

SCHOOL CONCURRENCY PROPORTIONATE SHARE MITIGATION AGREEMENT

SCD # 201 5 - 3 Ashby Landing II

THIS SCHOOL CONCURRENCY PROPORTIONATE SHARE MITIGATION AGREEMENT (“Agreement”), is made by and among **THE COUNTY OF ST. JOHNS**, a political subdivision of the State of Florida, hereinafter referred to as “**County**”, whose address is 500 San Sebastian View, St. Augustine, FL 32084; **THE SCHOOL BOARD OF ST. JOHNS COUNTY**, a body corporate and political subdivision of the State of Florida, hereinafter referred to as “**School District**,” whose address is 40 Orange Street, St. Augustine, Florida, 32084; and Ashby Landing, LLC **THE DEVELOPER** (“**Applicant**”), whose address is PO Box 1389, St. Augustine, FL 32085-1389; and

WHEREAS, the Applicant is authorized agent for the owner of that certain tract of land 102760-0050 and 102760-0080 (Parcel ID #) located in County and more particularly described on **Exhibit “A,”** attached hereto and incorporated herein (the “Property”). The location of the Property described in **Exhibit “A”** is illustrated with a map appearing in **Exhibit “B;”** and further described in the School Concurrency Determination application entitled **SCD 201 5 - 3 Ashby Landing II**; and

WHEREAS, the Applicant has submitted an application for a development proposal seeking approval to develop approximately 8 single family residential dwelling units on the Property, hereinafter referred to as the Development Proposal; and

WHEREAS, the County and the School District have adopted and implemented a public school concurrency management system to assure the future availability of public school facilities to serve new development consistent with level of service standards (“Level of Service” and “Level of Service Standards”) consistent with the terms of the current Interlocal Agreement between the School District and the local governments of St. Johns County, and the public school facilities and capital improvement elements of the respective comprehensive plans (individually, “Element”; plural, “Elements”); and

WHEREAS, at the time of this Agreement, adequate **elementary**, **middle, and** **high** school capacity is available to accommodate the 1.0 elementary, 0.5 middle, and 0 high school students the Development Proposal is anticipated to generate by the 8 proposed units.

WHEREAS, at the adopted Level of Service standards, (1) adequate school capacity is not available for the 0 elementary, 0 middle, and 0.7 high school students generated by the 8 proposed units at the Level of Service Standard within the concurrency services area or areas (“Concurrency Service Area”; “Concurrency Service Areas”) in which the Development Proposal is located, to accommodate the anticipated number of public school students that the Development Proposal will generate; (2) the needed school capacity for the applicable Concurrency Service Area or Concurrency Service Areas within which the Development Proposal is located is also not available in any contiguous Concurrency Service Areas; and (3) available school capacity will not be in place or under actual construction within three (3) years after the approval of the Development Proposal; and

WHEREAS, authorizing these **new** residential dwelling units without the mitigation provided for in this Agreement would result in a failure of the Level of Service Standard for public school facilities in one or more applicable Concurrency Service Areas, or will exacerbate existing deficiencies in Level of Service; and

WHEREAS, the Parties agree that public school concurrency shall be satisfied by the Applicant’s execution of this legally binding Agreement to provide mitigation proportionate to the demand for public

school facilities to be created by these **new** residential dwelling units (“Proportionate Share Mitigation”); and

WHEREAS, the Parties further agree that the appropriate Proportionate Share Mitigation option necessary to satisfy public school concurrency is payment of Proportionate Share Mitigation in the amount of \$ 13,042.00 **for the Development Proposal, or \$ 1,630.00 per dwelling unit**, as more specifically depicted or described herein.

