Res 31273
#17

Amy Gray/ASG
OH MFTE Avalon Ballard RES
January 13, 2011
Version #1a

RESOLUTION 31273

A RESOLUTION authorizing the Director of Housing to enter into a Multifamily Housing Limited Property Tax Exemption Agreement between the City of Seattle and Avalon Ballard LLC for new multifamily rental housing constructed as part of a mixed-use project on property situated at 1400 NW Market Street, Seattle, Washington, under Seattle's Multifamily Housing Property Tax Exemption Program, Seattle Municipal Code Chapter 5.73.

WHEREAS Avalon Ballard LLC has submitted a complete application for multifamily housing limited property tax exemption as required by Seattle Municipal Code (SMC) Chapter 5.73, proposing to construct multifamily housing ("Multifamily Housing") known as the Avalon Ballard Apartments on property situated at 1400 NW Market Street in Seattle, Parcel Numbers 27681100395 and 27681100400, legally described as follows,

"Lots 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17, Block 117, Gilman Park, according to the Plat thereof recorded in Volume 3 of Plats, Page(s) 40, records of King County, Washington";

and

WHEREAS, the Director of Housing has determined that the Multifamily Housing, if completed as proposed, will comply with the provisions of SMC 5.73.040 and, in accordance with SMC 5.73.060 A., has approved the application for limited property tax exemption for the proposed Multifamily Housing; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEATTLE, THE MAYOR CONCURRING, THAT:

The Director of Housing is authorized to enter into the Multifamily Housing Limited Property Tax Exemption Agreement with Avalon Ballard LLC or its heirs, successors and assigns that own the Multifamily Housing, concerning the Multifamily Housing, in substantially the form attached as Exhibit A, on behalf of the City of Seattle.

DS CITY CLERK

Adopted by the City Council the ____ day of _____, 2011, and signed by me in open session in authentication of its adoption this_____ day of _____, 2011.

_____

President _____of the City Council

THE MAYOR CONCURRING:

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2011.

_____

City Clerk

(Seal)

Exhibit A: Multifamily Housing Limited Property Tax Exemption Agreement

CITY CLERK

Amy Gray/ASG
OH Avalon Ballard MFTE RES Exhibit A
January 21, 2011
Version #2

Exhibit A
MULTIFAMILY HOUSING LIMITED PROPERTY TAX EXEMPTION AGREEMENT

THIS MULTIFAMILY HOUSING LIMITED PROPERTY TAX EXEMPTION AGREEMENT ("Agreement") is entered into on the date signed below between Avalon Ballard LLC, a Washington limited liability company, referred to as "Applicant," and The City of Seattle, a Washington municipal corporation, referred to as "City".

Recitals.

1. Applicant applied for a limited property tax exemption as provided for in Chapter 84.14 RCW and Chapter 5.73 SMC for new multifamily rental housing as part of a mixed-use development ("Multifamily Housing") in the Ballard Residential Targeted Area, and the Director of Housing ("Director") has approved the application; and

2. Applicant has submitted to the City preliminary site plans and floor plans ("Preliminary Plans") for the Multifamily Housing constructed as part of a mixed-use project ("Project") on property situated at 1400 NW Market Street in Seattle, Washington, and described more specifically as follows:

   Lots 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17, Block 117, Gilman Park, according to the Plat thereof recorded in Volume 3 of Plats, Page(s) 40, records of King County, Washington

   hereafter referred to as the "Property"; and

3. Applicant is the owner of the Property; and

4. No existing rental housing building that contained four or more occupied dwelling units was demolished on the Property within eighteen (18) months prior to Applicant's submission of its application for limited property tax exemption; and

5. The City has determined that the Multifamily Housing will, if completed, occupied, and owned as proposed, satisfy the requirements for a final certificate of tax exemption

NOW, THEREFORE, in consideration of the mutual promises herein, City and Applicant do mutually agree as follows:

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1. Conditional Certificate of Acceptance of Tax Exemption.

