

RESOLUTION NO. 42

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 HEARTWOOD 23, LLC

WHEREAS, Heartwood 23, LLC is the Developer of certain lands contained within a portion of the Twin Creeks Development of Regional Impact (the "Project") as described and approved in St. Johns County Resolution No. 2015-51; and

WHEREAS, St. Johns County Ordinance No. 87-57, as amended, St. Johns County Road Facilities Impact Fee Ordinance ("Road Impact Fee Ordinance") and Chapter 163, Florida Statutes allow for impact fee credits to be granted by the Board of County Commissioners for the property conveyed to St. Johns County and for cash donation for transportation improvements as identified within the Impact Fee Credit Agreement attached hereto and incorporated herein; and

WHEREAS, in accordance with the County Road Impact Fee Ordinance and Chapter 163, Florida Statutes, Heartwood 23, LLC is entitled to certain impact fee credits for the conveyance of land and cash donations for proportionate share mitigation obligations.

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 Heartwood 23, LLC substantially in the form of that which is attached hereto and incorporated herein by reference for those improvements and/or 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 16th day of February, 2016.

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

[Signature]
Its Chair

ATTEST:
HUNTER S. CONRAD, CLERK
By: [Signature]
Deputy

RENDITION DATE 2/18/16

HEARTWOOD IMPACT FEE CREDIT AGREEMENT

Road Facilities Impact Fee Credits

THIS IMPACT FEE CREDIT AGREEMENT (the “Agreement”) is made this _____ day of _____, 2016, by and among the **BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA** (“County”) and **HEARTWOOD 23, LLC** (“Heartwood”) (together the “Parties”).

RECITALS:

- A. Heartwood is the Developer and Development Property Feepayer (as defined below) for certain lands (the “Development Property”) contained within a portion of the Twin Creeks Development of Regional Impact (“Development Property”), as described and approved in St. Johns County Resolution No. 2015-239 and Ordinance No. 2015-51, as may be amended from time to time.
- B. Pursuant to St. Johns County Ordinance No. 87-57, as amended, (the “Road Impact Fee Ordinance”), the County requires any person or entity that develops land within St. Johns County - as evidenced by such person’s application for a building permit or certificate of occupancy - to pay a road impact fee (“Feepayer”), so as to assure that such new development bears a proportionate share of the cost of capital expenses necessary to provide roads within St. Johns County.
- C. Pursuant to Section 25 of Resolution 2015-239, in order to offset impacts to the regional transportation system caused by development of the Development Property, Heartwood agreed to pay \$7 million in order to meet its proportionate fair share transportation obligations.

- D. Pursuant to Chapter 163, Florida Statutes and Section 25 of Resolution 2015-239, Heartwood is entitled to dollar for dollar road impact fee credits for all transportation proportionate share mitigation payments made to the County.
- E. The Road Impact Fee Ordinance and Chapter 163, Florida Statutes allow road impact fee credits to be granted for certain land dedications.
- F. At the request of the County, in addition to the \$7 million in road proportionate share mitigation payments, Heartwood is also conveying approximately 1.25 acres in land to the County to allow for the widening of County Road 210 (the "ROW") (the description and appraisal for which is shown on Exhibit "A").
- G. The conveyance of the ROW is recognized by the Parties as meeting the requirements for road impact fee credits.
- H. The dollar value of the ROW has been determined by an appraiser approved by the County.
- I. Pursuant to the terms of the Road Impact Fee Ordinance, the County and Heartwood desire to set forth their agreement and a procedure and treatment of all road impact fee credits due to Heartwood.

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. Pursuant to Section 25 of Resolution 2015-239, in order to offset impacts to the regional transportation system caused by development of the Development Property, on or before

thirty (30) days prior to construction plan approval for the first residential unit within the Development Property, Heartwood shall pay to the County \$3.5 million for development of 700 residential units and on or before thirty (30) days prior to construction plan approval for the 701st residential unit, Heartwood shall pay the County a second payment of \$3.5 million for development of an additional 700 residential units. Upon each payment of any portion of its transportation proportionate share mitigation pursuant to Resolution 2015-239, Heartwood shall receive from the County equal road impact fee credits on a dollar for dollar basis.

3. Upon recording of a deed in favor of the County evidencing the conveyance of the ROW, Heartwood shall receive road impact fee credits in amount equal to \$108,900.00.
4. The total road impact fee credits due to Heartwood is calculated as the sum of the value of the ROW and the transportation proportionate share mitigation payments in the amount equal to \$7,108,900 (as shown on Exhibit "B").
5. From and after the date thereof, all Feepayers applying for building permits or certificates of occupancy in connection with any construction in the Development Property shall pay the amount due under the Road Impact Fee Ordinance directly to Heartwood. Then, for so long as the total road impact fee credits for which Heartwood has issued vouchers under this Agreement is less than the total road impact fee credits authorized by this Agreement, Heartwood shall issue to such Feepayer a voucher (as shown on Exhibit "C") 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 Heartwood 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. Heartwood may assign any and all road impact fee credits it receives from the County to a separate entity, however said entity's use of those impact fee credits shall be subject to the terms of this Agreement. Heartwood shall be fully responsible for notifying all Feepayers of this requirement and shall ensure that such payments are paid directly to Heartwood.