NOW, THEREFORE, in consideration of the foregoing described Proportionate Share Mitigation, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby agree as follows:

1. **INCORPORATION OF RECITALS**. The foregoing recitals are true and correct and are hereby incorporated into this Agreement by this reference as if fully set forth herein.
2. **PARTIES**. The **County**, the School District and the Applicant shall be collectively referred to as the “Parties.”
3. **LEGALLY BINDING COMMITMENT**. The Parties agree that this Agreement constitutes a legally binding commitment by the Applicant to provide Proportionate Share Mitigation for the new residential dwelling units sought to be approved by County in the Development Proposal for the Property.
4. **PROPORTIONATE SHARE MITIGATION**. The Parties agree that the payment of Proportionate Share Mitigation in the total amount of \$ 13,042.00 for the Development Proposal, or \$ 1,630.00 per dwelling unit is an appropriate Proportionate Share Mitigation option necessary to maintain the Level of Service Standard for school capacity in the affected Concurrency Service Area or Concurrency Service Areas. Upon the final execution of this Agreement, the School District shall issue a revised School Concurrency Determination showing adequate mitigation. The duration and effect of this School Concurrency Determination shall be in accordance with the Interlocal Agreement and the Public School Facilities Element. However, in no event shall this School Concurrency Determination, or any capacity reservation based on this Determination, continue to be effective if the Applicant fails to perform its obligations under this Agreement. Conversely, once the Applicant has completely performed its obligations under this Agreement, the Applicant shall be entitled to rely on the School Concurrency Determination and capacity reservation to the extent of the capacity provided by the Proportionate Share Mitigation and once the Applicant has completely performed its obligations under this Agreement, such right of reliance shall survive the expiration of this Agreement.
5. **TIMING**. The Parties agree that the Proportionate Share Mitigation shall occur at the time of, and be a condition for the issue by County of, final construction plan approval. This payment shall be made directly to the School District.
6. **IMPACT FEE CREDIT**. As consideration for the Applicant’s Proportionate Share Mitigation specified herein, the Parties agree that the County shall provide a credit of \$ 13,042.00 for the Development Proposal, or \$ 1,630.00 per dwelling unit, toward any school impact fee or exaction imposed by ordinance of the County for the same need. Should the school impact fee or exaction be greater than the above described credit, the Applicant shall pay the difference at the time school impact fees are due. The Applicant shall provide a school impact fee voucher substantially in the form of "Exhibit C" to St. Johns County, at the time of impact fee payment. Should the school impact fee or exaction be less, the Applicant shall not be entitled to the use of any excess credits. Should school impact fees be pre-paid in order to extend the Final Certificate of Concurrency, any remaining balance due on the Proportionate Share Mitigation shall be paid at the time of final subdivision approval. Provided, however nothing in this Agreement shall be deemed to require the County to continue to levy or collect School Impact Fees, or, if levied, to levy them for any certain amount.
7. **SCHOOL CAPACITY IMPROVEMENT**. The School District agrees to apply the Proportionate Share Mitigation contributed by the Applicant toward a school capacity improvement which will

be added to the planned capital improvements in the Five Year District Facilities Work Plan at the time of its next annual update, and which satisfies the demands created by the Development Proposal in accordance with this Agreement.

8. **NO GUARANTEE OF LAND USE/ZONING.** Nothing in this Agreement shall require the COUNTY to approve any Land Use Amendment or Rezoning application associated with the property described herein.
9. **EFFECTIVE DATE.** This Agreement shall become effective on the date it is recorded in the Public Records of St. Johns, Florida (the "Effective Date"). If this Agreement is not executed by the Applicant and delivered to the County within thirty (30) days after the latter of County or School District approval of this Agreement, this Agreement shall become void.
10. **TERM.** This Agreement shall expire upon the Parties' completion of their performance of all obligations herein.
11. **STATUTORY COMPLIANCE.** The Parties agree that this Agreement satisfies the requirements for a binding Proportionate Share Mitigation Agreement in Section 163.3180(6)(h), Florida Statutes.
12. **NOTICES.** Whenever any of the Parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified. The place for giving of notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. Until otherwise designated by amendment to this Agreement, the Parties designate the following as the respective places for giving notice:

FOR COUNTY:

**County Administrator
St. Johns County
500 San Sebastian View
St. Augustine, FL 32084**

FOR SCHOOL DISTRICT:

**Tim Forson/Nicole Cubbedge
Facilities Planning & Growth Management
St. Johns County School District
40 Orange Street
St. Augustine, FL 32084**

