

## Petition

**Agency:** Florida Housing Finance Corporation  
227 North Bronough Street, Suite 5000  
Tallahassee, Florida 32301

**File:** 2005-110 Hibiscus Isle

**Petitioner:** Hibiscus Isle Partners, Ltd.  
11900 Biscayne Boulevard, Suite 262  
Miami, Fl 33181  
Phone: 305-891-3331  
Representative: Amber Seidle

Hibiscus Isle Partners, Ltd. is seeking to receive credit for the fee waivers that were provided on the Local Government Verification of Contribution- Fee Waiver form, Exhibit 44 of the Universal Application. This information is also found in Part IVa in the Universal Application. The affect of not receiving five points in the Local Government Support section would keep our development from being in contention for funding during the 2005 Housing Credit Cycle. The City of Fort Myers is in great need of affordable housing at this time.

Hibiscus Isle Partners, Ltd. was informed of the denial of points by the Florida Housing Finance Corporation in the 2005 Universal Scoring Summary via Federal Express on May 26<sup>th</sup>, 2005.

Item #9S: The site of the proposed development, Hibiscus Isle, is located in Fort Myers, Florida. The City of Fort Myers grants impact fee waivers for water and sewer specifically for the development of affordable housing. There are two issues that lead to the denial of points for the Local Government Contribution Section of the 2005 Universal Application. The site of the proposed development is also located in an Enterprise Zone where these impact fees are waived. The Mayor of Fort Myers signed the Local Government Verification of Contribution-Fee Waiver form stating that Hibiscus Isle would receive impact fee waivers in the amount of \$547,040. Florida Housing Finance Corporation denied Hibiscus Isle the five points because the form specified we were located in an Enterprise Zone which waives the impact fees for all construction. Hibiscus Isle Partners, Ltd. should receive these points because we would have received the water and sewer impact fee waivers specifically for affordable housing even if the development was not located in an Enterprise Zone. Please refer to the City of Fort Myers Growth Management Code sections 26-41(a)(1)b2 and 26-96(a)(1)b2. If the development was no longer a part of this Enterprise Zone, the development would receive these impact fee waivers. The effective period of the waivers in

an Enterprise Zone is stated in Enterprise Zone Ordinance No. 2769 which states "until ordinance repealed or building permits are pulled". The interpretation is indefinite but not necessarily before December 31<sup>st</sup>, 2005. If we were not located in this Enterprise Zone or were no longer a part of the Enterprise Zone, we would receive the impact fee waivers specifically for affordable housing, which are effective through September 30<sup>th</sup>, 2011. Please refer to the City of Fort Myers Growth Management Code sections 26-41(a)(1)b and 26-96(a)(1)b. This development happens to be located in an Enterprise Zone. The City of Fort Myers makes contributions in the form of water and sewer impact fee waivers specifically for affordable housing. Hibiscus Isle Partners would have received these impact fee waivers regardless of being located in an Enterprise Zone. Please refer to the package that was submitted to the City of Fort Myers.

The remedy being sought is to receive the maximum five points for the Local Government Support section of the 2005 Universal Application to ensure that Hibiscus Isle is in contention to be awarded funding during the 2005 Housing Credit Cycle.

allocation of water and sewer capital costs. A copy of the same is executed by the mayor and attested by the clerk and a copy shall be placed on file in the office of the city clerk.

(GMC § .010(B)(2)(e); Ord. No. 2640, § 2, 8-17-92)

### **Sec. 26-41. Water impact fees, credits and exemptions.**

(a) *Water impact fees.* No building permit may be issued for any development until the appropriate impact fee has been paid in full.

(1) Except as provided below, no building permit may be issued for any development until the appropriate impact fee has been paid in full. The waiver of any water impact fees must be consistent with, and shall not violate, any bond covenants made by the city.

a. Notwithstanding any provision herein to the contrary, imposition of water impact fees is waived for all construction in that area as shown on the certain map entitled "Impact Fees Exemption Areas," dated November 1995, on file in the office of the city clerk.

b. As provided herein, standardized application forms for waivers of water impact fees for construction of new residential dwellings in the city limits developed and approved by resolution of the city council shall continue to be accepted and thereafter processed to finality until September 30, 2011. After September 30, 2011 the city shall no longer accept or process application forms for waivers of water impact fees.

1. Review and approval of any water impact waiver shall include a determination of an increase in net revenues to the city and must clearly calculate the amount and type of impact fees to be waived.

2. Additionally, for items c.3. and 4. below, the application for waiver of water impact fees shall indicate that such waiver is expected to substantially advance redevelopment, urban infill, availability of affordable housing, or economic development within the city.

3. The approval of impact fee waivers as set forth in subsections (a)(1)c.1. and 2. are subject to payment of two and three-tenths (2.3) percent of the amount of impact fees waived for administrative fees.

c. Upon complete application made prior to September 30, 2011, water impact fees may continue to be waived for construction of new residential dwellings in the city limits in the following manner:

1. Projects which simultaneously seek both a building permit and a water impact fee waiver for construction of a new residential dwelling, shall be reviewed administratively and timely approved or denied, by the building official and public works director, using the criteria and requirements identified. An appeal of any decision of the building official and public works director by the party seeking the waiver may be made to the city council within thirty (30) days of a written determination by the building official and public works director.

