

RESOLUTION NO. 349

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 WFC ASHFORD MILLS OWNER VII, L.L.C.

WHEREAS, WFC Ashford Mills Owner VII, L.L.C. is the developer ("Developer") of certain lands contained within Ashford Mills (the "Project") as described and approved in St. Johns County Resolution No. 2014-241 (NOPC 2014-02) and Ordinance No. 2014-40 (MAJMOD 2014-09).

WHEREAS, St. Johns County Ordinance No. 87-57 ("Road Impact Fee Ordinance"), as has been or may be amended, allow for impact fee credits to be granted by the Board of County Commissioners for the property dedicated to St. Johns County and/or improvements made or funded by the Developer as identified within the Impact Fee Credit Agreement attached hereto and incorporated herein.

WHEREAS, in accordance with Section 13 of the County Road Impact Fee Ordinance, the Developer is entitled to certain impact fee credits for contribution of proportionate share funds to the County for construction of a portion of County Road 210, as identified in the Ashford Mills Development of Regional Impact Amended and Restated Development Order (the "DRIDO").

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 WFC Ashford Mills Owner VII, L.L.C. 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. Upon acceptance by the County Administrator, the Clerk is instructed to record the agreement in the official records of St. Johns County, Florida.

Section 3. To the extent that there are typographical or administrative errors that do not change the tone, tenor or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida this 2nd day of December, 2014.

BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA

[Signature]
Its Chairman

Attest: Pam Halterman

CHERYL STRICKLAND, CLERK
By: Pam Halterman
Deputy



RENDITION DATE 12/10/14
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IMPACT FEE CREDIT AGREEMENT

(Roads /Ashford Mills)

THIS IMPACT FEE CREDIT AGREEMENT (“Agreement”) is made this ___ day of _____, 2014, by and among the **BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA** (“County”), and **WFC ASHFORD MILLS OWNER VII, L.L.C.** (“Developer”).

RECITALS:

A. WFC Ashford Mills Owner VII, L.L.C., a Delaware limited liability company, is the Developer and projected Impact Feepayer for certain lands contained within the Ashford Mills Development of Regional Impact (“**Project**”), as described and approved in St. Johns County Resolution No. 2014-241 (NOPC 2014-02) and Ordinance No. 2014-40 (MAJMOD 2014-09).

B. St. Johns County Ordinance No. 87-57 (“**Road Impact Fee Ordinance**”), as amended, allows for impact fee credits to be granted by the Board of County Commissioners for any property dedicated to St. Johns County and/or improvements made or funded by the Developer as identified in this Agreement.

C. Section 13 of the County Road Impact Fee Ordinance provides that the Developer is entitled to certain impact fee credits for contribution of proportionate share funds to the County for construction of a portion of County Road 210, as set forth in the Ashford Mills Development of Regional Impact Amended and Restated Development Order (the “**DRI DO**”).

D. The Road Impact Fee Ordinance, as amended, requires any person who seeks to develop land within St. Johns County, as evidenced by an application for a building permit or certificate of occupancy by such person or its successors and assigns (“**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.

E. The Road Impact Fee Ordinance allows for impact fee credits to be granted for certain contributions of proportionate share funds to the County for construction of a portion of County Road 210, as set forth more fully in the Ashford Mills DRI DO (“**Road Facilities Impact Fee Credits**”).

F. Pursuant to the terms of the Road Impact Fee Ordinance, County and Developer desire to set forth their agreement and a procedure for the application 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 are hereby acknowledged, the parties agree as follows:

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

2. The total Road Impact Fee Credits will be calculated as the sum shown on Exhibit "A" attached hereto and incorporated herein by this reference in the maximum amount of Twenty Million One Hundred Seven Thousand Eight and No/100 Dollars (\$20,107,008). Such Road Impact Fee Credits shall be awarded to the Developer, its successors and assigns, immediately upon the Developer's payment of the funds set forth in Exhibit "A".
3. From and after the date thereof, all Feepayers applying for building permits or certificates of occupancy in connection with any construction in the Project shall pay the amount due under the Road Fee Ordinance directly to Developer. Developer shall be fully responsible for notifying all Feepayers of this requirement and shall ensure that such payments are paid directly to the Developer. Then, for so long as the total Road Impact Fee Credits for which Developer has issued vouchers under this Agreement is less than the total Road Impact Fee Credits authorized by this Agreement, Developer shall issue to such Feepayer a voucher evidencing full payment of Road Impact Fees in connection with such Feepayer's application for a building permit or certificate of occupancy. The voucher issued by Developer shall contain a statement setting forth the amount of Road Impact Fee paid. Upon presentation of such voucher by the Feepayer, the County shall issue a receipt to the Feepayer and shall deduct the amount of such voucher from the Developer's Road Impact Fee Credit account. In the event that the County institutes an alternate mechanism to the current voucher for Impact Fee Credits, such as a voucherless system, Developer and Feepayer may use said alternate system. The voucher form is attached hereto as Exhibit "B" and incorporated herein by this reference.
4. 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 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 dedication to the particular development to which credits are transferred. Developer acknowledges that only one Impact Fee Credit account may exist at any given time for the Development Property.
5. On or before January 31 of each year, so long as there remain any Road Impact Fee Credits, Developer shall prepare and deliver to the County Growth Management Department an annual report setting forth the amount of Road Impact Fee payments made by the Feepayers applying for building permits or certificates of occupancy within the Project and the remaining balance of Road Impact Fee Credits.

