

2 This instrument prepared by
and after recording return to:

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

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

16 _____
<NAME OF ROADWAY>

18 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>,
20 a <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
22 (“**County**”), whose address is P.O. Box 1393, Orlando, FL 32802-1393.

24 WHEREAS, Owner is the owner of 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

26 WHEREAS, the Property is located in County Commission District __, within the
<County’s Urban Service Area/other>, and the proceeds of the PS Payment, as defined herein,
28 will be allocated to <name of roadway>; and

30 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

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

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

40 WHEREAS, the Excess Trip(s) will cause the Deficient Segment to operate below
adopted Level of Service standards; therefore, pursuant to Section 163.3180(5)(h), Florida
42 Statutes, as amended, the Owner shall provide the County with proportionate share mitigation for
the Excess Trip(s); and

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

48 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.

50 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
52 sufficiency of which are hereby acknowledged, the parties hereto stipulate and agree as follows:

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

Section 2. PS Payment; CEL.

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

80 (b) *Timing of PS Payment, Issuance of CEL.* Within ninety (90) days following the
81 Effective Date, Owner shall deliver a check to County in the amount of <spell out> and __/100
82 Dollars (\$_____.__) as the PS Payment. The check shall be made payable to “Orange
83 County Board of County Commissioners” and shall be delivered to the Fiscal and Operational
84 Support Division of the Community, Environmental, and Development Services Department.
85 Within twenty-one (21) days following its receipt of the PS Payment, if the Property’s future
86 land use designation and zoning are consistent with the Project’s proposed development, County
87 shall issue a CEL sufficient to encumber traffic capacity for the Project, irrespective of any actual
88 traffic deficiency on the Deficient Segments. Within the time frame provided in the CEL, the
89 Owner must reserve the encumbered trips by obtaining a Capacity Reservation Certificate as
90 provided in Section 30-591 of the Orange County Code, as may be amended. An amount equal
91 to the PS Payment shall be applied toward the amount of the initial capacity reservation payment
92 (and any subsequent reservation payment(s), if the initial reservation payment does not exceed
93 the amount of the PS Payment) as further set forth in Section 3 below. In the event Owner has
94 not paid the PS Payment within ninety (90) days of the Effective Date, one extension of ninety
95 (90) days may be granted by the manager of County’s Transportation Planning Division. In the
96 event Owner has not paid the PS Payment to County within one hundred eighty (180) days after
the Effective Date, this Agreement shall become null and void.

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

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

110 (e) *Satisfaction of Transportation Improvement Requirements.* County hereby
111 acknowledges and agrees that upon Owner’s payment of the PS Payment as required herein, and
112 absent any change in the Project increasing the number of trips as set forth in subparagraph 2(d)
113 above, Owner shall be deemed to have satisfied all requirements for the mitigation of the traffic
114 impacts of the Project on all roads affected by the Project within County’s jurisdiction through
115 buildout of the Project. Owner shall be entitled to fully and completely develop the Project,
116 without regard to whether the improvements to the Deficient Segment are actually constructed;
117 provided, however, Owner shall be required to obtain a Capacity Reservation Certificate prior to
118 the expiration of Owner’s Capacity Encumbrance Letter and shall be required to maintain the
119 validity of the Capacity Reservation Certificate in accordance with its terms. Additionally,
120 nothing herein shall be construed to exempt Owner from meeting the requirements of all other
121 applicable laws, regulations, and/or Orange County Code provisions or from making the required
122 payment of transportation impact fees applicable to the Project, subject to credits as set forth in
Section 3 below.

124 **Section 3. Transportation Impact Fee Credits.** County and Owner agree that Owner
126 shall be entitled to receive transportation impact fee credits on a dollar for dollar basis in an
128 amount up to but not exceeding the PS Payment in accordance with Section 163.3180, Florida
130 Statutes, and as specifically described in Exhibit “C.” County further agrees that such credits
132 may be applied on a dollar for dollar basis against capacity reservation fees at such time as
134 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 transportation impact fees or capacity reservation fees, as the case may be, Owner
shall not be entitled to a refund for the amount of the PS Payment in excess of such
transportation impact fees or capacity reservation fees.