1 1/2	80	5.33	x	( 1,221	+	745)	=	10,479
2	120	8.00	x	( 1,221	+	745)	=	15,728
3	250	16.67	x	( 1,221	+	745)	=	32,773
4	350	23.33	x	( 1,221	+	745)	=	45,867
6	700	46.67	x	( 1,221	+	745)	=	91,753
8	1,200	80.00	x	( 1,221	+	745)	=	157,280

The property owners shall additionally be billed for the actual cost of labor and material for all service connections longer than fifty (50) feet, which must be paid by the owner to the city before city sewer service is supplied.

(GMC § .010(C)(1); Ord. No. 2640, § 5, 8-17-92; Ord. No. 2915, § 2, 10-4-99; Ord. No. 3051, § 3, 3-4-02)

**Sec. 26-94. Reserved.**

**Editor's note:** The Growth Management Code, § .010(C)(1), adopted September 18, 1989, outlining a schedule of impact fees for sewer customer, and designated as section 26-94, was deleted in its entirety by section 6 of Ord. No. 2640, adopted August 17, 1992.

**Cross references:** Sanitary sewer system rates and charges, § 18-76 et seq. Impact fee imposed.

**Sec. 26-95. Allocation of funds; fee report adopted.**

(a) Revenues from section 26-94 shall be allocated upon receipt thereof into an impact fee escrow account (sewer) and shall be used semiannually to aid in the retirement of the portion of bonds associated with excess capacity and for such other sewer plants and main line capital improvements as the city council may approve.

(b) The "Water and Wastewater Impact Fee Study" prepared by Burtin and Associates, dated February 1992, is hereby adopted and made a part hereof for allocation of water and sewer capital costs. A copy of the same executed by the mayor and attested by the clerk and a copy shall be placed on file in the office of the city clerk.

(GMC § .010(C)(1)(c); Ord. No. 2640, § 7, 8-17-92)

**Sec. 26-96. Sewer impact fees; credits and exemptions.**

(a) *Sewer impact fees.* No building permit may be issued for any development until the appropriate impact fee has been paid in full.

(1) Except as provided in subsections a. and b. below, no building permit may be issued for any development until the appropriate impact fee has been paid in full. The waiver of any sewer impact fees must be consistent with, and shall not violate, any bond covenants made by the city.

a. Notwithstanding any provisions herein to the contrary, imposition of sewer impact fees is waived for all construction in that area as shown on

the certain map entitled "Impact Fees Exemption Areas," dated November 1995, on file in the office of the city clerk.

b. As provided herein, standardized application forms for waivers of sewer impact fees for construction of new residential dwellings in the city limits developed and approved by resolution of the city council shall continue to be accepted and thereafter processed to finality until September 30, 2011. After September 30, 2011 the city shall no longer accept or process application forms for waivers of sewer impact fees.

1. Review and approval of any sewer impact waiver shall include a determination of an increase in net revenues to the city and must clearly calculate the amount and type of impact fees to be waived.

2. Additionally, for items c.3. and 4. below, the application for waiver of sewer impact fees shall indicate that such waiver is expected to substantially advance redevelopment, urban infill, availability of affordable housing, or economic development within the city.

3. The approval of impact fee waivers as set forth in subsections (a)(1)c.1. and 2. are subject to payment of two and three-tenths (2.3) percent of the amount of impact fees waived for administrative fees.

c. Upon complete application made prior to September 30, 2011, sewer impact fees may continued to be waived for construction of new residential dwellings in the city limits in the following manner:

1. Projects which simultaneously seek both a building permit and a sewer impact fee waiver for construction of a new residential dwelling, shall be reviewed administratively and timely approved or denied, by the building official and public works director, using the criteria and requirements identified. An appeal of any decision of the building official and public works director by the party seeking the waiver may be made to the city council within thirty (30) days of a written determination by the building official and public works director.

2. Every application for a waiver of sewer impact fees, except those made concurrently with a building permit application, shall be contingent upon the record owner entering into an agreement prepared by the city attorney and approved by the city council, memorializing the terms and conditions thereof within ninety (90) days of approval of the waiver application by the city. Unless otherwise provided for in an agreement authorized herein for a phased development, failure to lawfully secure a building permit and commence construction as provided herein prior to September 30, 2011 and to continue construction in good faith to substantial completion, shall cause the waiver to expire without necessity of further notice and be of no further force and effect. Upon the expiration of any sewer impact fee waiver, any construction of new residential dwellings shall be subject to the payment of any sewer impact fees or charges then in effect.

3. Persons seeking a waiver of sewer impact fees in advance of applying for building permits may do so provided, that each application for waiver of sewer impact fees reasonably

# RHS Urban L.L.C.

11900 Biscayne Boulevard Suite 262

Miami, FL 33181

Phone: (305) 891-3331

Fax: (305) 891-0086

December 6, 2004

Ms. Barb Vrell  
Impact Fee Analyst  
Public Works/Engineering  
City of Fort Myers  
2200 Second Street  
Fort Myers, FL 33901

RE: IMPACT FEE WAIVER APPLICATION

VIA FEDERAL EXPRESS

Ms. Vrell,

I have enclosed the water and sewer impact fee waiver applications and back up for the two proposed developments. I will have the preliminary site plans in the next day or so and I will bring those with me when I meet with you. I will call you tomorrow to confirm a time to meet with you on either Wednesday or Thursday of this week. Also, just a reminder the closing documents will be submitted to you as soon as we close on the property which should take place on December 13<sup>th</sup>, 2004. Thank you for your help. Please call me if you have any questions or comments.