6. 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.

7. Miscellaneous Provisions:

A. 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.

B. The Parties agree that Road Impact Fee Ordinance Section 13 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. The parties further agree that they will not challenge in any judicial proceeding and will accept the interpretation of the County Attorney's Office that the Road Impact Fee Credits identified or granted by this Agreement are limited to the amount of Impact Fees which are due or become due within the Project.

C. 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.

D. All of exhibits attached to this Agreement are incorporated into and made a part of this Agreement.

E. The Agreement, and any exhibits and/or addenda made a part hereof, constitutes 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.

F. Any notices provided pursuant to this Agreement shall be sent to the parties at the following addresses:

County: County Administrator
St. Johns County

500 San Sebastian View
St. Augustine, Florida 32084

Developer: WFC Ashford Mills Owner VII, L.L.C.
Attn: Andy Smith
352 Paseo Reyes Drive
Saint Augustine, Florida 32095

- G. 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.
- H. All covenants, agreements, representation and warranties made herein shall be deemed to be material and may be relied on by each party to this Agreement.
- I. This Agreement is recognized as being subject to the laws of the State of Florida and the ordinances of St. Johns County, and therefore all applicable provisions thereof are incorporated herein. If any provision hereof is inconsistent with the requirements of Florida laws or the ordinances of St. Johns County, such laws and ordinances shall apply.
- J. Nothing in this Agreement shall act to allow an entity to receive impact fee credits for contributions provided by a government entity including, but not limited to, a community development district.
- K. Nothing in this Agreement shall be deemed to require the County to continue to levy or collect impact fees, or, if levied, to levy them for a certain amount.

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

DEVELOPER:

WFC ASHFORD MILLS OWNER VII, L.L.C.,
a Delaware limited liability company

By: _____

Name: _____

Title: _____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by _____, as authorized signatory of WFC Ashford Mills Owner VII, L.L.C., a Delaware limited liability company, on behalf of the corporation, who is personally known to me or who has provided _____ as identification.

Notary Public, State of _____

Print Name: _____

My Commission Expires: _____

My Commission No.: _____

COUNTY:

ST. JOHNS COUNTY, FLORIDA

By: _____
Name: _____
Title: _____

STATE OF FLORIDA)
)
COUNTY OF ST. JOHNS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by _____, who is personally known to me or who has provided _____ as identification.

Notary Public, State of Florida
Print Name: _____
Commission Expires: _____
Commission No.: _____

EXHIBIT "A"

Road Impact Fee Credit Calculation

The Developer will pay a maximum of \$20,107,008 to the County for construction of the widening of County Road 210 from two (2) lanes to four (4) lanes from Cimarrone Boulevard to Greenbriar Road (the "CR 210 Widening"), as set forth more fully in the Ashford Mills DRI DO, and will immediately receive Road Impact Fee Credits in an equal amount, as follows:

1. The sum of \$150,000 upon the County's approval of the first residential construction plan for the project;
2. The sum of \$350,000 upon the County's issuance of the first residential plat or multi-family building permit, whichever first occurs, for Ashford Mills;
3. The sum of \$7,636.54 for each of the first 1,100 residential units within the project, with such funds paid to the County at the time the Developer, its successors and assigns, obtains County approval of a plat or multi-family building permit, whichever first occurs, for each phase or parcel containing a portion of the aforementioned 1,100 units (for a total of \$8,400,194); and
4. Upon the Developer, its successors and assigns, obtaining a plat or multi-family building permit, whichever first occurs, for the 1,101th residential unit within Ashford Mills, the Developer shall pay to the County the difference between the \$8,900,194 previously paid and the County's total cost for the improvement verified through public bid process for the construction of the CR 210 Widening plus a ten percent (10%) contingency to pay for any necessary construction change orders (the "Contingency Funds"); provided, however, that in no event shall the Developer, its successors and assigns, be required to pay more than: (a) \$20,107,008 for the design, permitting, right-of-way acquisition and construction of the CR 210 Widening; and (b) the County's total cost for the CR 210 Widening, including design, permitting, right-of-way acquisition and construction.

EXHIBIT "B"

Voucher # _____

St. Johns County Impact Fee Voucher
ASHFORD MILLS
DEVELOPMENT OF REGIONAL IMPACT

- 1. Name and address of Developer/Grantor: WFC Ashford Mills Owner VII, L.L.C.
352 Paseo Reyes Drive
St. Augustine, FL 32095
- 2. Name and address of Grantee: _____
- 3. Legal description of subject property: See attached Exhibit "A"
- 4. Subdivision or Master Development Plan name: Ashford Mills Development of Regional Impact

The undersigned Developer/Grantor confirms that it has received from _____ on _____ funds sufficient for the following impact fees required under the applicable St. Johns County Impact Fee Ordinance, as amended, as indicated below. Developer/Grantor gives notice to St. Johns County, Florida that the following sums should be deducted from the applicable Impact Fee Credit account of the Developer/Grantor.

_____ Roads Ordinance No. 87-57 in the amount of \$ _____

WFC ASHFORD MILLS OWNER VII, L.L.C.,
a Delaware limited liability company

By: _____
Print: _____
Its: _____

EXHIBIT "A"

Legal Description for Voucher
[To be attached to each original Voucher]