



Interoffice Memorandum


APPROVED

BY ORANGE COUNTY BOARD  
OF COUNTY COMMISSIONERS

June 14, 2013

JUL 16 2013 NP/BS

TO: Mayor Teresa Jacobs  
and the Board of County Commissioners

FROM: Mark V. Massaro, P.E., Director, Public Works Department 

CONTACT PERSON: Renzo Nastasi, AICP, Manager **RN**  
Transportation Planning Division

PHONE NUMBER: (407) 836-8072

SUBJ: **Proportionate Share Agreement for Peachtree Estates Reams Road: From  
Cast Drive to Old Reams Road**

Pursuant to Section 163.3180(5)(h)(3), Florida Statutes, an applicant may mitigate capacity deficiencies by entering into a Proportionate Share Agreement and contributing to a proportionate share payment. The Agreement (Peachtree Estates) follows the recommendations of the Concurrency Review Committee providing for the mitigation of road impacts on Reams Road.

The proportionate share fee for Peachtree Estates amounts to \$99,114.82.

**Action Requested: Approval of Proportionate Share Agreement for Peachtree Estates Reams Road: From Cast Drive to Old Reams Road by and between Ashton Woods Orlando Limited Partnership and Orange County, Florida regarding a proportionate share payment in the amount of \$99,114.82. District 1.**

MM/RN/hegb

APPROVED  
BY ORANGE COUNTY BOARD  
OF COUNTY COMMISSIONERS

JUL 16 2013 *NPL/ES*

This instrument prepared by  
and after recording return to:  
Juli S. James, Esquire  
300 S. Orange Ave., Ste 1000  
Orlando, FL 32801

**PROPORTIONATE SHARE AGREEMENT FOR  
PEACHTREE ESTATES  
Reams Road: From Cast Drive to Old Reams Road**

This Proportionate Share Agreement (the "Agreement") is made and entered into by and between Ashton Woods Orlando Limited Partnership, a Florida limited partnership (the "**Owner**") and ORANGE COUNTY, FLORIDA, a charter county and political subdivision of the State of Florida (the "**County**").

WHEREAS, the Owner is the owner of fee simple title to certain real property, as more particularly described on Exhibit "A," attached hereto and incorporated herein by this reference (the "**Property**"); and

WHEREAS, the Property is located in County Commission District #1 in Horizon West; and

WHEREAS, the Owner intends to develop the Property as a residential subdivision consisting of twenty-eight (28) single-family residential units to be known as "Peachtree Estates" (the "**Project**"); and

WHEREAS, the Owner received a letter from the County dated April 9, 2013, stating that the Owner's Capacity Encumbrance Letter ("**CEL**") application #12-246 for the Project was denied; and

WHEREAS, the Project will generate seven (7) deficient PM Peak Hour trips (the "**Excess Trips**") for the deficient roadway segment on Reams Road from Cast Drive to Old Reams Road (the "**Deficient Segment**"), and zero (0) PM Peak Hour trips were available on the Deficient Segment on the date the CEL was denied as further described in Exhibit "C" hereto; and

WHEREAS, the Excess Trips will cause the Deficient Segment to operate below adopted Level of Service standards and, therefore, pursuant to Section 163.3180(5)(h)(3), Florida Statutes (2012), the Owner must provide the County with proportionate share mitigation for the Excess Trips; and

WHEREAS, the Owner and the County have agreed that the proportionate share payment necessary to mitigate the impact of the Excess Trips on the Deficient Segment

through the current anticipated Project buildout is Ninety-Nine Thousand One Hundred Fourteen and 82/100 Dollars (\$99,114.82) (the “PS Payment”).

WHEREAS, County and Owner desire to set forth certain terms, conditions, and agreements between the parties as to the development of the Property into the Project.