Sincerely,



Amber J. Seidle







# City of Fort Myers, Florida

## SEWER IMPACT FEE WAIVER

APPLICATION FORM  
(FOR RESIDENTIAL USE ONLY)

Prepared date: 12/2/2004

Application # \_\_\_\_\_ Date of Application: 12/2/2004

Record Title Owner: RHS Urban L.L.C.

Strap # 16-44-25-P2-00069.0000

Site Address: Ortiz Avenue & East Michigan Avenue

**Check the appropriate Option:**

Option I. - Waiver request concurrent with building permits

Option II. - Waiver request for two (2) year deferment to apply for building permits; 100% of permits issued within two years. I understand an Agreement is required, and that the waiver will expire if development does not timely occur.

Option III. - Waiver request for phased project up to seven (7) years with 5% of building permits issued within 2 years; 50% of building permits issued in 5 years; and 100% of building permits issued within 7 years. I understand an Agreement is required, and that the waiver will expire if development does not timely occur.

Number of units proposed: 160 type:  single family  multi-family

Amount of sewer impact fees to be waived \$ 269,600

160 (# of units) x \$ 1,685 (impact fees) = \$ 269,600 (Total amount of sewer impact fees to be waived)

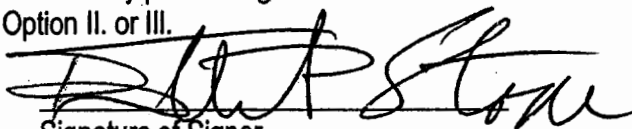
**Explain how proposed project increases net revenues to the City:** (e.g. current assessed value, current taxable value, current year ad valorem taxes to City, projected taxable value, projected ad valorem taxes to City, estimated building permit fees, estimated road, fire/ems, regional park impacts. Provide calculations) The current assessed and taxable value of the property is \$211,390 and current taxes to the City are \$1,645. The projected taxable value of the property when completed is approximately \$11,115,000 (based on land cost and projected hard and soft costs). The projected ad valorem taxes to the City are approximately \$86,492. The estimated permit fees are approximately \$109,000 (based on estimates provided by the City of Fort Myers permitting department). The estimated road, fire/ems, and regional park impact fees are approximately \$479,200.

**Explain how proposed project substantially advances the availability of affordable housing within the City:** RHS Urban will provide 160 units of quality affordable multifamily housing to the residents of the City of Fort Myers. The proposed development is located in a low income area and a qualified census tract. There is currently a great need for affordable housing in the area, especially for families that have been displaced due to the hurricanes.

AFFIDAVIT

I, Elliot N. Stone, being first duly sworn, depose and say that I am the OWNER, or AUTHORIZED AGENT FOR OWNER of the property referenced above and which is the subject matter of the sewer impact fee waiver request; that all the answers to the questions in this application are honest and true to the best of my knowledge and belief. The record title owner of the subject property is RHS Urban L.L.C.. I understand this application must be completed and accurate before the sewer and water impact fee waiver can be considered; that I am authorized to sign this application by the owner, or owners.

I hereby request Option II and understand the record title owner has up to 90 days from the date of approval to enter into an agreement with the City prescribing the terms and conditions of the sewer and water impact fee waiver, if requesting Option II. or III.

  
Signature of Signer

Elliot N. Stone, Member  
Print Signature of Signer

STATE OF FLORIDA  
COUNTY OF LEE

Before me this 2nd day of December, 2004, personally appeared  
Elliot N. Stone who is personally known to me or who has  
produced the following as identification.

He/she has acknowledged to and before me that he/she executed such instrument for the purpose

therein expressed

Jamice Most Pickard  
Name

Prepared date: February 10, 2000



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**For Department Use Only:**

Will approving this waiver be consistent with bond covenants made by the City? Yes \_\_\_ No \_\_\_

Finance Director: \_\_\_\_\_ Date approved: \_\_\_\_\_ ((required for Options II, III)

Building Official: \_\_\_\_\_ Date approved: \_\_\_\_\_ (required for Options I, II, III)

Engineering: \_\_\_\_\_ Date approved: \_\_\_\_\_ (required for Option I)

Public Works Director: \_\_\_\_\_ Date approved: \_\_\_\_\_ ((required for Options I, II, III)

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**\*Mayor to sign application if Option II or III. is exercised.**

CITY OF FORT MYERS, FLORIDA  
A municipal Corporation

Attest:

\_\_\_\_\_  
Marie Adams, City Clerk

(City Seal)

\_\_\_\_\_  
Jim Humphrey, Mayor

Approved as to Form:

\_\_\_\_\_  
Grant W. Alley, City Attorney

Prepared date: February 10, 2000

H:\PLANNING\Impact Fees\Sewer impact fee waiver application form - Options I,II, III.doc

**Exhibit B  
Water/Sewer Impact Fee Waivers  
Project Name:**

List all strap numbers separately

	Strap Number	
Current Assessed Value		<u>\$211,390</u>
	Total	<u><u>\$211,390</u></u>
Current Taxable Value		<u>\$211,390</u>
	Total	<u><u>\$211,390</u></u>
Current Year Ad Valorem Taxes to City		\$0
		<u>\$1,645</u>
	Total	<u><u>\$1,645</u></u>
Projected Taxable Value		<u>\$11,115,000</u>
	Total	<u><u>\$11,115,000</u></u>
Projected Ad Valorem Taxes to City	294425P3000010000	\$0
	324425P2000650020	<u>\$86,492</u>
	Total	<u><u>\$86,492</u></u>
Fiscal Impact		\$0
		<u>\$84,848</u>
	Total	<u><u>\$84,848</u></u>

