

MEMORANDUM

December 14, 2010

TO: Honorable Mayor and City Commissioners

VIA: Judith Delmar, City Manager^{jhd}

FROM: Margaret Swanson, Director of Planning and Development

RE: Sunrise Park Apartments – Impact Fee Agreement

SYNOPSIS

Approval is requested for an impact fee agreement with Norstar, developer of Sunrise Park Apartments, a 196-unit complex located on the south side of Burns Ave. at the Old Scenic Highway. The agreement authorizes water impact fee credits for construction by the developer of a water main connecting the development with the City's Burns Avenue water plant. The water line will provide required fire flow (water pressure) for the 5-story senior apartment building proposed in Phase 2 of the development and will improve the City's water distribution system in the neighborhoods on the south side of Burns Avenue. Reimbursement to the developer is capped at 50% of project costs, not to exceed \$50,000.

RECOMMENDATION

Staff recommends approval of the Impact Fee Agreement with Norstar Development for Phase 1 of Sunrise Park Apartments (72 multi-family units).

BACKGROUND

Impact fee credits for construction of public facilities can be granted by City Commission through a development agreement per sec. 23-770 of the City Code. Staff estimates that the construction of the proposed water main from the Burns Avenue water plant and Sunrise Park Apartments will benefit the City and the developer equally. Improving service south of Burns Ave. is desirable to the City, but the project is not programmed in the near future because of higher priorities for City funds.

Exhibit C of the agreement sets forth the details of utility impact fees and proposed credits. Under the agreement, Norstar will construct the improvement and will be reimbursed for 50% (not to exceed \$50,000) of the cost of the project. Final construction cost for reimbursement is subject to approval by the City per Code requirements.

An alternative formula for utility impact fees was authorized by the City Manager to allow a discount for affordable housing. The formula for a 6-inch meter for commercial development was used in lieu of the residential unit fee, resulting in a reduction of \$28,679. Per the alternative formula, the City's capital cost per gallon of water and wastewater flow is multiplied by the projected gallons of usage. Estimates of usage were provided by the applicant.

Credit for the water main construction is limited to the distribution portion of the water impact fee, which is 68% of the fee. For phase 1, water impact fees will total \$113,665 (\$1,568.78 per unit); all credits can be covered in this phase.

Plans for the main are included in construction plans for phase 1 of the project (72 multi-family units). The main will run from the plant southward across and under Burns Ave. to the apartment complex. The project is necessary for adequate fire flow for phase 2, the 5-story senior apartment building. The applicant has been notified that the site development permit, to commence construction, is ready to be issued. Current activity on the site is limited to grading and tree removal.

The three phases of the project are:

- Phase 1 – West side of site – Old Scenic Highway
72 multi-family units (in 11 buildings), the leasing office/community center, tennis courts (2 townhouse buildings with 6 units each, 3 townhouse buildings with 4 units each, and 6 buildings with 8 flats each.)
- Phase 2 – East side of site – 5th Street
72-unit senior apartment building
- Phase 3 – Center of site
52 multi-family units in 8 buildings (5 townhouses with 4 units each, 3 buildings with 8 flats each)

FISCAL IMPACT

The agreement will authorize up to \$50,000 of water impact fees from the apartment project to be used for the proposed water main rather than for other projects on the capital improvements program. The benefit to the City is that the project cost will be shared by the developer.

OTHER OPTIONS

The City Commission could turn down the agreement. The developer would then not receive credit for 50% of the water main construction and would have to pay 100% of the cost. The developer's other option would be to modify the plan for the 5-story building to meet requirements for fire flow.

ATTACHMENTS

Impact Fee Agreement for Sunrise Park Apartments

IMPACT FEE AGREEMENT

BETWEEN

CITY OF LAKE WALES, FLORIDA

AND

NORSTAR DEVELOPMENT USA, LP

FOR

Phase ~~I~~^{II} - Sunrise Park Apartments

PROJECT

This instrument prepared by:

**City of Lake Wales
201 W. Central Avenue
Lake Wales, FL 33853**

IMPACT FEE AGREEMENT

THIS IMPACT FEE AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 2010 by and between Norstar Development USA, LP, and its successors and assigns, having an office at 3629 Madaca Lane, Tampa, FL 33618 (hereinafter referred to as "DEVELOPER"), and The City of Lake Wales, Florida whose business address is 201 W. Central Ave, Lake Wales, Florida 33853, and its successors and assigns (hereinafter referred to as "CITY").

