

2 This instrument prepared by
and after recording return to:

4
6 Parcel ID Number(s):
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10 -----[SPACE ABOVE THIS LINE FOR RECORDING DATA]-----

12 **PROPORTIONATE SHARE AGREEMENT FOR**
<PROJECT NAME>

14 _____
<NAME OF ROADWAY>

16 This Proportionate Share Agreement (the “Agreement”), effective as of the latest date of
execution (the “**Effective Date**”), is made and entered into by and between <legal entity name>, a
18 <state/ type of entity> (“**Owner**”), whose principal place of business is <address>, and ORANGE
COUNTY, a charter county and political subdivision of the State of Florida (“**County**”), whose
20 address is P.O. Box 1393, Orlando, FL 32802-1393.

22 WHEREAS, Owner holds fee simple title to certain real property, as generally depicted on
Exhibit “A” and more particularly described on Exhibit “B”, both of which exhibits are attached
hereto and incorporated herein by this reference (the “**Property**”); and

24 WHEREAS, the Property is located in County Commission District __ and the proceeds
of the PS Payment, as defined herein, will be allocated to <name of roadway>; and

26 WHEREAS, Owner intends to develop the Property as <number and type of units/square
footage>, referred to and known as <Project Name> (the “**Project**”); and

28 WHEREAS, Owner received a letter from County dated _____, stating that Owner’s
Capacity Encumbrance Letter (“**CEL**”) application # _____ for the Project was denied; and

30 WHEREAS, the Project will generate _____ deficient PM Peak Hour trip(s) (the
“**Excess Trip(s) 1**”) for the deficient roadway segment on _____ from
32 _____ to _____ (the “**Deficient**
Segment 1”), and _____ PM Peak Hour trips were available on Deficient Segment 1 on the
34 date the CEL was denied, as further described in Exhibit “C”; and

36 WHEREAS, the Project will generate _____ deficient PM Peak Hour trip(s) (the
“**Excess Trip(s) 2**”) for the deficient roadway segment on _____ from
_____ to _____ (the “**Deficient**
Segment 2”), and _____ PM Peak Hour trips were available on Deficient Segment 2 on the
38 date the CEL was denied, as further described in Exhibit “C”; and

40 WHEREAS the Excess Trip(s) 1 and Excess Trip(s) 2 shall be referred to herein
collectively as the Excess Trips; and

42
44 WHEREAS, the Deficient Segment 1 and Deficient Segment 2 shall be referred to herein
collectively as the Deficient Segments; and

46 WHEREAS, the Excess Trips will cause the Deficient Segments to operate below adopted
Level of Service standards; therefore, pursuant to Section 163.3180(5)(h), Florida Statutes, as
48 amended, Owner has offered to provide County with proportionate share mitigation for the Excess
Trips; and

50 WHEREAS, Owner and County have agreed that the proportionate share payment
necessary to mitigate the impact of the Excess Trips on the Deficient Segments through the current
52 anticipated Project buildout is <spell out> and --/100 Dollars (\$_____.__) (the “PS
Payment”); and

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

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

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

Section 2. PS Payment; CEL.

62 (a) **Calculation of PS Payment:** The amount of the PS Payment for the Deficient
Segments, as described in Exhibit “C”, totals <spell out> and __/100 Dollars (\$_____.__). This
64 PS Payment was calculated in accordance with the methodology outlined in Section 163.3180,
Florida Statutes. Owner and County agree that the Excess Trips will constitute the Project’s impact
66 on the aforementioned Deficient Segments based upon (i) Owner’s Traffic Study titled “[TITLE
ON COVER OF TRAFFIC STUDY]” prepared by [NAME OF CONSULTING FIRM
68 PERFORMING TRAFFIC STUDY], dated _____, 20__ for [NAME OF APPLICANT]
(the “Traffic Study”), which is incorporated herein by this reference, and (ii) upon the calculations
70 described in Exhibit “C”. The Traffic Study was accepted by the Orange County Transportation
Planning Division on _____, 20__ [DATE OF MEMO FROM TRANSPORTATION
72 PLANNING’S CONSULTANT APPROVING TRAFFIC STUDY], and is on file and available
for inspection with that division (CMS #____). Owner and County further acknowledge and agree
74 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 currently approved Project as proportionate
76 share mitigation for impacts of the Project upon roadways within Orange County’s jurisdiction,
notwithstanding any subsequent variance in the actual cost of improvement to the Deficient
78 Segments or actual traffic impacts created by the Project; provided, however, that if Owner
subsequently increases the number of units and/or square footage, as applicable, of the Project, the
80 Project may then be subject to an additional concurrency evaluation and proportionate share