NOW, THEREFORE, in consideration of the premises contained herein and other good and valuable consideration exchanged by and between the Owner and the County, the receipt and sufficiency of which are hereby acknowledged, the parties hereto stipulate and agree as follows:

**Section 1. Recitals.** The above recitals are true and correct and are incorporated herein by this reference.

**Section 2. Issuance of Capacity Encumbrance Letter**

(a) *Calculation of PS Payment:* The amount of the PS Payment for the Deficient Segment described in Exhibit “B,” attached hereto and incorporated herein by reference, totals Ninety-Nine Thousand One Hundred Fourteen and 82/100 Dollars (\$99,114.82). This PS Payment was calculated in accordance with the methodology outlined in Section 163.3180, Florida Statutes; the Memorandum of such Proportionate Share Calculation is attached hereto as Exhibit “C,” and incorporated herein by this reference. The Owner and the County agree that the Excess Trips constitute the Project’s impact on the aforementioned Deficient Segment based upon Orange County’s Traffic Study dated February 6, 2013, attached hereto and incorporated herein by reference as Exhibit “D.” The Owner and the County further acknowledge and agree that the PS Payment as set forth above shall be the final and binding calculation of the amount the Owner is required to pay through the buildout of the Project as proportionate share mitigation for impacts of the Project upon roadways impacted by the Project within Orange County’s jurisdiction, notwithstanding any subsequent variance in the actual cost of improvement to the Deficient Segment or actual traffic impacts created by the Project; provided, however, that if Owner subsequently increases the number of units (or square footage, as applicable) of the Project, the Project may then be subject to an additional concurrency evaluation and proportionate share agreement as set forth in Section 2(d) below. The Owner and the County further acknowledge and agree that the calculation of and agreement on the amount of the PS Payment constitute material inducements for the parties to enter into this Agreement.

(b) *Timing of PS Payment.* Within thirty (30) days following the Effective Date (as defined in Section 12 hereof) of this Agreement, the Owner shall deliver a check to the County in the amount of Ninety-Nine Thousand One Hundred Fourteen and 82/100 Dollars (\$99,114.82) as the PS Payment. The check shall be made payable to “Orange County Board of County Commissioners” and shall be delivered to the Fiscal and Operational Support Division of the Community, Environmental, and Development Services

Department. Within twenty-one (21) days following the County's receipt of the PS Payment, the County shall issue a CEL sufficient to encumber traffic capacity for the Project, irrespective of any actual traffic deficiency on the Deficient Segment. Within the time frame provided in the CEL, the Owner shall reserve the encumbered trips as provided in Section 30-591 of the County Code. An amount equal to the PS Payment shall be applied to the amount of the initial reservation payment (and any subsequent reservation payment(s), if the initial reservation payment does not exceed the amount of the PS Payment), as further set forth in Section 3 below. In the event Owner has not paid the PS Payment within thirty (30) days of the Effective Date, this Agreement shall become null and void.

(c) *Project Development.* Recordation of a subdivision plat or approval of a commercial site plan for the Project shall not be permitted prior to the issuance of a Capacity Reservation Certificate as contemplated in subparagraph 2(b) above.

(d) *Increase in Project Trips.* Any change to the Project which increases the unit count or square footage, as applicable, could result in an increase in trips on the Deficient Segment or other segments within the Concurrency Road Network. The Owner understands and agrees that it is precluded from asserting that those additional trips are vested or otherwise permitted under this Agreement. In addition, the Owner understands and agrees that any such changes resulting in an increase in trips may cause this Agreement to be null and void, or may require the application for and execution of an additional Proportionate Share Agreement for the number of increased trips.

(e) *Satisfaction of Transportation Improvement Requirements.* The County hereby acknowledges and agrees that, based upon the Owner's commitment to pay the PS Payment as required herein, in the absence of a change in the Project increasing the number of trips as set forth in subparagraph 2(d) above, the Owner shall be deemed to have satisfied all requirements for the mitigation of the traffic impacts of the Project on all roads affected by the Project within the jurisdiction of the County through buildout of the Project. Owner shall be entitled to fully and completely develop the Project, without regard to whether the improvements to the Deficient Segment are actually constructed. Provided, however, Owner shall be required to obtain a Capacity Reservation Certificate prior to the expiration of Owner's Capacity Encumbrance Letter and shall be required to maintain the validity of the Capacity Reservation Certificate in accordance with its terms. Nothing herein shall be construed to exempt the Owner from meeting the requirements of all other applicable laws, regulations, and County Code sections or from making the required payment of road impact fees applicable to the Project, subject to credits as set forth in Section 3 below.