Subject to Seattle City Council ("Council") approval of this Agreement and Applicant's execution of this Agreement, City agrees to issue a Conditional Certificate of Acceptance of Tax Exemption ("Conditional Certificate"), which will expire three (3) years from the date of approval of this Agreement by the Council unless extended by the Director as provided in SMC 5.73.070. Applicant understands and agrees that this Agreement and the Conditional Certificate pertain to rental housing and that in the event that individual residential units within the Multifamily Housing are sold, this Agreement will automatically terminate, and any Conditional Certificate issued pursuant to this Agreement is void. For purposes of this Agreement, a sale will be deemed to have occurred when an instrument transferring title to an occupant or proposed occupant of an individual residential unit is recorded.

2. Agreement to Construct Multifamily Housing.

a. Applicant agrees to construct the Project on the Property, including the Affordable Units, substantially as described in the Preliminary Plans, subject to such modifications as may be required to comply with applicable codes and ordinances, including the design review process. In no event shall Applicant provide fewer than four (4) new dwelling units designed for Permanent Residential Occupancy as part of the Project. At least fifty percent (50%) of the space in each building of the Project must be devoted to Permanent Residential Occupancy.

b. Applicant agrees to comply with all applicable zoning requirements, land use regulations, and building and housing code requirements contained or incorporated in SMC Titles 22, 23, and 25. Applicant further agrees that approval of this Agreement by the Council, its execution by the Director, or issuance of a Conditional Certificate by the City pursuant to SMC Chapter 5.73 in no way constitutes approval of proposed improvements on the Property with respect to applicable provisions contained or incorporated in SMC Titles 22, 23, and 25 or obligates the City to approve proposed improvements.

c. Applicant agrees that the Multifamily Housing will be completed within three (3) years from the date of approval of this Agreement by the Council, unless extended by the Director for cause as provided in SMC 5.73.070.

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3. Agreement to Provide Affordable Housing.

a. Applicant agrees that, for the entire period of time for which the Multifamily Housing receives a tax exemption, a certain minimum number of the residential units in the Project shall be Affordable Units. Affordable Units means residential units rented at an Affordable Rent (defined below) to Income Eligible Occupants. In accordance with SMC 5.73.040 B.1. a minimum of twenty percent (20%) of all the units in the Project shall be rented to tenants whose Household Annual Income is at or below eighty percent (80%) of Median Income for studio and one-bedroom units and ninety percent (90%) of Median Income for two-bedroom or larger units. For purposes of this Agreement, Affordable Rent means that the annual rent plus tenant paid utilities for the unit do not exceed 30% of the percentage of Median Income designated by this subsection. Median Income means annual family median income for the Seattle-Bellevue-Everett Primary Metropolitan Statistical Area, as published from time to time by HUD. Income Eligible Occupants means that the Household Annual Income at initial occupancy of the Affordable Unit is no greater than the percentage of Median Income designated by this subsection. Household Annual Income is defined in subsection b.(2) below.

b. Applicant is responsible for verifying the income of households occupying Affordable Units no later than the date of initial occupancy.

(1) Prospective tenants of Affordable Units shall be advised of the definition of Household Annual Income at the time they are provided with an application for tenancy.

(2) For purposes of this Agreement, Household Annual Income means the aggregate annual income of all persons over eighteen (18) years of age residing within the same household for a period of at least one month and shall be calculated for prospective tenants by projecting the income anticipated to be received over the twelve-month period following the date of initial occupancy, based on the prevailing rate of income of each person at the time of income verification, which shall be no more than six (6) months prior to the date of initial occupancy.

(3) Documentation of tenant income eligibility for Affordable Units shall be obtained by Applicant or Applicant's agent and maintained on file for audit or inspection through the term of the tenancy, and for one (1) calendar year thereafter. Documentation shall include, at a minimum, an application signed by the prospective tenant declaring monthly or annual income, and certifying that the information thereon is correct, and evidence of current income.