Estimated Road Impact Fees	Single Family	\$0.00
	Multi-Family	<u>\$329,440.00</u>
	Total to City	<u><u>\$329,440.00</u></u>
Estimated Fire Impact Fees	Single Family	
	Multi-Family	<u>\$35,680.00</u>
	Total to City	<u><u>\$35,680.00</u></u>
Estimated EMS Impact Fees	Single Family	\$0.00
	Multi-Family	<u>\$3,520.00</u>
	Total Transferred to County	<u><u>\$3,520.00</u></u>
Estimated School Impact Fees (Benefit to Lee County Only)	Single Family	\$0.00
	Multi Family	<u>\$110,560.00</u>
	Total Transferred to County	<u><u>\$110,560.00</u></u>



# City of Fort Myers, Florida

## WATER IMPACT FEE WAIVER

APPLICATION FORM  
(FOR RESIDENTIAL USE ONLY)

Prepared date: 12/2/2004

Application # \_\_\_\_\_ Date of Application: 12/2/2004

Record Title Owner: RHS Urban L.L.C.

Strap # 16-44-25-P2-00069.0000

Site Address: Ortiz Avenue & East Michigan Avenue

**Check the appropriate Option:**

Option I. - Waiver request concurrent with building permits

Option II. - Waiver request for two (2) year deferment to apply for building permits; 100% of permits issued within two years. I understand an Agreement is required, and that the waiver will expire if development does not timely occur.

Option III. - Waiver request for phased project up to seven (7) years with 5% of building permits issued within 2 years; 50% of building permits issued in 5 years; and 100% of building permits issued within 7 years. I understand an Agreement is required, and that the waiver will expire if development does not timely occur.

Number of units proposed: 160 type: single family  multi-family

Amount of water impact fees to be waived \$ 277,440

160 (# of units) x \$ 1,734 (impact fees) = \$ 277,440 (Total amount of water impact fees to be waived)

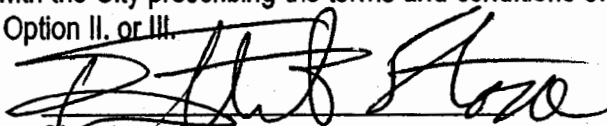
**Explain how proposed project increases net revenues to the City:** (e.g. current assessed value, current taxable value, current year ad valorem taxes to City, projected taxable value, projected ad valorem taxes to City, estimated building permit fees, estimated road, fire/ems, regional park impacts. Provide calculations) The current assessed and taxable value of the property is \$211,390 and current taxes to the City are \$1,645. The projected taxable value of the property when completed is approximately \$11,115,000 (based on land cost and projected hard and soft costs). The projected ad valorem taxes to the City are approximately \$86,492. The estimated permit fees are approximately \$109,000 (based on estimates provided by the City of Fort Myers permitting department). The estimated road, fire/ems, and regional park impact fees are approximately \$479,200 .

**Explain how proposed project substantially advances the availability of affordable housing within the City:** RHS Urban will provide 160 units of quality affordable multifamily housing to the residents of the City of Fort Myers. The proposed development is located in a low income area and a qualified census tract. There currently is a great need for affordable housing in the area, especially for families that have been displaced due to the hurricanes.

AFFIDAVIT

I, Elliot N. Stone, being first duly sworn, depose and say that I am the OWNER, or AUTHORIZED AGENT FOR OWNER of the property referenced above and which is the subject matter of the water impact fee waiver request; that all the answers to the questions in this application are honest and true to the best of my knowledge and belief. The record title owner of the subject property is RHSUrban LLC. I understand this application must be completed and accurate before the sewer and water impact fee waiver can be considered; that I am authorized to sign this application by the owner, or owners.

I hereby request Option II and understand the record title owner has up to 90 days from the date of approval to enter into an agreement with the City prescribing the terms and conditions of the sewer and water impact fee waiver, if requesting Option II, or III.

  
Signature of Signer


Elliot N. Stone, Member  
Print Signature of Signer

STATE OF FLORIDA  
COUNTY OF LEE

Before me this 2<sup>nd</sup> day of December, 2004, personally appeared  
Elliot N. Stone who is personally known to me or who has  
produced the following as identification.

He/she has acknowledged to and before me that he/she executed such instrument for the purpose  
therein expressed.

Name

  
Name

Prepared date: February 10, 2000



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**For Department Use Only:**

Will approving this waiver be consistent with bond covenants made by the City? Yes \_\_\_ No \_\_\_

Finance Director: \_\_\_\_\_ Date approved: \_\_\_\_\_ ((required for Options II, III))

Building Official: \_\_\_\_\_ Date approved: \_\_\_\_\_ (required for Options I, II, III)

Engineering: \_\_\_\_\_ Date approved: \_\_\_\_\_ (required for Option I)

Public Works Director: \_\_\_\_\_ Date approved: \_\_\_\_\_ ((required for Options I, II, III))

---

**\*Mayor to sign application if Option II or III. is exercised.**

CITY OF FORT MYERS, FLORIDA  
A municipal Corporation

Attest:

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Marie Adams, City Clerk

\_\_\_\_\_  
Jim Humphrey, Mayor

(City Seal)

Approved as to Form:

\_\_\_\_\_  
Grant W. Alley, City Attorney

Prepared date: February 10, 2000

H:\PLANNING\Impact Fees\Sewer impact fee waiver application form - Options I,II, III.doc

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Fiscal Impact		\$0
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Estimated School Impact Fees (Benefit to Lee County Only)	Single Family	\$0.00
	Multi Family	\$110,560.00
	Total Transferred to County	<u>\$110,560.00</u>



**AGREEMENT  
OWNER NAME**

**FOR WAIVER OF WATER AND SEWER IMPACT FEES  
(TO BE USED WHEN EXERCISING OPTION II AND III)**

**THIS AGREEMENT** (hereinafter referred to as "Agreement") is entered into between RHS Urban LLC., (the "Owner"); and the City of Fort Myers, Florida, a municipal corporation, (the "City"), as of \_\_\_\_\_.

