

RESOLUTION NO. 2001- 174

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY,
FLORIDA, AUTHORIZING THE COUNTY ADMINISTRATOR TO
EXECUTE AN IMPACT FEE CREDIT AGREEMENT WITH
WINCHESTER DEVELOPMENT, RLLP**

WHEREAS, Winchester Development, RLLP is the Developer of certain lands contained within Winchester (the Project) as described and approved in St. Johns County Ordinance No2001-50; and

WHEREAS, Section 13 of St. Johns County Ordinance No. 87-57, as amended, St. Johns County Road Impact Fee Ordinance ("Road Impact Fee Ordinance") allows for impact fee credits to be granted by the Board of County Commissioners for the property dedicated to St. Johns County as identified within the Impact Fee Agreement attached hereto and incorporated herein; and

WHEREAS, in accordance with the County Road Impact Fee Ordinance, Winchester Development, RLLP is entitled to certain impact fee credits for certain dedications.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of St. Johns County, Florida that:


Section 1. The County Administrator is hereby authorized to approve and execute an Impact Fee Credit Agreement with Winchester Development, RLLP substantially in the form of that which is attached hereto and incorporated herein by reference for those dedications identified within the Road Impact Fee Ordinance which are eligible for impact fee credits.

Section 2. The County Administrator is authorized to take all necessary action to carry out the terms of said Impact Fee Agreement including, but not limited to, accepting title for real property reference in said Agreement. However, the County Administrator shall ensure that standard due diligence procedures are carried out prior to accepting such title.

Section 3. Upon acceptance by the County Administrator, the Clerk is instructed to record the agreement in the official records of St. Johns County, Florida.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida this 24th day of August, 2001.


**BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA**



Marc A. Jacalone, Chairman

ATTEST:

CHERYL STRICKLAND, CLERK

By: 
Deputy Clerk

**IMPACT FEE CREDIT AGREEMENT
("AGREEMENT")**

AS amended

Road Impact Fees

THIS AGREEMENT is made this _____ day of _____, 2001, by and among the **BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA** ("County") and **Winchester Development, RLLP**

RECITALS

- A. Winchester Development, RLLP is the Developer and projected Impact Feepayer (the "Developer") of certain lands contained within Winchester ("Project"), as described and approved in St. Johns County Ordinance No. 2001-50. The "Landowner" of the project is Winchester Properties of Jax, Inc.
- B. Pursuant to St. Johns County Ordinance No. 87-57, as amended, ("Road Impact Fee Ordinance"), the County requires any person who seeks to develop land within St. Johns County, as evidenced by such person's application for a building permit or certificate of occupancy ("Feepayer"), to pay a Road impact fee ("Road Impact Fee"), so as to assure that such new development bears a proportional share of the cost of capital expenses necessary to provide roads within St. Johns County.
- C. Section 13 of the Road Impact Fee Ordinance allows impact fee credits to be granted for certain dedications ("Road Impact Fee Credits").
- D. Pursuant to the County requirements of the Land Development Code Section 6.04.04.H, Developer is dedicating right - of - way along CR 210 West as further described in Exhibit "A" attached hereto (the "Right of Way") and which is recognized as meeting the requirements for Road Impact Fee Credits.
- E. Pursuant to the terms of the Road Impact Fee Ordinance, County and Developer desire to set forth their agreement and a procedure for the applicant and treatment of such Road Impact Fee Credits.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The above stated Recitals are incorporated herein as Findings of Facts.

2. The Developer shall convey marketable title to the County that certain Right of Way, comprising approximately 4.3 acres, and as further described in **Exhibit "A"** hereto, on or before August 25, 2001, which may be accepted by the County Administrator. Additionally, the Developer shall provide, at its own expense, a policy of title insurance in favor of the County demonstrating there are no encumbrances against the Right-of-Way.
3. Upon acceptance of the Right-of-Way, Developer will make payment to the County in the amount of \$800.00 for an environmental review of said Right-of-Way and the County shall award \$95,000.00 in Road Impact Fee Credits to Developer.
4. The total Road Impact Fee Credits awarded by the County are in accordance with the Right of Way's appraised value of \$95,000.00. A copy of the appraisal has been previously provided to the County.
5. From and after the date thereof, Developer, in applying for building permits or certificates of occupancy in connection with any construction in the Project shall present a voucher to the County, evidencing the portion of Road Impact Fees which shall be offset for each such application or certificate of occupancy, and upon receipt of such voucher, the County shall issue a receipt. Then, for so long as Road Impact Fee Credits for which Developer has not issued vouchers under this Agreement remain, Developer shall be entitled to present additional vouchers evidencing payment of Road Impact Fees in connection with each such application for a building permit or certificate of occupancy. Alternatively, said Road Impact Fee Credits may be given up by the Developer and applied to pre-payment of Road Impact Fees required for extension of concurrency under Article XI of the Land Development Code.
6. In the event that Developer determines to sell all or part of the Project, Developer may sell, transfer, assign or convey any of its interest in part of the Road Impact Fee Credits to such purchaser, transferee, assignee or grantee for use within the Project for such consideration as Developer, in its sole discretion, determines. In such event, Developer shall execute and deliver to the County a copy of the instrument selling, transferring, assigning or granting the Road Impact Fee Credits so sold, transferred, assigned or granted and the remaining amount of Road Impact Fee Credits, if any, shall remain vested in Developer. The Parties agree that no Road Impact Fee Credit may be used or applied to development outside the Project without the specific approval of the County, and that such approval may be denied based on factors including, but not limited to the relationship of the Right of Way to the particular development to which credits are transferred.
7. On or before January 31 of each year, so long as there remains any Road Impact Fee Credits, Developer shall prepare and deliver to the County Planning Department an annual report setting forth the amount of Road