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c. Applicant agrees to make good faith efforts to rent all vacant Affordable Units. Applicant shall comply with all applicable fair housing and nondiscrimination laws, ordinances and regulations.

d. Applicant agrees to rent Affordable Units only pursuant to a form lease or rental agreement prepared by Applicant. Applicant shall provide a copy of the form of lease currently in use to the City promptly upon any request by the City. The form lease or rental agreement shall comply with all applicable laws; shall not include any provisions prohibited by applicable laws or regulations; shall prohibit subletting or assignment of the lease without the express written approval of Applicant, which approval shall not be granted by Applicant if the result would be any violation of the requirements of this Agreement to provide affordable housing; and shall state that information about the affordable housing requirements pursuant to SMC Chapter 5.73 is available from the City's Office of Housing.

e. Applicant agrees that the mix and configuration of the Affordable Units shall be substantially proportional to the mix and configuration of the total housing units in the Project provided that units with the same number of bedrooms shall be combined into a single category for the purpose of compliance with this provision. If the Project contains more than one building, Applicant agrees that all of the Affordable Units will not be located in the same building.

f. Applicant agrees that the Affordable Units shall have substantially the same level of interior fixtures and quality of finish as the other housing units in the Project.

4. Requirements for Final Certificate of Tax Exemption.

Applicant may, upon completion of the Multifamily Housing and upon issuance by the City of a temporary or permanent certificate of occupancy, request a Final Certificate of Tax Exemption ("Final Certificate"). The request shall be in writing directed to the City's Office of Housing and be accompanied by all of the following:

a. A statement of expenditures made with respect to each housing unit in the Project and the total expenditures made with respect to the entire Project.

b. A description of the completed work 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.

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d. Information regarding Applicant's compliance with the affordability requirements in SMC 5.73.040 and this Agreement, which shall include all of the following:

(1) Identification of all Affordable Units, whether rented or held vacant to be rented by Income Eligible Occupants.
(2) Rents (or offering rents, as applicable) for all Affordable Units.
(3) A copy of the application form used for rental of Affordable Units.
(4) A copy of the form of lease or rental agreement to be used for Affordable Units.

e. Any such further information that the Director deems necessary or useful to evaluate eligibility for the Final Certificate.

5. Agreement to Issue Final Certificate.

The City agrees to file a Final Certificate with the King County Assessor within forty (40) days of submission of all materials required by Section 4, if Applicant has:

a. successfully completed the Multifamily Housing in accordance with the terms of this Agreement and SMC Chapter 5.73; and

b. filed a request for a Final Certificate with the City's Office of Housing and submitted the materials described in Section 4 above; and

c. paid to the City a fee in the amount of $150.00 to cover the Assessor's administrative costs; and

d. met all other requirements provided in SMC Chapter 5.73 for issuance of the Final Certificate.

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6. Annual Certification.

Within thirty (30) days after the first anniversary of the date the City filed the Final Certificate with the King County Assessor and each year thereafter for a period of twelve (12) years, Applicant agrees to file a certification or declaration with the Director, verified upon oath or affirmation, with respect to the accuracy of the information provided therein, containing the following:

a. a statement of the occupancy and vacancy of the Multifamily Housing during the previous year; and

b. a statement that the Multifamily Housing has not changed use since the date of filing of the Final Certificate; and

c. a statement that the Multifamily Housing continues to be in compliance with this Agreement and the requirements of SMC Chapter 5.73; and

d. a description of any improvements or changes to the Project made after the filing of the Final Certificate or the previous annual certification; and

e. information and documentation sufficient to demonstrate, to the satisfaction of the Director, compliance with the affordability requirements of SMC 5.73.040 B. and this Agreement, which shall, at minimum, include the following:

(1) identification of each Affordable Unit, and any substitution of Affordable Units during the previous year; and

(2) for each Affordable Unit that was initially occupied or that had a change of tenancy during the previous year, the date of each tenant's initial occupancy, the household size and Household Annual Income of each tenant household at initial occupancy, and the rent charged at initial occupancy; and

(3) for any Affordable Units with turnover during the previous calendar year, the date on which any tenancy was terminated, and the time during which the unit remained vacant; and

(4) the current contract rent on the anniversary date of the Final Certificate for each Affordable Unit.

