

City of Olympia
Attn: City Clerk
P.O. Box 1967
Olympia, WA 98507

Document Title:	Partial Impact Fee Exemption Agreement
Grantor:	Thurston County Title Company, Trustee
Grantee:	Fourth Street Housing, LLC
Abbreviated Legal Description:	PCL A BLA-16-9062OL
Assessor's Tax Parcel Number:	41700100000

PARTIAL IMPACT FEE EXEMPTION AGREEMENT

THIS AGREEMENT is entered into by and between Fourth Street Housing, LLC, a Washington limited liability company, hereinafter referred to as the "Applicant" and the City of Olympia, a Washington municipal corporation, hereinafter referred to as the "City" and jointly referred to as "the Parties." This Agreement shall become effective following execution by all the Parties and recording of this Agreement with the Auditor of Thurston County.

RECITALS

WHEREAS, Olympia Municipal Code Section (OMC) 15.04.060 allows for certain exemptions for payment of impact fees; and

WHEREAS, OMC 15.04.060.A.10 permits exemption of impact fees for any form of low-income housing occupied by households whose income, when adjusted for size, is at or below eighty percent (80%) of the area median income, as annually adjusted by the U.S. Department of Housing and Urban Development; and

WHEREAS, OMC 15.04.060.D states that upon application by a property owner, a partial exemption of not more than eighty percent (80%) of park, transportation and school impact fees, with no explicit requirement to pay the exempted portion of the fee from public funds, may be granted to a low-income housing development; and

WHEREAS, OMC 15.04.060.D.4 requires the property owner to record a covenant approved by the Director of Community Planning and Development that prohibits using the property for any purpose other than for low-income housing as described in OMC Subsection 15.04.060.A.10. which, at a minimum, must address price restrictions and household income limits for the low-income housing, and require that if the property is converted to a use other than for low-income housing as defined in the covenant, the property owner or successor must pay the applicable impact fees in effect at the time of any conversion; and

WHEREAS, Fourth Street Housing, LLC has applied to the City of Olympia for a partial exemption of not more than eighty percent (80%) of park and school impact fees for its property located at 3335 Martin Way E., also known as Merritt Manor; and

WHEREAS, Olympia School District No. 111 has by resolution agreed to Applicant's application for a partial exemption of not more than eighty percent (80%) of school impact fees due to Applicant's use of the property for low-income housing that meets the statutory requirements of the Olympia Municipal Code for households whose income adjusted for size is at or below eighty percent (80%) of the area median income, as annually adjusted by the U.S. Department of Housing and Urban Development.

AGREEMENT

The legal description for the real property and appurtenances to which this Partial Impact Fee Exemption Agreement applies is as follows (hereinafter "the Property"):

Parcel A of Boundary Line Adjustment No. BLA-16-9062OL, as
recorded November 22, 2016 under Auditor's File No. 4534996

For consideration mutually exchanged, the Parties agree to the following covenants, terms, and conditions:

1. The Recitals set forth above are hereby incorporated and made part of this Partial Impact Fee Exemption Agreement as if fully set forth herein.
2. The Property shall be used by Applicant for low-income housing occupied by households whose income when adjusted for size is at or below eighty percent (80%) of the area median income, as annually adjusted by the U.S. Department of Housing and Urban Development as provided in OMC 15.04.060.A.10, and as defined in OMC 15.04.060.D.5.
3. In consideration for using the Property for low-income housing as provided in OMC 15.04.060.A.10, and as defined in OMC 15.04.060.D.5, the City grants Applicant a partial exemption from payment of park and school impact fees of eighty percent (80%), as provided in OMC 15.04.060.D, so long as the Property is used solely for low-income housing as provided in OMC 15.04.060.A.10.
4. In the event the Property is converted by Applicant or its successors or assigns to a use other than for low-income housing as provided in OMC 15.04.060.A.10, the Applicant or its successors or assigns shall pay the remaining eighty percent (80%) of applicable park and school impact fees in effect at the time of any conversion. Upon payment to the City of the park and school impact fees due in effect at time of any conversion, this Agreement shall terminate and the City shall file a release of the Restrictive Covenant upon the Property with the Thurston County Auditor.

5. It is the express intent of the Applicant and the City that the provisions of this Agreement and the Restrictive Covenant to be filed upon title to the Property shall be deemed to run with the land and shall pass to and be binding upon Applicant's successors in title, including any subsequent purchaser, grantee, owner, assignee, trustee, trustor, or lessee of any portion of the Property and appurtenances and any other person or entity having any right, title or interest therein and upon the respective heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee, owner, assignee, trustee, trustor, or lessee of any portion of the Property and any other person or entity having any right, title or interest therein. The terms of this Agreement may be enforced by injunctive relief or other remedies at law.

6. The City agrees to grant Applicant a partial exemption of park and school impact fees equal to eighty percent (80%) as provided in OMC 15.04.060.D, so long as the Property is used solely for low-income housing as provided in OMC 15.04.060.A.10 and OMC 15.04.060.D.5.

7. The Applicant shall execute a Restrictive Covenant in favor of the City, which shall be recorded upon title to the Property, that limits its use to low-income housing as provided in OMC 15.04.060.A.10 and as defined in OMC 15.04.060.D.5.

8. No amendment, change or modification of this Agreement shall be valid, unless in writing and signed by all of the Parties hereto. No waiver of any breach of any covenant or provision in this Agreement shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision in this Agreement. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

9. Jurisdiction and venue for any dispute related to this Agreement shall be in Thurston County Superior Court for the State of Washington.

10. 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.

11. This Agreement shall in all respects be governed by the laws of the State of Washington.

12. This Agreement constitutes the entire understanding and agreement of the Parties with respect to its subject matter and any and all prior agreements, understandings or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force or effect. The Parties do not intend to confer any benefit under this Agreement to any person, firm or corporation other than the Parties.

[The remainder of this page is intentionally left blank.]

13. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared it.


14. Time is of the essence of every provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date indicated below.

CITY OF OLYMPIA

FOURTH STREET HOUSING, LLC

Steven J. Burney
Interim City Manager
Dated _____



Signature
Title MEMBER
Dated 12-20-19

APPROVED AS TO FORM:

By: 

City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

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 Steven J. Burney, to me known to be the Interim City Manager of the City of Olympia, a Washington municipal corporation, who executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned and on oath stated that he is authorized to execute the said instrument on behalf of the City of Olympia.

WITNESS my hand and official seal the day and year first 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 THURSTON)

On this 20th day of DECEMBER, 2019 before me, the undersigned a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared GLENN WELLS, to me known to be a managing member of Fourth Street Housing, LLC, a Washington limited liability company, who executed the foregoing instrument and acknowledged the said instrument to be his free and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned and on oath stated that he is authorized to execute the said instrument on behalf of Fourth Street Housing, LLC.

WITNESS my hand and official seal the day and year first above written.




Signature _____
Print Name: KEN PEKOLA
NOTARY PUBLIC in and for the State of Washington,
Residing at: ROCHESTER, WA
My commission expires: 11/19/20