FOR APPLICANT:

Michael Carlo, Ashby Landing, LLC
PO Box 1389
St. Augustine, FL 32085-1389

13. **RELEASE.** Upon the performance of all obligations of all parties hereto, the School District shall release the Applicant from this Agreement, and the Applicant shall release the School District and the County from any and all future claims, costs or liabilities arising out of the provision of Proportionate Share Mitigation in accordance with this Agreement. These releases shall be recorded at the Applicant's expense in the Official Records of St. Johns County, Florida, evidencing such performance.
14. **DEFAULT.** If **any party to this Agreement** materially defaults under the terms hereof, then the County shall give the defaulting party thirty (30) days notice and a right to cure such breach. Should the Applicant of the property described herein fail to timely cure a default in meeting their obligations set forth herein, their Concurrency certificate, issued based upon payment and/or performance hereunder, shall be voided and that Applicant and the property described herein shall lose their right to concurrency under this Agreement and their right to School Impact Fee credits under this Agreement. Further, in the case of such default, any development upon that property dependent upon such certificate will be stopped, until and unless

the agreement is reinstated or the default is cured or capacity becomes available and is granted through an appropriate application. Should County or School District fail to timely cure a default in meeting their obligations set forth herein, Applicant may seek any and all remedies available to it in law or equity.

15. **VENUE; CHOICE OF LAW.** Any controversies or legal issues arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be submitted to the jurisdiction of the Circuit Court of St. Johns County, Florida, the venue situs, and shall be governed by the laws of the State of Florida.
16. **CAPTIONS and PARAGRAPH HEADINGS.** Captions and paragraph headings contained in this Agreement are for convenience and reference only. They in no way define, describe, extend or limit the scope or intent of this Agreement.
17. **NO WAIVER.** No waiver of any provision of this Agreement shall be effective unless it is in writing, and signed by the party against whom it is asserted. Any such written waiver shall only be applicable to the specific instance to which it relates, and shall not be deemed to be a continuing or future waiver.
18. **EXHIBITS.** All Exhibits attached hereto contain additional terms of this Agreement and are incorporated herein by reference.
19. **FURTHER ASSURANCES.** The Parties hereby agree to execute, acknowledge and deliver and cause to be done, executed, acknowledged and delivered all further assurances and to perform such acts as shall reasonably be requested of them in order to carry out this Agreement.
20. **AMENDMENTS.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective, unless contained in a written document prepared with the same or similar formality as this Agreement and executed by all the Parties to this Agreement.
21. **ASSIGNMENT.** This Agreement runs with the land. The Applicant may assign its rights, obligations and responsibilities under this Agreement to a third party purchaser of all or any part of fee simple title to the Property. Any such assignment shall be in writing and shall require the prior acknowledgement of all of the Parties. At the election of the School District, such acknowledgement may be conditioned upon the written agreement of the assignee to comply with conditions and procedures to aid in the monitoring and enforcement of the assignee's performance of the Proportionate Share Mitigation under this Agreement. The assignor under such assignment shall furnish the Parties with a copy of the written assignment within ten (10) days of the date of execution of same.
22. **NO THIRD PARTY BENEFICIARIES.** This Agreement is made for the sole benefit and protection of the parties, their successors and assigns, and no other persons shall have any right of action hereunder.
23. **COUNTERPARTS.** This Agreement may be executed in three (3) counterparts, each of which may be deemed to be an original.
24. **RECORDING OF THIS AGREEMENT.** The Applicant shall record this Agreement, at its expense, within fourteen (14) days after full execution, in the St. Johns County Public Records. Time is of the essence in the recording, and failure to timely record shall render this Agreement void.
25. **MERGER CLAUSE.** This Agreement sets forth the entire agreement among the Parties, and it supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, among the Parties.
26. **SEVERABILITY.** If any provision of this Agreement is declared invalid or unenforceable by a court of competent jurisdiction, the invalid or unenforceable provision will be stricken from the Agreement, and the balance of this Agreement will remain in full force and effect as long as doing so would not affect the overall purpose or intent of the Agreement.