RECITALS

1. DEVELOPER, with the express consent of the owner, controls the land located inside the boundaries of the City of Lake Wales, as described herein, which property is more particularly described in Exhibit “A”, attached hereto and made a part hereof (the Property); and
2. DEVELOPER intends to develop the Property by erecting residential improvements as provided in the Development Plan and Proposed Plat for Sunrise Park Apartments attached hereto as Exhibit “B”(if applicable); and,
3. DEVELOPER intends to develop the Property in three phases (herein collectively called “the Development”), the first phase of which, and the subject of this Agreement, will consist of 72 affordable multifamily housing units (Phase I of the Development is herein called “the Project”); and,
4. DEVELOPER is desirous of having available to the Property the CITY’s central potable water and wastewater systems, and when available, irrigation system utilizing reclaimed water; and,
5. The CITY is willing to provide, in accordance with the provisions of this Agreement, utilities services, including without limitation potable water, wastewater, and irrigation water services to the property in the manner provided herein; and,

DEVELOPER and CITY therefore agree as follows:

RECITALS AND EXHIBITS PART OF AGREEMENT

The above recitations are true and correct, are hereby incorporated herein by reference, and form a material part of this Agreement. All exhibits to this Agreement are hereby deemed a part hereof.

SECTION 1
DEFINITIONS

The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and shall apply unless the context indicates a different meaning or unless they are contradicted by CITY ordinance or State law:

- 1.1 “Development Plan” - the proposed improvements to be constructed by the DEVELOPER on the property and the anticipated time for the construction thereof as set forth in Exhibit “B” attached hereto and made a part hereof.

- 1.3 “Phase” - refers to a part of the Property which is being or is to be developed as a unit.
- 1.4 “Project” – shall have the meaning given to the term in the Recitals to this Agreement.
- 1.5 “Property” – all the lands legally described in Exhibit “A”.

SECTION 2 GENERAL COVENANTS BETWEEN THE PARTIES

2.1 Other Builders. The parties recognize and acknowledge that DEVELOPER may engage one or more independent builders other than DEVELOPER to effect the development of the Property, however, DEVELOPER shall ensure that each builder has received a copy of this Agreement and has agreed to comply with this Agreement. Nevertheless, DEVELOPER is, and shall remain, fully responsible to CITY for compliance with this Agreement by said additional builders unless said builders enter into independent agreements with CITY which exculpate DEVELOPER from liability due to those builders’ activities.

2.2 DEVELOPER’s Control of Property. DEVELOPER represents to the CITY that DEVELOPER either owns the Property, or has entered into a binding agreement to develop the Property for the Owner and that DEVELOPER is authorized by the Owner to enter into this Agreement.

**SECTION 3
WATER AND WASTEWATER CAPACITY CHARGES, IMPACT FEES AND
OTHER CHARGES**

3.1.1 DEVELOPER hereby agrees to pay to CITY all water and wastewater impact fees in accordance with CITY ordinances in effect at the time the capacity is used by the consumer. The water and wastewater capacity fees due from DEVELOPER for the Project shall be those fees listed in Exhibit “C,” adjusted up to the fees as they exist on the date when building permits are issued. The payment by DEVELOPER of all sums set forth in Exhibit “C” in accordance with the terms and the manner set forth therein, shall be considered essential to the continued performance by CITY of the terms and conditions of this Agreement.

**SECTION 4
LAWS OF FLORIDA TO GOVERN / VENUE**

This Agreement shall be governed by the laws of the State of Florida, and the proper venue shall be in the Courts of the 10th Judicial Circuit, in and for Polk County, Florida, and the parties agree to waive any right to jury trial.

**SECTION 5
SECTION HEADINGS FOR CONVENIENCE ONLY**

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+ 360 pt + 396 pt + 432 pt + 468 pt

Section headings used in this agreement are for convenience only and have no significance in the interpretation of the body of this Agreement, and the parties hereto agree that they shall be disregarded in construing the provisions of this Agreement.

SECTION 6
WARRANTY OF AUTHORITY TO EXECUTE AGREEMENT

The signature of any person to this Agreement shall be deemed representation of a personal warranty by that person that he/she has the power and authority to bind any corporation, partnership, or any other business entity for which he or she purports to act.

SECTION 7
DOCUMENT IS THE RESULT OF MUTUAL DRAFTSMANSHIP

The terms and conditions in this Agreement are the product of mutual draftsmanship by both parties, each being represented by counsel, and any ambiguities in this Agreement or any documentation prepared pursuant to it shall not be construed against any of the parties because of authorship. The parties acknowledge that all the terms of this Agreement were negotiated at arms' length, and that each party, being represented by counsel, is acting to protect its, his, her, or their own interest.