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7. No Violations for Duration of Exemption.

For the duration of the limited tax exemption granted under SMC Chapter 5.73, Applicant agrees that the Project and the Property will have no violations of applicable zoning requirements, land use regulations, and building and housing code requirements contained in SMC Titles 22, 23, and 25 for which the City's Department of Planning and 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 another method that proves either compliance or that no violation existed, 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 the Department of Planning and Development.

8. 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. Applicant further 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 to another use. Applicant acknowledges that such a change in use may result in cancellation of the limited tax exemption and imposition of additional taxes, interest and penalties pursuant to State law.

9. Cancellation of Exemption - Appeal.

a. The City reserves the right to cancel the limited tax exemption if at any time the Multifamily Housing no longer complies with the terms of this Agreement or with the requirements of SMC Chapter 5.73, or for any other reason no longer qualifies for a limited tax exemption.

b. If the limited tax 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 (1) of this subsection b.; 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 RCW Chapter 84.14 and SMC Chapter 5.73. 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 of any change of use of any or all of the Multifamily Housing or at the time

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that all or any portion of the Multifamily Housing no longer meets 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 limited tax exemption is to be canceled, the Director, on behalf of the Council, shall notify the owner of the Property by certified mail, return receipt requested. The owner of the Property may appeal the determination in accordance with RCW 84.14.110 and SMC 5.73.110.

10. Amendments.

No modification or amendment of this Agreement shall be made unless mutually agreed upon by the parties in writing and unless in compliance with the provisions of SMC 5.73.065.

11. 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 and are intended to run with the land.

12. 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 limited tax exemption as the Director deems appropriate for recording, including requirements under SMC Chapter 5.73 relating to affordability.

13. 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 SMC Chapter 5.73 and to perform evaluations of the effectiveness of the Multifamily Housing Property Tax Exemption program. Applicant agrees to make appropriate records available for review or audit upon seven (7) days' written notice by the City.

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14. 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.

OWNER:

Avalon Ballard LLC
11808 Northrup Way #W311
Bellevue WA 98005
Phone: (425) 576-2123 Fax: (425) 576-8548
Attn. Derek Bottles

CITY:

City of Seattle
Office of Housing
700 Fifth Avenue, #5700
PO Box 94725
Seattle, Washington 98124-4725
Phone: (206) 684-0721 Fax: (206) 233-7117
Attention: Director

15. Defined Terms.

All capitalized terms not otherwise defined in this Agreement are defined in SMC Chapter 5.73.

16. 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 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.

CITY CLERK

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

CITY:
The City of Seattle

By:_____
Rick Hooper,
Acting Director of Housing

Date: _____

OWNER:
Avalon Ballard LLC
a Washington limited liability company

By:_____
Name: _____
Its: _____

Date: _____

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Amy Gray/ASG
OH Avalon Ballard MFTE RES Exhibit A
January 21, 2011
Version #2

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this _____day of _____, 2011, personally appeared before me **Rick Hooper**, to me known to be the **Acting Director of Housing of The City of Seattle**, the municipal corporation that executed the within and foregoing instrument, and acknowledged 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 was authorized to execute said instrument.

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

_____
Print name:_____
NOTARY PUBLIC in and for the State of Washington,
residing at _____
My Commission expires _____

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STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this ____ day of _____, 2011, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____ to me personally known (or proved on the basis of satisfactory evidence) to be the _____ of **Avalon Ballard LLC,** , a Washington limited liability company, and acknowledged said instrument to be the free and voluntary act and deed of Avalon Ballard LLC for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute the said instrument.