**W I T N E S S E T H:**

**WHEREAS**, the City currently has excess capacity in its water and wastewater treatment facilities beyond that which is required to address the current rate of new growth within the service area of the City; and

**WHEREAS**, the City desires to encourage and maximize the use of existing capacity in its water and wastewater treatment facility services; and

**WHEREAS**, new growth in residential construction has not occurred and is not occurring as quickly as anticipated; and

**WHEREAS**, the City desires to increase use of existing capacity of water and wastewater facilities by encouraging construction of new residential dwellings in areas conducive to redevelopment, infill and in need of affordable housing within the City; and

**WHEREAS**, ~~construction of new residential dwellings within the City~~ creates positive economic development and impact for the community as a whole; and

**WHEREAS**, the City Council desires to deliberately advance and encourage construction of new residential dwelling units in order to cautiously accelerate the use of existing capacity in the City's water and wastewater treatment facilities and thereby advance an increase in the City's water and wastewater customer base.

**NOW, THEREFORE**, in consideration of the mutual promises, covenants, representations and agreements contained herein, together with Ten Dollars (\$10.00) and other good and valuable consideration exchanged between the parties, the parties to this Agreement do undertake, promise and agree for themselves, their permitted successors and assigns as follows:

**ARTICLE I  
DEFINITIONS AND CONSTRUCTION**

**SECTION 1.01. DEFINITIONS.** As used in this Agreement the terms used herein shall have the meanings as defined in the City Code (as hereinafter defined) unless the context clearly requires otherwise. The term "City Code" shall mean the City of Fort Myers, Florida, City Code of Ordinances, as amended, together with all resolutions, regulations and policies under which the City or its Utilities Department, now and in the future, funds, performs plan review, inspects, tests, provides utilities services and facilities, or accepts dedications and conveyances of utility easements and facilities installed by land developers to serve new growth or development.

**SECTION 1.02. CONSTRUCTION AND INTERPRETATION.**

(a) Words that indicate a singular number shall include the plural in each case and vice versa, and words that import a person shall include firms and corporations.

(b) The terms "herein", "hereunder", "hereby", "hereof", and any similar terms, shall refer to this Agreement; the term "heretofore" shall mean before the date of execution of this Agreement; and the term "hereafter" shall mean on or after the initial date of execution of this Agreement.

(c) Words that reference only one gender shall include all genders.

(d) This Agreement does not and shall not be construed to relieve the Owner or any other person or entity from any obligation to address any permit, condition, term, approval, requirement, or restriction and shall not relieve the Owner or any other person or entity of the obligation to comply with any law, ordinance, rule, or regulation governing said permitting requirements, conditions, terms, approvals, requirements, or restrictions.

(e) This Agreement is not and shall not be construed as a Development Agreement pursuant to the Florida Local Government Development Agreement Act, Sections 163.3220 and 163.3243, Florida Statutes, or its successor in function.

(f) This Agreement shall be construed as consistent with the City Code.

(g) This Agreement shall not be construed as a restriction on the City's power to legislate under its police power or the contracting or bartering away of its police power.

(h) This Agreement shall be construed as resulting from joint negotiation and authorship. No part of this Agreement shall be construed as the sole product of any of the parties hereto.

**SECTION 1.03. INCORPORATION.** The findings, recitals and acknowledgments contained herein are true, correct, and are incorporated in this Agreement.

**SECTION 1.04. SECTION HEADINGS.** Any headings preceding the text of the several articles, sections or appendices in this Agreement and any table of contents or margin notes appended to copies hereof, shall be solely for the convenience of reference and shall neither constitute a part of this Agreement nor affect its meaning, construction or effect.

## **ARTICLE II REPRESENTATIONS**

### **SECTION 2.01. OWNER REPRESENTATIONS.**

(a) The Owner has all requisite power and authority to enter into and desires to perform under the terms this Agreement.

(b) The Owner is the sole Owner of record of the land described or referenced in Exhibit A hereto (the "Site Plan with parcel number and legal description"), which shall be incorporated herein by reference.

(c) The waiver application attached as Exhibit B is true and correct in all respects and the Owner hereby confirms and ratifies same.

(d) Any and all necessary action on the part of the Owner relating to the authorization of, and the Owner's execution and delivery of, this Agreement and the performance of the Owner's obligations under this Agreement, assuming due authorization, execution and delivery by the City, has been duly taken.

**SECTION 2.02. NEW CONSTRUCTION IMMINENT.** Owner reasonably expects, or alternatively intends to cause, construction of new residential dwellings to commence on the Parcel prior to September 30, 2011 in accordance with the waiver application attached hereto as Exhibit B.

**ARTICLE III  
IMPACT FEE WAIVER PROVISIONS-**

**SECTION 3.01. CONDITIONAL IMPACT FEE WAIVER.**

(a) Subject to the provisions of this Agreement and applicable law, the City hereby agrees to waive water and wastewater impact fees for the construction of new residential dwellings on the Parcel. Such waiver shall only apply to construction of new residential dwellings in the quantity and amount as provided in the waiver application approved by the City attached hereto as Exhibit B.