SECTION 8
DISCLAIMER OF THIRD PARTY BENEFICIARIES

This Agreement is for the sole benefit of the parties hereto, and no right of action shall accrue upon or by reason hereof, to or for the benefit of any third party. Nothing in this Agreement either express or implied is intended or shall be construed to confer upon or give any person, corporation or governmental entity other than the parties hereto any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof, and all of the provisions, representations, covenants and conditions herein contained shall inure to the sole benefit of and shall be binding upon the parties hereto and their respective representatives, successors and assigns.

SECTION 9
CONFLICT WITH LAWS

In the event of a conflict between provisions in this Agreement and the provisions in any federal or state law, or any CITY ordinance, resolution, rules and regulations or code, the parties shall first attempt to read the provisions in reasonable harmony, and if no agreement can be reached, the provision of federal law, then state law, then CITY ordinance (Code), resolution, rules and regulations shall prevail over the affected provision(s) of this Agreement, in that order.

SECTION 10
SAVING CLAUSE

In the event that any portion of this Agreement shall be deemed by a court of competent jurisdiction to be unlawful or invalid, the parties shall first attempt to renegotiate that portion of the Agreement. The remainder of the Agreement shall remain enforceable. Failing an agreement on replacement provision(s), the obligations of the parties hereto shall be governed as provided by CITY ordinance, resolution or rules and regulations.

SECTION 11
WAIVER; REMEDIES

No failure or delay on the part of either party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any waiver on the part of either party of any right, power, or privilege hereunder operate as a waiver of any other right, power, or privilege hereunder, nor will any single or partial exercise of any right, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power, or privilege hereunder.

SECTION 12
EXHIBITS

The exhibits attached hereto are hereby incorporated in and made a part of this Agreement as if set forth in full herein.

SECTION 13
NOTICE; PROPER FORM

Any notice to be given shall be in writing and shall be sent by hand delivery, certified mail, return receipt requested, FedEx, Express Mail, UPS, or DHL, to the party being noticed at the following addresses:

AS TO CITY: Judith H. Delmar
City Manager
City of Lake Wales
201 W. Central Ave,
Lake Wales, Florida 33853

COPY TO: Albert C. Galloway, Jr., City Attorney
202 East Stuart Avenue
Post Office Box 3339
Lake Wales, Florida 33853

AS TO DEVELOPER: Richard L. Higgins, President
Norstar Development USA, LP
200 South Division Street
Buffalo, New York 14204

COPY TO:
Patricia Green, Esquire
Stearns Weaver Miller Weissler Alhadeff &
Sitterson, P.A. Museum Tower, Suite 2200
150 West Flagler Street

Miami, Florida 33130

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IN WITNESS WHEREOF, DEVELOPER and CITY have executed or have caused this Agreement, with the named Exhibits attached, to be duly executed.

DEVELOPER

Signed, sealed and delivered before
these witnesses:

(Signed)

(Printed)

(Signed)

(Printed)

DEVELOPER:

NORSTAR DEVELOPMENT USA, LP, a
Texas limited partnership

By: NORDEV, INC., a Delaware
corporation, its Managing General Partner

By: _____
Richard L. Higgins, President

STATE OF _____
COUNTY OF _____

SWORN TO AND SUBSCRIBED freely and voluntarily for the purposes therein expressed before me by _____, as the President of Nordev, Inc., a Delaware coporaion, as managing general partner of Norstar Development USA, LP, a Texas limited partnership, on behalf of the partnership, known to me to be the person described in and who executed the foregoing, this ____ day of _____, 2010. He is personally known to me or has produced _____ (type of identification) as identification.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____ 2008.

Notary Public

My Commission Expires:

CITY OF LAKE WALES

[SEAL]

CITY OF LAKE WALES, FLORIDA,

ATTEST: _____
Clara VanBlargan, City Clerk

By: _____
Judith H. Delmar, City Manager

APPROVED AS
TO FORM: _____
Albert C. Galloway,
City Attorney

[ADD NOTARY FOR THE CITY OF LAKE WALES SIGNATORIES]

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY- Phase I

LEGAL DESCRIPTION

The North 1/2 of the Southwest 1/4 of the Southeast 1/4 of Section 35, Township 29 South, Range 27 East, Polk County, Florida, less road right-of-way, being more particularly described as follows: Commence at the Southwest corner of said North 1/2; thence North 89°31'28" East along the South line of said North 1/2 a distance of 15.00 feet to the East right-of-way line of Old Scenic Highway and the Point of Beginning; thence continue North 89°31'28" East still along the said South line 1290.11 feet to the West right-of-way line of North Wales Drive, said point being on a line bearing South 89°31'28" West and 15.00 feet from the Southeast corner of aforesaid North 1/2; thence North 00°46'37" West, parallel to and 15.00 feet West of the East line of said North 1/2, and along said West right-of-way line 557.19 feet to the South right-of-way line of Burns Avenue (State Road No. 17-A); thence South 89°42'02" West along said South right-of-way line 7.03 feet; thence North 00°17'59" West still along said South right-of-way line 25.91 feet; thence South 89°11'51" West, parallel to and 37.00 feet South of the North line of aforesaid North 1/2 and still on the said South right-of-way line 1248.69 feet; thence South 44°10'58" West, still along said South right-of-way line 28.28 feet; thence South 00°49'56" East still along said South right-of-way line 46.16 feet; thence South 89°10'04" West still along said South right-of-way line 15.02 feet again to the aforesaid East right-of-way line of Old Scenic Highway; thence South 00°49'10" East parallel to and 15.00 feet East of the West line of aforesaid North 1/2 and along said East right-of-way line 509.64 feet to the Point of Beginning.