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

Date: _____

_____
NOTARY PUBLIC in and for the State of
Washington residing at _____
My commission expires: _____
PRINT NAME: _____

Use this space for Notary Seal/Stamp

DIS CITY CLERK

Amy Gray
OH MFTE Avalon Ballard FISC
January 13, 2011
Version #1a

Form revised: December 14, 2010

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Office of Housing	Amy Gray/4-0262	Kristi Beattie/ 4-5266

Legislation Title: A RESOLUTION authorizing the Director of Housing to enter into a Multifamily Housing Limited Property Tax Exemption Agreement between the City of Seattle and Avalon Ballard LLC for new multifamily rental housing constructed as part of a mixed-use project on property situated at 1400 NW Market Street, Seattle, Washington, under Seattle's Multifamily Housing Property Tax Exemption Program, Seattle Municipal Code Chapter 5.73.

Summary of the Legislation: The proposed Resolution authorizes the Director of Housing to enter into a Multifamily Housing Limited Property Tax Exemption Agreement ("Agreement") for new multifamily rental housing constructed as part of a mixed-use project at 1400 NW Market Street, Seattle. The value of the multifamily residential improvements will be exempt from taxation for up to 12 successive years so long as the owner and its successors comply with the requirements of the Agreement and SMC Chapter 5.73, including the requirement that at least 20 percent of the units are affordable units, for the duration of the tax exemption period. There is no tax exemption for the portion of the project that is not residential according to the King County Assessor.

Background: The current Multifamily Housing Property Tax Exemption Program was adopted by the City Council in June 2008 (Ordinance 122730). After the Director of Housing approves an application for limited tax exemption for multifamily housing under SMC Chapter 5.73, the applicant must enter into a contract approved by Resolution of the City Council to receive the exemption. This Resolution allows the Director of Housing to enter into a Multifamily Housing Limited Property Tax Exemption Agreement with the applicant.

Project Description:

- The project consists of 271 rental housing units.
- The project will contain 59 studio units, 164 one-bedroom units and 48 two-bedroom units.
- 20 percent (55 units) will be affordable to households with incomes between $47,900 and $69,350 (80 percent of median income for the studio and one-bedroom units, and 90 percent of median income for the two-bedroom units).
- The fifty-five affordable units will be comprised of 12 studio units, 33 one-bedroom units, and 10 two-bedroom units.
- The total value of the first year exemption is $467,529, of which $151,240 is Seattle's portion.
- The project is estimated to add $0.55 to the tax bill of the average assessed-valued home of $446,124 in the first year of exemption.

_X_ **This legislation does not have any financial implications.**

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City of Seattle
Office of the Mayor

February 8, 2011

Honorable Richard Conlin
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Conlin:

I am pleased to transmit the attached proposed Resolution that authorizes the Director of Housing to enter into an agreement with Avalon Ballard LLC to provide a property tax exemption under Chapter 5.73 of the Seattle Municipal Code for rental housing developed at 1400 NW Market Street. Each application for a multifamily housing limited property tax exemption requires Council adoption of a Resolution that authorizes the Director of Housing to enter into a contract with the applicant.

The Multifamily Housing Property Tax Exemption Program was enacted to help provide affordable housing in targeted areas. The Avalon Ballard Apartments project will contain 271 rental units (59 studios, 164 one-bedroom units and 48 two-bedroom units). At this time, the developer anticipates that twenty percent of the units (55 units) will be affordable to households earning between $47,900 and $69,350 per year, depending on the household size (80% of median income for the studio and one-bedroom units and 90% of median income for the two-bedroom units).

The Avalon Ballard Apartments project will help achieve multiple housing objectives in the Ballard Residential Targeted Area by providing additional housing opportunities, including affordable workforce housing. Thank you for your consideration of this legislation. Should you have any questions, please contact Amy Gray at 684-0262.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor
Office of the Mayor
600 Fourth Avenue, 7th Floor
PO Box 94749
Seattle, WA 98124-4749

Tel (206) 684-4000
Fax (206) 684-5360
TDD (206) 615-0476
mike.mcginn@seattle.gov

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