(b) Unless otherwise expressly provided for herein for a phased development project, the Owner's failure to lawfully secure a building permit and commence construction on the Parcel by September 30, 2011, and

to continue construction in good faith to substantial completion shall cause the waiver granted herein to expire, without necessity of further notice, and be of no further force and effect. In no event shall the waiver provided for herein continue beyond September 30, 2011.

(c) The Owner acknowledges that any waiver of impact fees herein is subject to the reserved power of the City to modify this Agreement in the interest of the public welfare without violation of the principle of unconstitutional impairment of contracts. Accordingly, no right of the Owner resulting from this Agreement shall fully vest until such time as each building permit is lawfully issued and construction is thereafter substantially completed. In the event the City, in the exercise of its police powers, effectively modifies this Agreement, the City will afford the Owner one hundred eighty (180) days to lawfully obtain any building permits or otherwise complete the construction of the residential dwellings for which an impact fee waiver is to be granted hereunder, and, if requested by the Owner enter into good faith negotiations to develop a guaranteed revenue or other agreement with the City in an attempt to preserve the waiver of impact fees approved in Exhibit B hereof. However, whether or not such subsequent agreement is entered into and executed shall be a decision made solely by the City.

**SECTION 3.02. IMPLEMENTATION AND ACCOUNTING.**

(a) As of the execution of this Agreement, the City has available uncommitted capacity in its treatment facilities; however, this Agreement is not and shall not be deemed a guarantee of capacity.

(b) All offsite improvements necessary to connect the Parcel to existing City facilities shall be constructed within public rights-of-ways or within easements available to the City or obtained by the Owner; this Agreement shall not be construed to require the City to exercise the power of eminent domain or otherwise expend any funds to acquire any easement or rights-of-way. All utility improvements and facilities shall be constructed in accordance with the City Code.

(c) Notwithstanding whether or not any waiver is granted or not, the Owner understands and acknowledges its obligation to cause the grant or dedication to the City of all easements necessary to provide water, wastewater (including wastewater effluent) services within the Parcel as provided in the City Code and herein. Each grant or dedication, together with appropriate subordinations from any lien holder, shall be in a form acceptable to the City, shall be of a perpetual nonexclusive nature for water and wastewater utility purposes, and shall be provided without cost to or reimbursement by the City. Each grant or dedication shall provide that the land underlying the easement or dedication shall not be subject to, nor subjected in the future to, other inconsistent uses.

(d) The City shall make available a written annual accounting of all impact fee waivers created hereunder which shall at a minimum reflect:

(1) A description of the Agreement, the waiver application, and Parcel and the initial amount of the impact fee waiver therefore;

(2) The date of approval of the waiver by the City and the date of expiration for impact fee waivers resulting therefrom;

(3) The name of the original Owner, and any permitted successors; and

(4) The currently remaining balance of water and wastewater impact fee waivers under this Agreement, and on an aggregate and Parcel basis for all waivers granted.

(e) The issuance of an erroneous impact fee waiver hereunder, or otherwise, by mistake or inadvertence, shall not relieve the owner of the benefiting property from the obligation of full payment of any impact fee which would otherwise be due. The Owner, and its successors, shall hold the City harmless for any mistake or error made in good faith as it accounts for impact fee waivers.

#### **ARTICLE IV GENERAL PROVISIONS**

**SECTION 4.01. POST EXECUTION RELATIONSHIP.** From time to time after execution of this Agreement, the Owner shall, upon request of the City, execute, acknowledge and deliver, or shall cause to be executed, acknowledged and delivered, all such further acts or other documentation for confirming or correcting the waiver application, easement or use rights contemplated hereunder in the name of the City, or otherwise fulfilling the obligations and intent of the parties under this Agreement.



**SECTION 4.02. TIME IS OF THE ESSENCE.**

Time is of the essence in this Agreement. Time periods specified in this Agreement shall expire at midnight on the date stated. Any time period provided for herein which ends on Saturday, Sunday or a legal holiday shall extend to 5:00 p.m. on the next business day.

**SECTION 4.03. APPLICABLE LAW; JURISDICTION AND VENUE;  
HOLD HARMLESS AGREEMENT.**

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

(b) The parties to this Agreement expressly consent to the jurisdiction of and agree to suit in any court of general jurisdiction in the State of Florida, whether state, local or federal, and further agree that venue shall lie in Lee County, Florida.

(c) The Owner, for the additional consideration of ten dollars (\$10.00) and other valuable consideration received, hereby agrees to hold the City, and its agents, officials and employees, harmless from any claim, damage or liability resulting from or arising under this Agreement, the provisions hereof, the waiver or failure to waive any impact fee, or any consequence arising therefrom.

**SECTION 4.04. NOTICE.**

(a) All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand

delivered or mailed by registered or certified mail, postage pre-paid to the following addresses:

To City: City of Fort Myers, Florida  
Attn: Mayor  
Post Office Drawer 2217  
Fort Myers, Florida 33902-2217

City of Fort Myers, Florida  
Attn: City Clerk  
Post Office Drawer 2217  
Fort Myers, Florida 33902-2217

To the Owner: Name RHS Urban L.L.C.  
Address 11900 Biscayne Blvd, Suite 262  
City, State, Zip Code Miami, FL 33181

(b) Any party providing written notice to one person in subsection (a) of this Section shall also copy and provide such notice to all other persons identified in subsection (a).