**Section 3. Road Impact Fee Credits.** The County and the Owner agree that the Owner shall be entitled to receive road impact fee credits on a dollar for dollar basis in an amount up to, but not exceeding the amount of, the PS Payment in accordance with Section 163.3180, Florida Statutes, and as more particularly described in Exhibits "B"

and "C" attached hereto. The County further agrees that such credits may be applied on a dollar for dollar basis against capacity reservation fees at such time as capacity reservation fees may be required to be paid by Owner in connection with the issuance of a Capacity Reservation Certificate as contemplated in Section 2 above. In no event shall Owner receive credits in excess of the PS Payment and in the event the PS Payment exceeds either the applicable road impact fees or capacity reservation fees, as the case may be, the Owner shall not be entitled to a refund for the amount of the PS Payment in excess of such road impact fees or capacity reservation fees.

**Section 4. No Refund.** The PS Payment (including any reservation fees paid with the PS Payment) is non-refundable.

**Section 5. Notice.** With the exception of the timing of the PS Payment as set forth in Section 2(b) hereof, the parties acknowledge and agree that no party shall be considered in default for failure to perform under this Agreement until such party has received written notice specifying the nature of such default or failure to perform and said party fails to cure said default or fails to perform within thirty (30) days of receipt of written notice. Any notice delivered with respect to this Agreement shall be in writing and be deemed to be delivered (whether or not actually received) (i) when hand delivered to the person(s) hereinafter designated, or (ii) upon deposit of such notice in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the person at the address set forth opposite the party's name below, or to such other address or other person as the party shall have specified by written notice to the other party delivered in accordance herewith:

As to Owner: Ashton Woods Orlando Limited Partnership  
c/o Ashton Woods Homes  
2450 Maitland Center Parkway, Suite 301  
Maitland, Florida 32751  
Attention: David Brown

With copy to: Shutts & Bowen LLP  
Attn: Juli S. James, Esq.  
300 S. Orange Avenue, Suite 1000  
Orlando, Florida 32801

As to County: Orange County Administrator  
201 South Rosalind Avenue, 5<sup>th</sup> Floor  
Orlando, Florida 32801

With copy to: Orange County Community, Environmental, and Development  
Services Department  
Manager, Fiscal and Operational Support Division  
201 South Rosalind Avenue, 2<sup>nd</sup> Floor  
Orlando, Florida 32801

Orange County Community, Environmental, and Development  
Services Department  
Manager, Transportation Planning Division  
4200 South John Young Parkway  
Orlando, Florida 32839

Orange County Community, Environmental, and Development  
Services Department  
Manager, Planning Division  
201 South Rosalind Avenue, 2nd Floor  
Orlando, FL 32801

**Section 6. Covenants Running with the Property.** This Agreement shall be binding, and shall inure to the benefit of the heirs, legal representatives, successors, and assigns of the parties, and shall be a covenant running with the Property and be binding upon the successors and assigns of the Owner and upon any person, firm, corporation, or entity who may become the successor in interest to the Property.

**Section 7. Recordation of Agreement.** The parties hereto agree that this Agreement shall be recorded in the Official Records of Orange County, Florida, at Owner's expense, within ten (10) business days after the Effective Date of this Agreement (as defined in Section 12 below).

**Section 8. Applicable Law.** This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida and in accordance with the Orange County Code.

**Section 9. Specific Performance.** County and Owner shall each have the right to enforce the terms and conditions of this Agreement only by an action for specific performance. Venue for any action(s) initiated under or in connection with this Agreement shall be in the Circuit Court for the Ninth Judicial Circuit in and for Orange County, Florida.