6. In the event that Heartwood determines to sell all or part of the Development Property, Heartwood 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 Development Property for such consideration as Heartwood, in its sole discretion, determines. In such event, Heartwood 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 Heartwood. The Parties agree that no impact fee credit may be used or applied to development outside the Development Property 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. Heartwood acknowledges that only one Impact Fee Credit account may exist at any given time for the Development Property.
7. On or before January 31 of each year, so long as there remain any road impact fee credits, Heartwood 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 Development Property and the remaining balance of road impact fee credits.

8. At such time as the road impact fee credits provided for hereunder have been exhausted, Heartwood or any FeePayer seeking building permits or certificates of occupancy within the Development Property shall pay the County the road impact fees that are then due and payable under the Road Impact Fee Ordinance in effect at that time. Until such time, any FeePayer within the Development Property shall be instructed by the County to pay its road impact fees directly to Heartwood.

9. **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 or that will become due for the Development Property. However, to the extent that the credits due to Heartwood under this Agreement exceed the amount of impact fees accessed on development, in whole or in part,

of the Development Property; the Parties agree the credits can be used if impact fees increase over time and the amount due for the development increases as a result. 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 Development.

- C. All of the exhibits attached to this Agreement are incorporated in, and made a part of this Agreement.
- D. 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.
- E. This Agreement shall not affect, derogate or impinge on any rights, benefits or obligations set forth in Resolution 2015-239 or Ordinance 2015-51.
- 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

With Copy To: County Attorney
St. Johns County
500 San Sebastian View
St. Augustine, Florida 32084

Developer: Heartwood 23, LLC
C/O Bruce Parker
401 East Las Olas Boulevard, Suite 800
Fort Lauderdale, FL 33301

With Copy To: Zachary Miller
501 Riverside Avenue, Suite 901
Jacksonville, Florida 32202

- 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 material and relied on by each party to this Agreement.
- I. 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.
- J. Nothing in this Agreement shall act to allow an entity to receive road impact fee credits for contributions provided by a government entity including, but not limited to, a Community Development District, unless said government entity or Community Development District undertakes the obligations of Heartwood which entitled Heartwood to said road impact fee credits.
- K. In the event the terms of this Agreement contradict any terms in Resolution 2015-239 or Ordinance 2015-51, the terms of Resolution 2015-239 and Ordinance 2015-51 shall control.
- L. 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 any certain amount.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed as of the date first set forth above.

WITNESSES	PARTIES
Print Name: _____ Signature: _____ Print Name: _____ Signature: _____	HEARTWOOD 23, LLC Manager: BBX Capital Asset Management LLC Print Name: Bruce J. Parker Print Title: Managing Director Signature: _____
Print Name: _____ Signature: _____ Print Name: _____ Signature: _____	ST. JOHNS COUNTY Print Name: Michael D. Wanchick Print Title: County Administrator Signature: _____
Print Name: _____ Signature: _____ Print Name: _____ Signature: _____	ST. JOHNS COUNTY Print Name: Patrick F. McCormack Print Title: County Attorney Signature: _____

EXHIBIT A

ROW and Appraisal

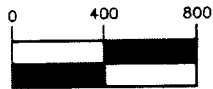
MAP SHOWING

A PORTION OF SECTIONS 9 AND 10, TOWNSHIP 5 SOUTH, RANGE 28 EAST, ST. JOHNS COUNTY, FLORIDA, BEING FOR PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF SAID SECTION 9; THENCE SOUTH 89°12'49" WEST, ALONG THE SOUTHERLY LINE OF SAID SECTION 9, A DISTANCE OF 479.89 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 89°12'49" WEST, ALONG LAST SAID LINE, A DISTANCE OF 16.19 FEET TO AN INTERSECTION WITH THE SOUTHEASTERLY EXISTING RIGHT OF WAY LINE OF COUNTY ROAD 210 (A 150 FOOT RIGHT OF WAY, AS NOW ESTABLISHED); THENCE NORTH 51°03'23" EAST, ALONG SAID SOUTHEASTERLY EXISTING RIGHT OF WAY LINE, A DISTANCE OF 5409.91 FEET; THENCE NORTH 58°54'22" EAST, CONTINUING ALONG LAST SAID LINE, A DISTANCE OF 73.22 FEET; THENCE SOUTH 51°03'23" WEST, A DISTANCE OF 5469.71 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.25 ACRES, MORE OR LESS.

GRAPHIC SCALE



(IN FEET)
1 inch = 800 ft.