(c) The parties may, by notice in writing given to the others, designate any future or different addresses to which the subsequent notices, certificates or other communications shall be sent. Any notice shall be deemed given on the date such notice is delivered by hand or five (5) days after the date mailed.

**SECTION 4.05. ASSIGNMENT.**

(a) The Owner shall not have the power or authority to assign this Agreement or any of their rights, duties, or obligations hereunder to a third party except as provided in this section.

(b) Upon notification to the City as provided hereunder, the Owner, or its permitted assignee, may assign all, but not less than all, of its right, title and interest hereunder to its successor owner of all or substantially all of the Parcel, or alternatively, to a first mortgage holder of a mortgage encumbering all, or substantially all, of the Parcel. Any waiver of impact fees granted hereunder shall be of no force and effect if the Owner attempts to reserve or in any way sever the interest, obligations or rights of the Owner hereunder, or a portion of same, upon sale or transfer of all or substantially all of the Parcel. No assignment hereof shall be effective unless and until the City receives a written acceptance from a permitted assignee unqualifiedly agreeing to be bound by the terms and provisions hereof. In no event shall any assignment enlarge or expand any obligation by the City hereunder.

**SECTION 4.06. AMENDMENTS AND WAIVERS.** This Agreement can only be amended by a written amendment executed by the Owner and the City. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision of this Agreement, whether or not similar, unless otherwise expressly provided.

**SECTION 4.07. SEVERABILITY.** In the event that any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**SECTION 4.08. ENTIRE AGREEMENT.** This Agreement is the entire agreement between the parties pertaining to the subject matter hereof,

and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions of the agreements, understandings, negotiations and discussions of the parties, whether written or oral, and there are no warranties, representations or other agreements between the parties in connection with the subject matter hereof, except as specifically set forth herein. Upon execution by all parties, the Owner may obtain a complete certified copy of this Agreement together with the copies of any exhibits and appendices thereto from the City Clerk.

IN WITNESS WHEREOF, the City and the Owner have caused this Agreement to be duly executed on the date written below.

**CITY OF FORT MYERS, FLORIDA  
a municipal corporation**

ATTEST:

\_\_\_\_\_  
Marie Adams, City Clerk

By: \_\_\_\_\_  
Jim Humphrey, Mayor

Approved as to form:

\_\_\_\_\_  
Grant W. Alley, City Attorney

Date: \_\_\_\_\_

IN WITNESS WHEREOF, the Owner has caused this Agreement to be duly executed on the date written below.

\_\_\_\_\_  
Amy Ramsburg

By: \_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Signature]  
Witnesses

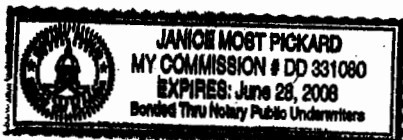
Date: 12/2/04

STATE OF FLORIDA  
County of Miami Dade

The foregoing Agreement was acknowledged before me this 2 day of December, 2004 by Cliff N. Stan. Such person is personally known to me or has presented \_\_\_\_\_ as identification.

(NOTARY SEAL)

\_\_\_\_\_  
Janice Most Pickard  
NOTARY PUBLIC - STATE OF FLORIDA  
Printed Name: Janice Most Pickard  
My Commission No.: DD331080  
My Commission Expires: 6/28/08



J:\Bonds\348101\2004 Impact Fee Waiver Form (Final Revisions).doc

**EXHIBIT A**

**Site Plan with Parcel Number and Legal Description**

**Schedule 1.1**  
**Legal Description**

THE EAST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 44 SOUTH, RANGE 25 EAST: BEING LOT 28, BALLARD ESTATES.

THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 44 SOUTH, RANGE 25 EAST: BEING LOT 29, BALLARD ESTATES.

THE SOUTH HALF OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 44 SOUTH, RANGE 25 EAST: BEING LOT 30, BALLARD ESTATES.

APPROXIMATELY 14 ACRES

DR JS



**EXHIBIT B**

**Copy of Impact Fee Waiver Application**

**PROPERTY DATA FOR PARCEL 16-44-25-P2-00069.0000  
TAX YEAR 2004**

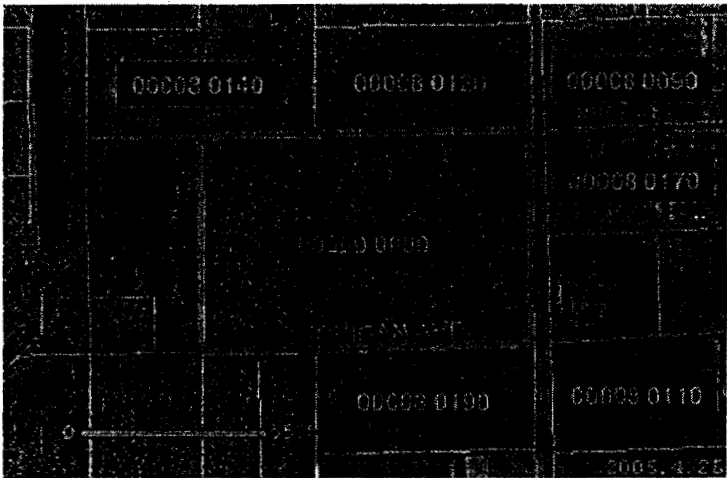
Parcel data is available for the following tax years:

[ [2001](#) | [2002](#) | [2003](#) | [2004](#) ]

[ [Next Lower Parcel Number](#) | [Next Higher Parcel Number](#)  
| [Display Tax Bills on this Parcel](#) | **NEW! Tax Estimator** ]

OWNERSHIP, LEGAL, SALES AND DISTRICT DATA ARE FROM THE CURRENT DATABASE.  
LAND, BUILDING, VALUE AND EXEMPTION DATA ARE FROM THE 2004 ROLL.