82 agreement as set forth in Section 2(d) below. Owner and County further acknowledge and agree
that the calculation of, and agreement regarding, the amount of the PS Payment constitute material
inducements for the parties to enter into this Agreement.

84 (b) *Timing of PS Payment, Issuance of CEL.* Within ninety (90) days following the
Effective Date, Owner shall deliver a check to County in the amount of <spell out> and __/100
86 Dollars (\$_____.__) 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
88 Division of the Planning, Environmental, and Development Services Department. Within twenty-
one (21) days following its receipt of the PS Payment, if the Property’s future land use designation
90 and zoning are consistent with the Project’s proposed development, County shall issue a CEL
sufficient to encumber traffic capacity for the Project, irrespective of any actual traffic deficiency
92 on the Deficient Segments. Within the time frame provided in the CEL, the Owner must reserve
the encumbered trips by obtaining a Capacity Reservation Certificate as provided in Section 30-
94 591 of the Orange County Code, as may be amended. An amount equal to the PS Payment shall
be applied toward the amount of the initial capacity reservation payment (and any subsequent
96 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
98 within ninety (90) days of the Effective Date, one extension of ninety (90) days may be granted by
the manager of County’s Transportation Planning Division. In the event Owner has not paid the
100 PS Payment to County within one hundred eighty (180) days after the Effective Date, this
Agreement shall become null and void.

102 (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
104 Reservation Certificate as contemplated in subparagraph 2(b) above.

(d) *Increase in Project Trips.* Any change to the Project which increases the unit count
106 and/or square footage, as applicable, may result in an increase in trips on the Deficient Segments
or other segments within the transportation impact area, as defined by County. Owner understands
108 and agrees that any such additional trips are neither vested nor otherwise permitted under this
Agreement, and that Owner is precluded from asserting any such vesting. In addition, Owner
110 understands and agrees that any such changes resulting in an increase in trips may cause this
Agreement to become null and void, and/or may require application for and execution of an
112 additional Proportionate Share Agreement, along with any other required documentation, for the
number of increased trips.

114 (e) *Satisfaction of Transportation Improvement Requirements.* County hereby
acknowledges and agrees that upon Owner’s payment of the PS Payment as required herein, and
116 absent any change in the Project increasing the number of trips as set forth in subparagraph 2(d)
above, Owner shall be deemed to have satisfied all requirements for the mitigation of the traffic
118 impacts of the Project on all roads affected by the Project within County’s jurisdiction through
buildout of the Project. Owner shall be entitled to fully and completely develop the Project, without
120 regard to whether the improvements to the Deficient Segments are actually constructed; provided,
however, Owner shall be required to obtain a Capacity Reservation Certificate prior to the
122 expiration of Owner’s Capacity Encumbrance Letter and shall be required to maintain the validity

124 of the Capacity Reservation Certificate in accordance with its terms. Additionally, nothing herein
shall be construed to exempt Owner from meeting the requirements of all other applicable laws,
126 regulations, and/or Orange County Code provisions or from making the required payment of
transportation impact fees applicable to the Project, subject to credits as set forth in Section 3
below.

128 **Section 3. Transportation Impact Fee Credits.** County and Owner agree that Owner
shall be entitled to receive transportation impact fee credits, applicable only toward development
130 of the Project on the Property, on a dollar for dollar basis in an amount up to but not exceeding the
PS Payment in accordance with Section 163.3180, Florida Statutes, and as specifically described
132 in Exhibit "C". 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
134 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
136 Payment and in the event the PS Payment exceeds either the applicable transportation impact fees
or capacity reservation fees, as the case may be, Owner shall not be entitled to a refund for the
138 amount of the PS Payment in excess of such transportation impact fees or capacity reservation
fees.