FLORIDA EAST COAST RAILROAD

COUNTY ROAD 210 REALIGNMENT

SHEET 4

(150' R/W)

SHEET 3

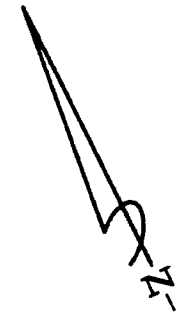
COUNTY ROAD 210

SHEET 2

SECTION 10

SECTION 9

SECTION 8



LEGEND

- R/W = RIGHT OF WAY
- O.R. = OFFICIAL RECORDS
- PG. = PAGE
- ESMT. = EASEMENT

GENERAL NOTES

1. BEARINGS SHOWN HEREON ARE BASED ON THE SOUTHEASTERLY RIGHT OF WAY LINE OF COUNTY ROAD NO. 210, AS S51°03'23"W.
2. THIS DRAWING MAY HAVE BEEN ENLARGED OR REDUCED FROM THE ORIGINAL. UTILIZE THE GRAPHIC SCALE AS SHOWN.
3. THIS MAP DOES NOT REPRESENT A BOUNDARY SURVEY

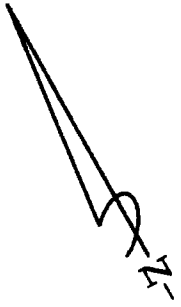
MAP SHOWING

PROPERTIES
O.R. 2190, PG. 1550

MATCH LINE

SHEET 3
SHEET 2

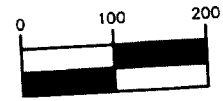
DRAINAGE
EASEMENT NO. 1
O.R. 2588, PG. 101



023712-0010
HEARTWOOD 23 LLC
O.R. 3381, PG. 430

023710-0001
HEARTWOOD 23 LLC
O.R. 3381, PG. 430

GRAPHIC SCALE



(IN FEET)
1 inch = 200 ft.

129

COUNTY ROAD 210
(150' R/W)

PROPOSED NWLY R/W LINE
NWLY R/W LINE
SELY R/W LINE

N51°03'23"E
S89°12'49"W

SECTION 9
023710-0000
SOUTH JACKSONVILLE
PROPERTIES
O.R. 2190, PG. 1550

SECTION 10
SECTION 15
SECTION 16

Point of
Commencement

12'49"W
6.19'
Point of
Beginning

479.89'

5409.91'
5469.77'

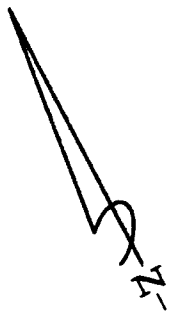
MAP SHOWING

MATCH LINE

SHEET 4
SHEET 3

023710-0001
HEARTWOOD 23 LLC
O.R. 3381, PG. 430

023710-0000
SOUTH JACKSONVILLE
PROPERTIES
O.R. 2190, PG. 1550



COUNTY ROAD 210
(150' R/W)

5409.91'
5469.71'

NWLY R/W LINE

SELY R/W LINE

PROPOSED NWLY R/W LINE

129

GRAPHIC SCALE



(IN FEET)
1 inch = 200 ft.

N51°03'23"E
S51°03'23"W

ACCESS &
UTILITY EASEMENT
OR. 2588, PG. 69

023712-0010
HEARTWOOD 23 LLC
O.R. 3381, PG. 430

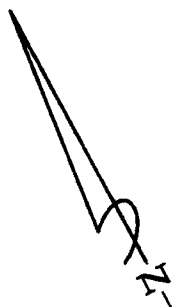
023710-0000
SOUTH JACKSONVILLE
PROPERTIES
O.R. 2190, PG. 1550

MATCH LINE

SHEET 3
SHEET 2

DRAINAGE
EASEMENT NO. 1
O.R. 2588, PG. 101

MAP SHOWING



COUNTY ROAD 210
(150' R/W)

SELY R/W LINE

NWLY R/W LINE

5409.91'
5469.71'

129

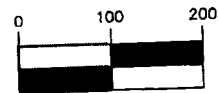
N58°54'22"E
73.22'

023710-0001
HEARTWOOD 23 LLC
O.R. 3381, PG. 430

ACCESS & UTILITY EASEMENT
OR. 2588, PG. 69

023712-0010
HEARTWOOD 23 LLC
O.R. 3381, PG. 430

GRAPHIC SCALE



(IN FEET)
1 inch = 200 ft.

N51°03'23"E
S51°03'23"W

MATCH LINE

SHEET 4
SHEET 3

EXHIBIT B

ROAD IMPACT FEE CALCULATIONS

Payment/Conveyance	Amount
Transportation Proportionate Share Mitigation Payment #1 -	\$3,500,000.00
Transportation Proportionate Share Mitigation Payment #2 -	\$3,500,000.00
ROW Land Conveyance -	\$108,900.00
Total -	\$7,108,900.00

Exhibit C

Voucher # _____

St. Johns County Road Impact Fee Voucher

Name of Development/Developer: **Heartwood 23, LLC**

Name and address of Developer/Grantor: 401 East Las Olas Boulevard, Suite 800
Fort Lauderdale, FL 33301

Name and address of Grantee: _____

Legal description of subject property: *See Attached*

Subdivision or Master Development Plan name: _____

The undersigned Developer/Grantor confirms that it has received from

on _____, 20____ funds sufficient for the following road 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.

Ordinance #87-57 in the amount of \$ _____.

By: _____

Print: _____

Its: _____