WITNESS WHEREOF, the Parties have made and executed this Agreement on the respective dates above each signature:

COUNTY of ST. JOHNS, through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Chair, authorized to execute same by BOARD action on this _____ day of _____, 2015.

The SCHOOL DISTRICT OF ST. JOHNS COUNTY, signing by and through its Chair, authorized to execute same by District action on this _____ day of _____, 2015.

The APPLICANT signing by Michael Carlo, Ashby Landing, LLC its
Manager duly authorized to execute same, on this _____ day of _____, 2015.

COUNTY

Signed, witnessed, executed and acknowledged on this _____ day of _____, 2015.

WITNESSES:

COUNTY

By: _____, Chair

(Please Print)

ATTEST:

By: _____, **County Clerk**

(Please Print)

By: _____, **County Administrator**

(Please Print)

SCHOOL DISTRICT

Signed, witnessed, executed and acknowledged on this _____ day of _____, 2015.

WITNESSES:

SCHOOL DISTRICT OF ST. JOHNS COUNTY, FLORIDA

By: _____, Chair

(Please Print)

ATTEST:

By: _____, Superintendent of Schools

(Please Print)

APPLICANT

Signed, witnessed, executed and acknowledged on this _____ day of _____, 2015.

WITNESSES:

APPLICANT

By: _____

(Please Print)

Manager
Title

STATE OF FLORIDA }

COUNTY OF ST JOHNS}

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____,

Print Name _____

Notary Public

State of Florida at Large

My Commission Expires: _____

Personally Known _____

or Produced ID _____

[check one of the above]

Type of Identification Produced

EXHIBIT A
Legal Description (Revised)
Ashby Landing II

LEGAL DESCRIPTION: SOUTH PARCEL

A tract of land being a portion of that certain property described as Parcel No. 1; Easement #1 and Parcel 3, as recorded in Official Records Book 3622, page 41 of the Public Records of St. Johns County, Florida and lying within the Antonio Canovas Donation, Section 48, Township 7 South, Range 29 East, St. Johns County, Florida and being more particularly described as follows:

Commence at the Northeast corner of said Section 48; thence S00°09'36"E, along the East line of said Section 48, for 708.34 feet to the point of intersection with the South right-of-way line of Dobb's Road Cut-off (a 100 foot right-of-way, as it is now established), as recorded in Official Records Book 787, page 1738 of the Public Records of St. Johns County, Florida, said point also being the POINT OF BEGINNING of the South Parcel described herein.