140 **Section 4. No Refund.** The PS Payment (including any capacity reservation fees paid
with the PS Payment) is non-refundable and cannot be transferred or applied to another project or
142 property.

144 **Section 5. 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
146 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
148 party shall have specified by written notice to the other party delivered in accordance herewith:

150
As to Owner:

With copy to:

As to County: Orange County Administrator
P. O. Box 1393
Orlando, Florida 32802-1393

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

Orange County
Planning, Environmental, and Development Services Department
Manager, Transportation Planning Division
4200 South John Young Parkway, 2nd Floor
Orlando, Florida 32839

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

152 **Section 6. Covenants Running with the Property.** This Agreement shall be binding
and shall inure to the benefit and burden of the heirs, legal representatives, successors, and assigns
154 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.

156 **Section 7. Recordation of Agreement.** Owner shall record an original of this
Agreement in the Public Records of Orange County, Florida, at no expense to County, not later
158 than thirty (30) days after the Effective Date.

160 **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.

162 **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.
164 Venue for any action(s) initiated under or in connection with this Agreement shall lie in the Circuit
Court of the Ninth Judicial Circuit in and for Orange County, Florida. With the exception of the
166 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
168 party has received written notice, in accordance with Section 5, specifying the nature of such
default or failure to perform and said party fails to cure said default or fails to perform within thirty
170 (30) days of receipt of written notice

172 **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,
174 shall be responsible for its own attorney and legal fees.

176 **Section 11. Construction of Agreement; Severability.** Captions of the Sections and
Subsections of this Agreement are for convenience and reference only; any words contained
178 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
180 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
182 respect whatsoever the validity or enforceability of the remainder of this Agreement.

184 **Section 12. Amendments.** No amendment, modification, or other change(s) to this
Agreement shall be binding upon the parties unless in writing and formally executed by all of the
parties.

186 **Section 13. Termination.** In the event either (i) Owner has not paid the PS Payment to
County within one hundred eighty (180) days after the Effective Date, as contemplated in
188 Subsection 2(b), or (ii) Owner has timely paid the PS Payment to County and the Project has been
constructed on the Property pursuant to a County building permit, this Agreement shall
190 automatically terminate and thereafter be null and void for all purposes.

192 **Section 14. Counterparts.** This Agreement may be executed in up to two (2)
counterparts, each of which shall be deemed to be an original and both of which together shall
constitute one and the same instrument.

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[Signatures appear on following pages]

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206 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”

Proportionate Share Agreement, <Project Name>
<entity name> for <name of roadway>, 20__

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: _____
Jerry L. Demings
Orange County Mayor

Date: _____

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: _____
Deputy Clerk

Print Name: _____

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WITNESSES:

“OWNER”

<name>, a <state / type of entity>

Print Name: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Date: _____

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STATE OF: _____

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COUNTY OF: _____

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The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 20 __, by _____, as

236

_____ of <owners name>, a <state / type of entity>, on behalf of such <entity>, who is personally known to me or has produced _____ as identification.

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WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, 20 __.

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(Notary Stamp)

Signature of Notary Public

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Print Name: _____

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Notary Public, State of: _____

Commission Expires: _____

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Exhibit “A”

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“[PROJECT NAME]”

Project Location Map

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MAP GUIDELINES

Black & White

1-2 Mile Radius

Must Reflect Street Names

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Parcel Must Be Clearly Identified/Outlined BOLD (no star)

Please Note: Maps can be printed from www.OCPAFL.org

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Proportionate Share Agreement, <Project Name>
<entity name> for <name of roadway>, 20__

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Exhibit “B”

“[PROJECT NAME]”

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Parcel ID: _____

Legal Description:

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[insert description from vesting deed unless project specific description is available]

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Exhibit “C”

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“[PROJECT NAME]”

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DEFICIENT SEGMENT [#]

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Log of Project Contributions
Deficient Road Segment (Road Segment to Road Segment)

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S:\RALfonso\RAC\Templates 2022\RAC Prop Share Template - Multiple Deficient Segments - updated June 2022 Clean.docx

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