Impact Fee Credits. In no event shall Developer grant, assign, sell or transfer any impact fee credits for an amount in excess of the amount of the then current impact fee.

8. At such time as the Road Impact Fee Credits provided for hereunder have been exhausted, Developer or the Feepayer seeking building permits or certificates of occupancy within the Project shall pay the County the Road Impact Fees as are then due and payable under the Road Impact Fee Ordinance in effect at that time. Until such time, any Feepayer within the project shall be instructed by the County to pay its Road Impact Fees directly to Developer.

9. Miscellaneous Provisions

1. This Agreement shall be constructed and governed in accordance with the laws of the State of Florida. All parties to this Agreement have participated fully in the negotiation and preparation hereof and accordingly, this Agreement shall not be more strictly construed against any one of the parties hereto. All parties agree particularly that this Agreement is bound by the terms of the County's Road Impact Fee Ordinance and other applicable ordinances. Any and all applicable terms of those Ordinances are to be considered incorporated herein by reference. If there is any inconsistency found between this Agreement and such Ordinances or applicable law, those Ordinances or law shall prevail and be applicable.

2. The Parties agree that Road Impact Fee Ordinance Section 13(b) limits the total amount of impact fee credits given to an amount not greater than the total amount of impact fees due for the Project.

2.1 The Parties agree that the Road Impact Fees of \$95,000.00 may at the developer's option be applied for the purpose of extending the Developer's Final Certificate of Concurrency for an additional three (3) year period, pursuant to Section 11.03.02.B.3.a. of the St. Johns County Land Development Code.

2.2 The Developer and his successors or assigns and/or the Landowner will deed to the County fifteen (15) acres of wetlands for the wetland impacts for future road construction. If the County is required to provide additional wetland mitigation in order to use the subject Right-of-Way for road construction then the Developer and his successors or assigns and/or the Landowner shall provide wetland mitigation lands to the County at no cost to the County (this obligation shall extend for ten (10) years after the date of this agreement).

3. In construing the Agreement the singular shall be held to include the plural, and the plural shall include the singular, the use of any gender shall include every other and all gender and captions and paragraph headings shall be disregarded.
4. All of the exhibits attached to this Agreement are incorporated in, and made a part of this Agreement.
5. The Agreement, and any Exhibits and/or addendum made a part hereof constitute the entire Agreement and understanding of the parties and shall not be modified or amended except by written agreement duly executed by the parties hereto.
6. This Agreement is made for the sole benefit and protection of the parties and no other persons shall have any right of action hereunder. This Agreement shall be binding upon the parties and their respective successors and permitted assigns.
7. All covenants, agreements, representation and warranties made herein shall be deemed to have material and relied on by each party to this Agreement.
8. This agreement is recognized as being subject to the laws of Florida and the Ordinances of St. Johns County, Florida and therefore all applicable provisions thereof are incorporated herein and if any provision hereof is inconsistent with such provisions, such provision shall apply.
9. Developer must be a feepayer as referenced in the applicable impact fee ordinance to receive impact fee credits under this ordinance.
10. Nothing in this Agreement shall act to allow a private entity to receive impact fees credits for contributions provided by a government entity including, but not limited to, a Community Development District.

IN WITNESS WHEREOF, the undersigned have set their hands and seals as of the date and year set forth above.

Winchester Development, RLLP

By: _____
Gary D. Silverfield, President
Silverfield Development Co.
as General Partner

Witness: _____

Winchester Properties of Jax, Inc.

By: _____
John Sessions

Witness: _____

ST. JOHNS COUNTY, FLORIDA

By: _____
David Halstead
Assistant County Administrator

ATTEST:

Cheryl Strickland, Clerk

By: _____
Deputy Clerk