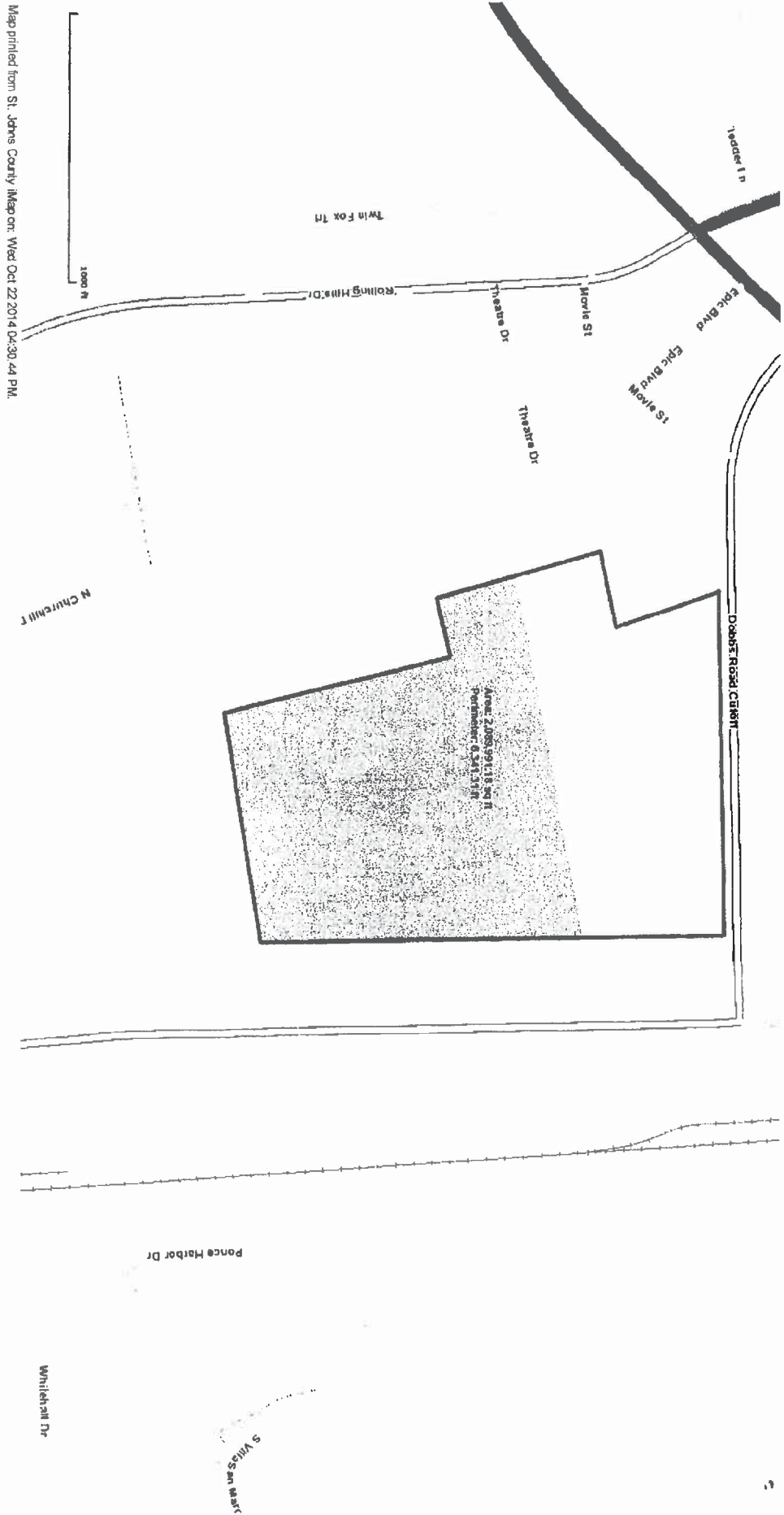
Thence continue S00°09'36"E, along said East line of said Section 48, for 1898.93 feet to the point of intersection with the South line of that 160-foot Florida Power & Light Company easement, as recorded in Official Records Book 259, page 136 of the Public Records of St. Johns County, Florida; thence S80°25'25"W, along said South line, for 845.18 feet to the point of intersection with the easterly line of that certain property as described in Official Records Book 2280, page 547 of the Public Records of St. Johns County, Florida; thence along said easterly line, the following three (3) courses; (1) thence N13°09'54"W, for 1047.34 feet; (2) thence S76°51'53"W, for 230.74 feet; (3) thence N15°10'27"W, for 611.74 feet to the point of intersection with the South line of that certain property described in Ordinance No. 88-8, as recorded in Official Records Book 771, page 989 of the Public Records of St. Johns County, Florida; thence N80°24'28"E, along said South line, for 268.87 feet to the Southeast corner thereof; thence N00°05'57"E, along the East line of said certain property, for 421.71 feet to the point of intersection with aforesaid South right-of-way line of Dobb's Road Cut-off; thence N89°15'50"E, along said South right-of-way line, for 1185.72 feet to the POINT OF BEGINNING of the South Parcel herein described.

Containing 51.18 acres, more or less.

Said lands situated, lying and being in St. Johns County, Florida.

SCD 2015-3 Ashby Landing II

Exhibit "B"



Map printed from St. Johns County Map on: Wed Oct 22 2014 04:30:44 PM.

Voucher #

St. Johns County Impact Fee Voucher

(Name of Development)

RE: SCD 201 -

1. Name and address of Developer/Grantor: _____
2. Name and address of Grantee: _____
3. Legal description of subject property: _____
4. Subdivision or Master Development Plan name: _____

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 Impact Fee Credit account of the Developer/Grantor.

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

By: _____
 Print: _____
 Its: _____