

**RESOLUTION NO.2024-4**

**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 PHOENICK RETAIL LLC**

**WHEREAS**, Phenick Retail, LLC is the Developer of certain lands contained within Treaty Ground PUD (the "Project") located at the intersection of SR 207 and Brinkhoff Road; 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 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, Phenick Retail, LLC is entitled to certain road impact fee credits for surveying, permitting and design costs for improvements at the SR 207/Brinkhoff Road intersection to be constructed by the County.

**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 Phenick Retail, 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.

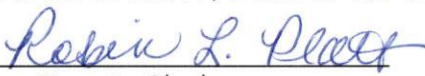
PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida  
This 16th day of January, 2024.

BOARD OF COUNTY COMMISSIONERS  
OF ST. JOHNS COUNTY, FLORIDA

  
\_\_\_\_\_  
Sarah Arnold  
Its Chair

Rendition Date: JAN 18 2024

ATTEST:  
BRANDON J. PATTY, Clerk of the Circuit Court & Comptroller

By:   
\_\_\_\_\_  
Deputy Clerk



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

**Road Facilities Impact Fees**

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 202\_ by and between the **BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA** ("County"), and **PHOENICK RETAIL, LLC**, ("Owner").

**RECITALS:**

- A. **Phoenick Retail, LLC**, ("Developer") is the Owner and projected Impact Feepayer of certain lands contained within the **Treaty Ground PUD (PUD MAJMOD 2017-11)** ("Project"), as described and approved in St. Johns County **Ordinance No. 2018-38**, as amended.
- B. Pursuant to St. Johns County Ordinance No. 87-57 , as amended, ("Road Facilities 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 Facilities impact fee ("Road Facilities 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 Facilities Impact Fee Ordinance allows impact fee credits to be granted for certain dedications and/or improvements ("Road Facilities Impact Fee Credits").
- D. Developer is providing the Intersection Control Evaluation (ICE) as required by the Florida Department of Transportation (FDOT), and the intersection design and permitting through FDOT for improvements at the SR 207/Brinkhoff Road intersection to be constructed by the County, which is recognized as meeting the requirements for Road Facilities Impact Fee Credits. The County shall be the applicant for permitting purposes. The estimated cost of the analysis, design and permitting is provided in **Exhibit "A"** attached hereto.
- E. Pursuant to the terms of the Road Facilities Impact Fee Ordinance, County and Developer desire to set forth their agreement and a procedure for the applicant and treatment of such Road Facilities 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 total Road Facilities Impact Fee Credits will be calculated as the cost of the intersection control evaluation, design and permitting for improvements at the SR 207/Brinkhoff Road intersection to be constructed by the County in the total amount of **\$182,250.00** (detailed in **Exhibit "A"**). This shall constitute fulfillment of the Developer's signal obligation for permitting purposes.
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 Facilities Impact Fee Ordinance directly to Developer. Developer shall be fully responsible for notifying all Feepayers of this requirement and shall ensure that such payments are directly paid to Developer. Then, for so long as the total Road Facilities Impact Fee Credits for which Developer has issued vouchers under this Agreement is less than the total Road Facilities Impact Fee Credits authorized by this Agreement, Developer shall issue to such Feepayer a voucher evidencing full payment of Road Facilities 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 Facilities 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 Road Impact Fee Credit Account. The Voucher Form is attached hereto as **Exhibit "B"**.
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 Facilities 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 Facilities Impact Fee Credits so sold, transferred, assigned or granted and the remaining amount of Road Facilities 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 dedication and/or improvements to the particular development to which credits are

transferred. Developer agrees it will not seek to transfer/assign/sell credits to vacant lands associated with St. Johns County permit COMM 2021-01, described as a 27 ac. mixed use commercial development with a grocery store, retail development, futures commercial outparcels and associated infrastructure. 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 remains any Road Facilities Impact Fee Credits, Developer shall prepare and deliver to the County Growth Management Department an annual report setting forth the amount of Road Facilities Impact fee payments made by the Feepayers applying for building permits or certificates of occupancy within the Project and the remaining balance of Road Facilities Impact Fee Credits.
6. At such time as the Road Facilities 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 Facilities Impact Fees as are then due and payable under the Road Facilities 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 construed 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 Facilities 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 Facilities 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 Facilities 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. 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 the exhibits attached to this Agreement are incorporated in, and made a part of this Agreement.
- e. 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.
- f. 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.
- g. All covenants, agreements, representation and warranties made herein shall be deemed to have material and relied on by each party to this Agreement.
- h. 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.
- i. The Developer must be a feepayer as referenced in the applicable impact fee ordinance to receive impact fee credits under this ordinance.
- j. Nothing in this Agreement shall act to allow an entity to receive impact fees 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 any certain amount.

- I. Any notices or reports required by this Agreement shall be sent to the following:

For the County: County Administrator  
St. Johns County  
500 San Sebastian View  
St. Augustine, Florida 32084

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

For the Developer: Phoenick Retail, LLC  
2809 Ocean Drive South  
Jacksonville Beach, FL 32250

With Copy to: Phoenick Retail, LLC  
200 Business Park Circle  
Suite 105  
St. Augustine, FL 32095

**[SIGNATURES ON FOLLOWING PAGES]**

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

Witness:

**Developer: Phoenick Retail, LLC**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

STATE OF \_\_\_\_\_

County OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of (check one)  physical presence or  online notarization, this \_\_\_\_ day of \_\_\_\_\_, 202\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a Florida corporation, on behalf of the company, who is (check one)  is personally known to me or  has produced a valid driver's license as identification.

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Notary Public

My Commission Expires: \_\_\_\_\_

Commission Number: \_\_\_\_\_

Witness:

**St. Johns County, Florida**

\_\_\_\_\_

Name: \_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: Joy Andrews,  
County Administrator

STATE OF FLORIDA  
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me by means of (check one)  
 physical presence or  online notarization, this \_\_\_\_ day of \_\_\_\_\_, 202\_, by Joy  
Andews, as County Administrator of St. Johns County, Florida, and is authorized to execute this  
Agreement on behalf of St. Johns County, Florida, on behalf of the County, who is (check one)  
 is personally known to me or  has produced a valid driver's license as identification.

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Notary Public

My Commission Expires: \_\_\_\_\_

Commission Number: \_\_\_\_\_



**EXHIBIT "A"**

**(Evaluation, Design and Permitting Costs)**

<b>ICE Analysis with FDOT:</b>	<b>\$35,000</b>
<b>Surveying:</b>	<b>\$58,250</b>
<b>Intersection and Light Design:</b>	<b>\$79,000</b>
<b><u>Permitting (Estimate):</u></b>	<b><u>\$10,000</u></b>
<b>Total:</b>	<b>\$182,250</b>

**Exhibit "B"**

**(Sample Impact Fee Voucher)**

Voucher # \_\_\_\_\_

**ST. JOHNS COUNTY IMPACT FEE VOUCHER**

(Treaty Ground PUD)

Name and address of Developer/Grantor: **Phoenick Retail, LLC**

Name and address of Grantee: \_\_\_\_\_

Legal description of subject property: \_\_\_\_\_

4. Subdivision or Master Development Plan name: **Treaty Ground PUD**

The undersigned Developer/Grantor confirms that it has received from \_\_\_\_\_

on \_\_\_\_\_, 20\_\_\_\_ 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 Road Facilities Impact Fee Credit account of the Developer/Grantor.

Road Impact Fees, Ordinance #87-57 in the amount of \$ \_\_\_\_\_

**Developer/Grantor:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_