**Section 10. Attorney Fees.** In the event either party hereto brings an action or proceeding, including any counterclaim, cross-claim, or third party claim, against the other party arising out of this Agreement, each party in such action or proceeding, including appeals therefrom, shall be responsible for its own attorney fees.

**Section 11. Construction of Agreement; Severability.** Captions of the Sections and Subsections of this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in

the interpretation, construction, or meaning of the provisions of this Agreement. If any provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefits by any party hereunder or substantially increase the burden of any party hereunder, shall be held to be invalid or unenforceable to any extent by a court of competent jurisdiction, the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Agreement.

**Section 12. Effective Date.** The effective date of this Agreement (the "Effective Date") shall be the date when the last one of the parties has properly executed this Agreement as determined by the date set forth immediately below their respective signatures.

**Section 13. Amendments.** No amendment, modification or other changes to this Agreement shall be binding upon the parties unless in writing executed by all of the parties.

**Section 14. Counterparts.** This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but all counterparts shall together constitute duplicates of one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their respective duly authorized representatives on the dates set forth below.



"COUNTY"

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Teresa Jacobs*

Teresa Jacobs

Orange County Mayor

Date: *7.16.13*

ATTEST: Martha O. Haynie, County Comptroller  
As Clerk of the Board of County Commissioners

By: *Katie Smet*

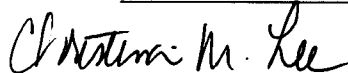
Deputy Clerk

**"PEACHTREE ESTATES"**

**WITNESSES:**



Print Name: JOHN E. KASSIK



**CHRISTINA M. LEE**

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

**"OWNER"**

ASHTON WOODS ORLANDO LIMITED PARTNERSHIP, a Florida limited partnership

By: Ashton Woods Lakeside L.L.C., a Nevada limited liability company, general partner

By: 

Print Name: **John Reny**  
Authorized Representative

Date: 6-6-13

**STATE OF FLORIDA  
COUNTY OF ORANGE**

SWORN to and subscribed freely and voluntarily for the purposes therein expressed before me by John Reny, as Authorized Representative of Ashton Woods Lakeside L.L.C., a Nevada limited liability company, the general partner of Ashton Woods Orlando Limited Partnership, a Florida limited partnership who is known by me to be the person described herein and who executed the foregoing, this 6<sup>th</sup> day of June, 2013. He/she is personally known to me or has produced (type of identification) as identification and did/did not (circle one) take an oath.

6<sup>th</sup> WITNESS my hand and official seal in the County and State last aforesaid this June day of June, 2013.

  
NOTARY PUBLIC

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

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





**Exhibit "A"**

**Peachtree Estates**

Parcel ID: 35-23-27-5432-00-001

**Legal Description:**

TRACT A OF LAKES OF WINDERMERE-PEACHTREE, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 55, PAGES 20-25, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, LESS THAT PORTION OF TRACT A DEDICATED TO ORANGE COUNTY AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHWEST CORNER OF TRACT A, LAKES OF WINDERMERE-PEACHTREE, AS RECORDED IN PLAT BOOK 55, PAGES 20-25, PUBLIC RECORDS OF ORANGE COUNTY FLORIDA, SAID POINT ALSO BEING THE NORTHERLY RIGHT-OF-WAY LINE OF REAMS ROAD, AS RECORDED IN PLAT BOOK 30, PAGES 106-107, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, AND SAID POINT ALSO BEING ON A CURVE, CONCAVE SOUTHWESTERLY HAVING A CENTRAL ANGLE OF 02° 09' 47" AND A RADIUS OF 1292.65 FEET; THENCE FROM A TANGENT BEARING OF N51° 50' 10"W, RUN NORTHWESTERLY ALONG SAID NORTHERLY RIGHT-OF-WAY AND THE ARC OF SAID CURVE, A DISTANCE OF 48.80 FEET TO POINT OF TANGENCY; THENCE CONTINUE ALONG SAID RIGHT-OF-WAY LINE, N53° 59' 57", A DISTANCE OF 292.51 FEET TO A POINT ON THE WESTERLY LINE OF TRACT A; THENCE DEPARTING SAID RIGHT-OF-WAY LINE, RUN N35° 26' 19"E, ALONG SAID WESTERLY LINE A DISTANCE OF 30.00 FEET; THENCE DEPARTING SAID WESTERLY LINE, RUN S53° 59' 57"E, A DISTANCE OF 292.81 FEET TO THE POINT OF CURVEATURE OF A CURVE, CONCAVE SOUTHWESTERLY HAVING A CENTRAL ANGLE OF 03° 49' 35" AND A RADIUS OF 1322.65 FEET; THENCE RUN SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 88.33 FEET TO A POINT ON THE SOUTH LINE OF SAID TRACT A; THENCE DEPARTING SAID CURVE, RUN N89° 19' 20"W, ALONG SAID SOUTH LINE, A DISTANCE OF 48.38 FEET TO THE POINT OF BEGINNING.