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

138 **Section 5. Notice.** With the exception of the timing of the PS Payment as set forth in
140 Section 2(b) hereof, the parties acknowledge and agree that no party shall be considered in
142 default for failure to perform under this Agreement until such party has received written notice
144 specifying the nature of such default or failure to perform and said party fails to cure said default
146 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:

148
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
Orlando, Florida 32839

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

150 **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
152 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.

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

158 **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.

160 **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.
162 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.

164 **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
166 arising out of this Agreement, each party in such action or proceeding, including appeals
therefrom, shall be responsible for its own attorney and legal fees.

168 **Section 11. Construction of Agreement; Severability.** Captions of the Sections and
Subsections of this Agreement are for convenience and reference only; any words contained
170 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
172 Agreement, the deletion of which would not adversely affect the receipt of any material benefits

174 by any party hereunder or substantially increase the burden of any party hereunder, shall be held
175 to be invalid or unenforceable to any extent by a court of competent jurisdiction, the same shall
176 not affect in any respect whatsoever the validity or enforceability of the remainder of this
Agreement.

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

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

185 **Section 14. Counterparts.** This Agreement may be executed in up to three (3)
186 counterparts, each of which shall be deemed to be an original and all of which together shall
constitute one and the same instrument.

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[Signatures appear on following pages]

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Proportionate Share Agreement, <PROJECT NAME>
<entity name> for <name of roadway>, 20__

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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: _____
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:

Print Name: _____

Print Name: _____

“OWNER”

<name>, a <state / type of entity
≥

By: _____

Print Name: _____

Title: _____

Date: _____

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226 **STATE OF FLORIDA**
227 **COUNTY OF ORANGE**

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230 The foregoing instrument was acknowledged before me by
_____, as _____ of _____, a
_____, who is known by me to be the person described herein and who executed
232 the foregoing, this _____ day of _____, 20__. He/she is personally known to me
or has produced _____ (type of identification) as identification
234 and did/did not (circle one) take an oath.

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

NOTARY PUBLIC

Print Name: _____

My Commission Expires: _____

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Exhibit A

“[PROJECT NAME]”

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Project Location Map

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Proportionate Share Agreement, <PROJECT NAME>
<entity name> for <name of roadway>, 20__

Exhibit “B”

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“[PROJECT NAME]”

Parcel ID: _____

268 **Legal Description:**

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Exhibit “C”
“[PROJECT NAME]”
DEFICIENT SEGMENT
Log of Project Contributions
Deficient Road Segment (Road Segment to Road Segment)

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**JOINDER AND CONSENT TO
<title of agreement>**

The undersigned hereby certifies that it is the holder of the following instrument(s) (the
“Instrument(s)”):

**<First/other Mortgage, Assignment of Rents, and Security Agreement/other>
by <name>, a <type of entity> duly organized and validly existing under the
laws of the State of Florida, to <name>, a <type of entity>, duly created,
organized and existing under the laws of the State of Florida (the "Issuer"),
dated < date>, and recorded <date>, in Instrument No. 20170268158, Public
Records of Orange County, Florida, in the original principal amount of <\$>
and the terms and conditions thereof,**

upon the property presently owned by <name>, a description of which is attached hereto
as Exhibit “A” (hereinafter the “Property”).

The undersigned hereby joins in, and consents to, the recording of the <title of
agreement> (the “Agreement”), and agrees that its above-referenced Instrument(s), as
<it/they> may be modified, amended, and assigned from time to time, shall be
subordinated to the Agreement, as said Agreement may be modified, amended, and
assigned from time to time.

[Signatures follow on next page.]

362 **IN WITNESS WHEREOF**, the undersigned has executed this Joinder and
Consent in manner and form sufficient to bind it.

**Signed, sealed, and delivered
in the presence of:**

<Name>, a <type of entity – e.g., banking
corporation> duly organized and validly
existing under the laws of the United States of
America

Name: _____

By: _____
Print Name: _____
Print Title: _____

Name: _____

364 STATE OF FLORIDA
COUNTY OF ORANGE

366 The foregoing instrument was acknowledged before me this ___ day of
_____, 201_, by _____, as _____ of
368 _____, a _____, on behalf of
_____. S/he is personally known to me or has produced
370 _____ as identification.

372 (NOTARY SEAL)

Notary Public, State of Florida

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376 _____
Typed or Printed Name of Notary

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