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EXHIBIT "B"

DEVELOPMENT PLAN FOR PROPERTY

SEE ATTACHED

Initials _____

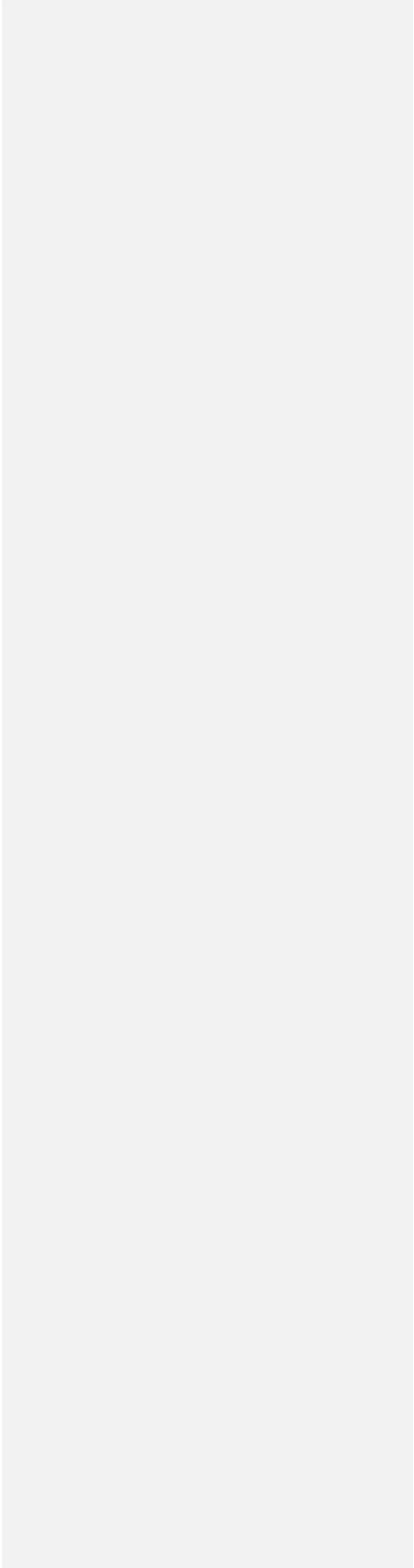


EXHIBIT "C"
SCHEDULE OF CHARGES AND PAYMENT FOR SEWER AND WATER IMPACT FEES INCLUDING CREDITS

In order to further induce the CITY to provide municipal services, DEVELOPER hereby agrees to pay to the CITY, in accordance with the terms and conditions set forth below, the sums of money set forth herein, together with such other charges as are hereafter provided for by law. The CITY shall charge any other rates, fees and charges lawfully authorized by the CITY Commission.

Water and Wastewater Impact Fees: DEVELOPER agrees to pay CITY water and wastewater system impact fees to CITY to reserve water and wastewater treatment plant capacity for Phase I (72 units) of the DEVELOPER's Project in accordance with CITY ordinances and this Agreement as follows:

Water system impact fee:

Annualized average daily demand - 17,568 gallons @ \$6.47/gallon = \$113,665 (\$1,578.68/unit)

Water impact fee credit:

The CITY agrees to grant a credit, not to exceed \$50,000, of the cost for the DEVELOPER's construction of a water main from the Development to the CITY's water line on the north side of Burns Avenue. Upon written authorization by the CITY's Director of Public Works of the total amount of credit, such amount to be determined as required by City Code, credits will be granted equal to 68% of the water impact fee per unit as the fees are paid until the amount of credit so authorized is exhausted.

Wastewater system impact fee:

Annualized average daily demand – 14,400 gallons @ \$16.12/gallon = \$232,128 (\$3,224/unit)

Total utility impact fees: \$345,793 (\$4,802.68/unit)

Tap-in charges. Various tap-in fees may be charged based on the nature of the individual service lines and size requirements.

Meter installation fees. Various meter installation fees will be charged based on the nature of the individual service lines and size requirements.