**Exhibit "B"**

**Proportionate Share Summary Calculation**

**Reams Road**

Cast Drive to Old Reams Road

$$7 \text{ Trips} \times \$14,159.26/\text{Trip} = \$99,114.82$$

**Exhibit "C"**  
**Memorandum of Proportionate Share Calculation**

**PROPORTIONATE SHARE SUMMARY**

**Project Name:**  
Peachtree Estates

**Development Program:**  
28 Single Family Dwelling Units

**Trip Generation:**  
33 New PM Peak hour trips ( 21 entering /12 exiting)

**Deficient Segment:**  
Segment #373.1 of Concurrency Management System Database, Reams Road from Cast Drive to Old Reams Road.

**Total Deficient Trips:**  
7 PM Peak hour directional trips.

**Mitigation Plan:**  
Pay Proportionate Share towards programmed roadway improvement to widen Reams Road from 2 lanes to 4 lanes.

Total capacity generated by improvement: **1080 PM Peak hour trips**

Estimated cost of overall roadway improvement: **\$15,292,000.00**

Cost per trip on deficient segment: **\$14,159.26**

Project Proportionate Share Calculation:

**7 PM Peak hour trips X \$14,159.26/trip = \$99,114.82**

**Exhibit "D"**

**Orange County Traffic Study**



## Proportionate Share Summary Calculation Sheet

**Development Name:** Peachtree Estates  
**Application Number:** 2012-246  
**Denial Date:** \_\_\_\_\_

**Type of Development:**
      Residential
      Commercial
      Industrial
      Mixed Use

Single Family  
 Multi-family  
 TH/Condo  
 Other

Retail  
 Office  
 Lodging  
 Other

Industrial/Manuf  
 Warehousing  
 Mini-Warehousing  
 Other

Indicate all applicable uses

**Development Size:** \_\_\_\_\_ S.F.      28 D.U.      \_\_\_\_\_ Rooms

**Total Number of Deficient**      7      Trips

**Roadway Improvement Project Information**

Planned Improvement Roadway(s)	Limits of Improvement From                      To	Segment Length	Adopted LOS	Existing Generalized Capacity	Type of Improvement	Improved Generalized Capacity	Capacity Increase	Total Project Cost	Cost per Mile	Cost / Trip / Mile
Reams Road	Cast Drive                      Old Reams Road	1.61	E	880	Widen to 4 Lanes	1960	1080	\$15,292,000	\$9,498,137	\$8,794.57

**Development Proportionate Share Information**

Deficient Roadway(s) Impacted	Limits of Deficient Segment From                      To	Deficient Segment Length	Number of Deficient Trips	Cost / Trips/ Mile	Cost / Trip on Deficient Segment	Gross Proportionate Share	Impact Fee Credit %	Total Impact Fee Credit	Net Proportionate Share
Reams Road	Cast Drive                      Old Reams Road	1.61	7	\$8,794.57	\$14,159.26	\$99,114.82	0	\$0	\$99,114.82