

PARTIAL IMPACT FEE EXEMPTION AGREEMENT

THIS AGREEMENT is entered into by and between FSCSS West Olympia LLLP, a Washington limited liability limited partnership, hereinafter referred to as the “Applicant” and the City of Olympia, a Washington municipal corporation, hereinafter referred to as the “City” and jointly referred to as “the Parties.” This Agreement shall become effective following execution by all the Parties and recording of this Agreement with the Auditor of Thurston County.

RECITALS

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

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

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

WHEREAS, the Olympia Municipal Code requires that an applicant enter into a contract with the City approved by the City Council, under which the City agrees to grant the applicant a partial exemption of park, transportation, and school impact fees, so long as the property is used solely for low-income housing, and under which the applicant agrees to execute a form of restrictive covenant in favor of the City to be recorded with the Thurston County Auditor, which limits use of the property to low-income housing as provided in OMC 15.04.060(C) and as defined in OMC 15.04.060(F) and which further requires that the property owner or successor must pay applicable impact fees in effect at the time of any conversion of the property to a use other than for low income housing; and

WHEREAS, FSCSS West Olympia LLLP has applied to the City of Olympia for a partial exemption of not more than eighty percent (80%) of park and school impact fees for its property located at 3524 7th Avenue SW, Olympia, Washington, also known as The Landing; and

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

WHEREAS, the Director of Community Planning and Development, in consultation with the Directors of Parks, Arts and Recreation and Public Works Transportation, has granted Applicant’s request for a partial exemption of parks, transportation, and school impact fees.

AGREEMENT

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

Lot 1 and Tracts A, and B of FSCSS Housing Binding Site Plan No. BSP 21-2735-OL recorded May 18, 2022 as Recording No. 4932163, records of Thurston County, Washington.

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

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

1. The Recitals set forth above are hereby incorporated and made part of this Partial Impact Fee Exemption Agreement as if fully set forth herein.
2. The Property shall be used by Applicant for low-income housing occupied by households whose income when adjusted for size is at or below eighty percent (80%) of the area median income, as annually adjusted by the U.S. Department of Housing and Urban Development as provided in OMC 15.04.060(C), and as defined in OMC 15.04.060(D)(5).
3. In consideration for using the Property for low-income housing as provided in OMC 15.04.060(C), and as defined in OMC 15.04.020(Y), the City grants Applicant a partial exemption from payment of park, transportation, and school impact fees of eighty percent (80%), as provided in OMC 15.04.060(C), so long as the Property is used solely for low-income housing as provided in OMC 15.04.060(C).
4. In the event the Property is converted by Applicant or its successors or assigns to a use other than for low-income housing as provided in OMC 15.04.060(C), the Applicant or its successors or assigns shall pay the remaining eighty percent (80%) of applicable park, transportation, and school impact fees in effect at the time of any conversion. Upon payment to the City of the park, transportation, and school impact fees due in effect at time of any conversion, this Agreement shall terminate, and the City shall file a release of the Restrictive Covenant upon the Property with the Thurston County Auditor.
5. It is the express intent of the Applicant and the City that the provisions of this Agreement and the Restrictive Covenant to be filed upon title to the Property shall be deemed to run with the land and shall pass to and be binding upon Applicant’s successors in title, including any subsequent purchaser, grantee, owner, assignee, trustee, trustor, or lessee of any portion of the Property and appurtenances and any other person or entity having any right, title or interest therein and upon the respective heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee, owner, assignee, trustee, trustor, or lessee of any portion of the Property and any other person or entity having any right, title or interest therein. The terms of this Agreement may be enforced by injunctive relief or other remedies at law.
6. The City agrees to grant Applicant a partial exemption of park, transportation, and school impact fees equal to eighty percent (80%) as provided in OMC 15.04.060(C), so long as the Property is used solely for low-income housing as provided in OMC 15.04.060(C) and OMC 15.04.060(F).

7. The Applicant shall execute a Restrictive Covenant in favor of the City, which shall be recorded upon title to the Property, which limits its use to low-income housing as provided in OMC 15.04.060(A)(10) and as defined in OMC 15.04.060(F). The Restrictive Covenant shall be recorded with the Thurston County Auditor.

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

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

10. In the event that any term or clause of this Agreement conflicts with applicable law, such conflict shall not affect other terms of this Agreement which can be given effect without the conflicting terms or clause, and to this end, the terms of the Agreement are declared to be severable.

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

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

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

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

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

FSCSS WEST OLYMPIA LLLP

By: Trish Gregory
Patricia Gregory, Executive Director

Dated: 04/28/2023

CITY OF OLYMPIA

By: _____
Steven J. Burney, City Manager

Dated: _____

APPROVED AS TO FORM:

Mark Barber
Mark Barber, City Attorney