**PROPERTY DETAILS**

<p><b>OWNER OF RECORD</b> RHS URBAN LLC 11900 BISCAYNE BLVD STE 262 MIAMI FL 33181</p> <p><b>SITE ADDRESS</b> 1550 ORTIZ AVE FORT MYERS FL 33905</p> <p><b>LEGAL DESCRIPTION</b> NW1/4 OF NW1/4 OF SE1/4 + E3/4 OF S1/2 OF SW1/4 OF NE 1/4 LES R/W 2736/1573</p>	<p>[ <a href="#">VIEWER</a> ] TAX MAP [ <a href="#">PRINT</a> ]</p>  <p>[ <a href="#">PICTOMETRY</a> ]</p>
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<b>TAXING DISTRICT</b>	<b>DOR CODE</b>
137 - CITY FT MYERS/EAST CO SEWER MSTU	10 - VACANT COMMERCIAL

PROPERTY VALUES (TAX ROLL 2004) [ <a href="#">NEW!</a> <a href="#">HISTORY</a> <a href="#">CHART</a> ]	EXEMPTIONS	ATTRIBUTES
JUST 211,390	HOMESTEAD	0 UNITS OF MEASURE Mixed
ASSESSED 211,390	AGRICULTURAL	0 NUMBER OF UNITS 16.21
ASSESSED SOH 211,390	WIDOW	0 FRONTAGE 0
TAXABLE 211,390	WIDOWER	0 DEPTH 0

<b>BUILDING</b>	<b>0</b>	<b>DISABILITY</b>	<b>0</b>	<b>BEDROOMS</b>	<b>0</b>
<b>LAND</b>	<b>211,390</b>	<b>WHOLLY</b>	<b>0</b>	<b>BATHROOMS</b>	<b>0</b>
<b>BUILDING FEATURES</b>	<b>0</b>	<b>SOH DIFFERENCE</b>	<b>0</b>	<b>TOTAL BUILDING SQFT</b>	<b>0</b>
<b>LAND FEATURES</b>	<b>0</b>			<b>YEAR IMPROVED</b>	<b>0</b>

### SALES/TRANSACTIONS

SALE PRICE	DATE	OR BOOK / PAGE	TYPE	TRANSACTION DETAILS	VACANT / IMPROVED
				DESCRIPTION	
1,524,600	12/10/2004	<u>4521/2890</u>	06	Qualified (Fair Market Value / Arms Length / One STRAP #)	V
348,200	7/2/2003	<u>4005/3070</u>	02	Qualified (Multiple STRAP # / 06-09I) There are 1 additional parcel(s) with this document (may have been split after the transaction date)... <u>16-44-25-P3-00069.0010</u>	V
100	7/2/2003	<u>4005/3075</u>	04	Disqualified (Multiple STRAP # - 01,03,07) There are 1 additional parcel(s) with this document (may have been split after the transaction date)... <u>16-44-25-P3-00069.0010</u>	V
100	7/1/1996	<u>2729/2488</u>	04	Disqualified (Multiple STRAP # - 01,03,07) There are 6 additional parcel(s) with this document (may have been split after the transaction date)... <u>16-44-25-P3-00062.0000,</u> <u>16-44-25-P3-00068.0000,</u> <u>16-44-25-P3-00068.0010,</u> <u>16-44-25-P3-00069.0010,</u> <u>16-44-25-P3-00069.0020,</u> <u>16-44-25-P3-00069.0030</u>	V
0	9/12/1991	<u>2717/1299</u>	03	Disqualified (Interest Sales / Court Docs / Government) There are 6 additional parcel(s) with this document (may have been split after the transaction date)... <u>16-44-25-P3-00062.0000,</u> <u>16-44-25-P3-00068.0000,</u> <u>16-44-25-P3-00068.0010,</u> <u>16-44-25-P3-00069.0010,</u> <u>16-44-25-P3-00069.0020,</u> <u>16-44-25-P3-00069.0030</u>	V

## PARCEL RENUMBERING HISTORY

<b>PRIOR STRAP</b>	<b>RENUMBER REASON</b>	<b>RENUMBER DATE</b>
16-44-25-P4-00069.0000	Split (From another Parcel)	Monday, January 01, 1996

## SOLID WASTE (GARBAGE) ROLL DATA

SOLID WASTE DISTRICT	ROLL TYPE	CATEGORY	UNIT/AREA	TAX AMOUNT
009 - City of Fort Myers	-		0	0.00

## ELEVATION INFORMATION

STORM SURGE CATEGORY	FLOOD INSURANCE (FIRM FAQ)				
	RATE CODE	COMMUNITY	PANEL	VERSION	DATE
Category 4	X	125106	0010	B	111584

[ [Show](#) ]

## APPRAISAL DETAILS

TRIM (*proposed tax*) Notices are available for the following tax years:  
 [ [1997](#) | [1998](#) | [1999](#) | [2000](#) | [2001](#) | [2002](#) | [2003](#) | [2004](#) ]

[ [Next Lower Parcel Number](#) | [Next Higher Parcel Number](#) ]

[ [New Query](#) | [New Browse](#) | [Parcel Queries Page](#) | [Lee PA Home](#) ]