herein. The City agrees that in such circumstances, it will accept that report and certification on behalf of the individual condominium unit owners. Applicant will provide the City with a copy of the Condominium Declaration prior to final closeout. For purposes of this Agreement, final closeout shall mean and refer to, that event which results in all remaining right, title and interest of Burien Town Square Parcel 1, L.L.C. in and to Phase I of the Project and all condominium units created as a result thereof, being conveyed to unit owners.

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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 Phase I (“Conditional Certificate”), which Conditional Certificate shall expire three (3) years from the date of approval of this Agreement by the Council, unless extended by the Director as provided in BMC 19.45.030.7. Applicant understands and agrees that this Agreement and the Conditional Certificate based thereon pertain to Phase I of the Project complying with the Project eligibility requirements of BMC 19.45.030.4 and that in the event that Phase I of 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 Phase I of the Project on Parcel 1, 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 Phase I of the Project on Parcel 1, 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, 18 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, 18 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 Phase 1 of the Project will be completed within three years from the date of approval of this Agreement by the Council, unless extended by the Director for cause as provided in BMC 19.45.030.7.

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3. Requirements for Final Certificate of Tax Exemption.

Applicant may, upon completion of the multifamily housing component of Phase I 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 such phase of the Project as described in recitals section three. 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 Phase I of the Project;
- b. A description of the completed work for Phase I of the Project and a statement of qualification for the exemption;
- c. Documentation that the multifamily housing was completed within the required three-year period or any authorized extension and in compliance with the terms of this Agreement;
- d. Information required pursuant to BMC 19.45.030(8) or as amended;
- e. Any such further information related to the requirements of a-d above that the Director of Community Development deems reasonably necessary or useful to evaluate eligibility for the Final Certificate of Tax Exemption.

4. 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 forty (40) days of submission of all materials required by paragraph 3, if Applicant has:

- a. Successfully completed the multifamily housing component of Phase I in accordance with the terms of this Agreement and BMC chapter 19.45;
- b. Filed a request for a Final Certificate of Tax Exemption with the Community Development Department and submitted the materials described in Paragraph 3 above;
- c. Paid to the City a fee to cover the Assessor's administrative costs; and
- d. Met all other requirements provided in BMC chapter 19.45 for issuance of the Final Certificate of Tax Exemption.

5. Annual Certification/Report. Burien Town Square Parcel 1, L.L.C., until such time as final closeout of Phase I of the Project, shall have joint and several responsibilities for the following:

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a. Within thirty (30) days after the first annual anniversary of the date the City filed the Final Certificate of Tax Exemption for Phase I and each year thereafter for a period of ten (10) 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 and the requirements of BMC Chapter 19.45;

iv. A description of any improvements or changes to the Project made after the filing of the Final Certificate or the previous certification.

b. The City is required pursuant to ESSHB 1910, Sec. 10, laws of 2007, to report annually by December 31st of each year, beginning in 2009, to the department of community, trade, and economic development certain information related to the use and occupancy of Phase I of the Project. As a condition of this Agreement and in order to facilitate such reporting, the owner or assigned designee agrees to file with the City of Burien Director of Community Development by no later than November 30 of each year during the duration of the exemption, a certification or declaration verified upon oath or affirmation, with respect to the accuracy of the information provided therein, containing the following.

i. The actual development cost of each multiunit housing produced;

ii. The total monthly rent or total sale amount of each unit of multi-unit housing produced; and

iii. The income of each renter household at the time of initial occupancy and the household income of each initial purchaser of owner-occupied units of multiunit housing at the time of purchase for each of the units receiving a tax exemption and a summary of these figures. The City understands that at the time of execution of this agreement the Applicant has entered into binding agreements for the purchase and sale of approximately 42 Condominium units within Phase I of the Project (hereafter the "Units") and that the household income information is available only regarding the range of income for the prospective purchasers of such Units. The City agrees, therefore, that providing a range of income (a list of buyers above or below 80% of median income for King County) for each such unit satisfies the Applicant's obligations under Section 4.b.iii; provided that, Applicant agrees that it will seek voluntary disclosure of household income information from buyers upon sale of each such Unit. The provision allowing reporting of income ranges only applies to those 42 units specified above.

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6. No violations for duration of exemption.

For the duration of the exemption granted under BMC Chapter 19.45, the Applicant agrees that Phase I of the Project and Parcel 1 will have no material violations of applicable zoning requirements, land use regulations, and building and housing code requirements contained in BMC Titles 15, 18, 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, within thirty (30) days following final closeout, provide the Director of Community Development with the names and addresses of the owners of each condominium unit together with the name and mailing address of the condominium owners unit association and the names and mailing addresses of the unit association's officers and directors. Applicant further agrees to notify the Director of Community Development 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, Phase I of the Project or Parcel 1 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,

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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 each of the condominium unit property owners 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; provided that, as to each condominium unit created, the obligations herein shall be limited to the individual ownership interest(s) created.

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 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.

City Council Draft

APPLICANT: Burien Town Square Parcel 1, L.L.C.
304 S. Broadway, Suite 400
Los Angeles, CA 90013
Phone: 213-437-0470 Fax: 213-437-0474
Attn.: Matt Burton

SECONDARY: American Management Services LLC
Pier 70, 2801 Alaskan Way, Suite 200
Seattle, WA 98121
Phone: 206-215-9737 Fax: 206-802-0034
Attn: Deke Turner

CITY: City of Burien
Department of Community Development
15811 Ambaum Blvd. SW Ste. C
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.

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

THE CITY OF BURIEN

Date

Michael Martin, City Manager

City Council Draft

APPLICANT

BURIEN TOWN SQUARE PARCEL 1, L.L.C.,
a Delaware limited liability company

By: BURIEN TOWN SQUARE, L.L.C., a Delaware limited liability
company, Sole Member

By: RECP/UP BURIEN, LP, a Delaware limited partnership,
its Member

By: Urban RECP Portfolio GP, LLC, a Delaware limited
liability company, its General Partner

By: _____
Name: _____
Its: _____

By: BURIEN HOLDINGS, L.L.C., a Delaware limited liability
company, its Member

By: WCP Real Estate Fund I Holdings, LLC, a Delaware
limited liability company, its Sole Member

By: WCP Real Estate Fund I, L.P., a Delaware limited
partnership, its Managing Member

By: WCP Real Estate Fund I GP, LLC, a
Delaware limited liability company, its
General Partner

By: WCP Investment Manager, LLC, a
Delaware limited liability
company, its Manager

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

