

NOTE: SUBMITTAL OF NON-STANDARD
DOCUMENTS MAY RESULT IN LONGER REVIEW TIMES

This instrument prepared by and after
recording return to:

2 Tax Parcel I.D. No(s):

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**ADEQUATE PUBLIC FACILITIES AGREEMENT
FOR <NAME>**

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8 **THIS ADEQUATE PUBLIC FACILITIES AGREEMENT FOR <NAME>** (the
“Agreement”), effective as of the latest date of execution (the “Effective Date”), is made and
10 entered into by and between <NAME> a <type, state of entity> whose mailing address is <add>
 (“Owner”) and ORANGE COUNTY, a charter county and political subdivision of the State of
12 Florida whose mailing address is P.O. Box 1393, Orlando, Florida 32802-1393 (“County”).

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RECITALS:

16 A. OWNER is the fee simple owner of certain real property located in Orange
County, Florida, as more particularly described in Exhibit “A” and as shown on Exhibit “B”
18 attached hereto and made a part hereof by this reference, referred to as the “<name> PD.”

20 B. The <name> PD is identified on the Orange County Comprehensive
Plan <year - year> (the “Comprehensive Plan”) Future Land Use map with the “Village” land use
22 designation and constitutes a portion of <Village name/Town Center>, in Horizon West, as same
is described and depicted in the <name> Specific Area Plan approved by the Board of County
24 Commissioners of Orange County, Florida (the “BCC”) on <date> (the “<name> SAP”).

26 C. The <name> PD is included in the Horizon West Village Land Use
Classification Area. The BCC adopted the Horizon West Village Land Use Classification
28 Comprehensive Policy Plan (“CPP”) amendment on June 5, 1995. The Horizon West
Village Land Use Classification was the result of a public-private partnership between the BCC
30 and Horizon West, Inc. The partnership conducted an extensive visioning and community
consensus building process that was summarized in the Horizon West Study Report issued
32 February 7, 1995.

34 D. The <name> PD has relied on the prior approvals of the Horizon West Study and
the <name> SAP, and on the approvals and studies included in the <name> SAP.

36

E. The <name> SAP contemplates certain < type/use> uses
38 within the PD Property.

2 F. OWNER desires to develop the PD Property in accordance with the
<name of PD LUP/ UNP>, submitted by OWNER to COUNTY, and with the PD zoning
application on file with COUNTY.

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6 G. The Goals, Objectives, and Policies contained in the Future Land Use Element of
the Comprehensive Plan have been implemented through Chapter 30, Article XIV of the Orange
County Code (the “APF/TDR Ordinance”) adopted by the BCC on May 20, 1997, as amended.

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10 H. Division 2 of the APF/TDR Ordinance requires, in Section 30-712(b), that
OWNER enter into a developer’s agreement identifying required adequate public facilities within
the development and addressing the conveyance to the COUNTY of such adequate public
12 facilities lands prior to or in conjunction with PD approval, unless otherwise addressed in such
agreement pursuant to Section 30-714(c).

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16 I. The parties have agreed that this Agreement constitutes the aforementioned
developer’s agreement referenced in Division 2 of the APF/TDR Ordinance.

18 J. If Owner is unable to convey sufficient adequate public facilities lands to County,
the APF/TDR Ordinance, at Sections 30-712(b) and 30-714(d), states that OWNER may make
20 payment of an adequate public facility lands fee to COUNTY. Additionally, the APF/TDR
Ordinance, at Section 30-714(g), allows for application of APF acreage credits to satisfy an APF
22 deficit.

24 K. It is the intent of the parties that COUNTY will consider approval of the <name>
PD with its consideration of this Agreement.

26 L. The <name> PD contains approximately <#> acres of **net** developable land, and
both the <name> SAP and Section 30-714 of the APF/TDR Ordinance require 1 acre of public
facilities acreage for every <#> acres of net developable land (the “APF Ratio”).

28
30 M. When applied to the <name> PD, the APF Ratio requires approximately
<#> acres of public facilities lands.

32 N. As shown on the <name of PD LUP/UNP>, and as described in this
Agreement, OWNER is providing __ acre(s) of adequate public facilities land (the “APF Lands”)
34 to COUNTY.

NOW THEREFORE, for and in consideration of the above premises, the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

AGREEMENT

1. Recitals. The above recitals are true and correct and are hereby incorporated as material provisions of this Agreement by this reference.

2. Dedication of APF Lands by Owner. Owner shall convey the APF Lands as follows:

a) Right(s)- of- way for the following transportation improvement(s) /road(s) (depicted as APF Road ROW on the <name of PD LUP/UNP>:

<road/improvement name> Approximately __ acres

It is contemplated that wider right(s)- of- way may be required in some locations, such as at intersections, to facilitate traffic movement.

b) <type/use of APF Lands>:

<facility> Approximately __ acres

c), etc. as necessary.

3. APF <Surplus/Deficit>. The APF Ratio requires that Owner convey to County approximately _____ acres of APF Lands. This Agreement provides for conveyance of approximately _____ acres of APF Lands, thereby creating a _____-acre APF <surplus/deficit>.

4. APF <Acreage Credits / Surplus/ Fee>.

(if applying acreage credits) – OWNER has obtained __ APF acreage credits within <village/town center> and has asked COUNTY to apply these credits toward the APF deficit. Application of the APF acreage credits <satisfies the APF deficit / results in a remaining APF deficit of __ acres>.

(if fee) -- OWNER will pay to COUNTY an APF Fee of \$___ per acre, for __ acre(s), for a total of <spell out amount (\$__.)>, to account for the <remaining> APF deficit, representing OWNER’S full and final APF contribution for the <name> PD. OWNER understands and agrees

2 that payment of the APF Fee shall occur prior to or in connection with County's approval of the
2 <name> PD.

4 (if surplus) -- County hereby acknowledges that the aforementioned APF surplus will
4 result in APF acreage credit equivalent to _____ acres of APF Lands, which APF acreage credit
6 may be sold and/or assigned by Owner to other owners within <Village Name/Town Center> who
6 do not have sufficient land within the boundaries of their PD(s) to satisfy their APF Ratio
8 requirements. Such APF acreage credit may only be used within <Village Name / Town Center>.

10 5. Conveyance Procedure. The conveyance of the APF Lands shall be by general
12 warranty deed, free and clear of all liens and encumbrances, except for easements of record
12 acceptable to County, if any. Owner shall pay all costs associated with the conveyance of the APF
14 Lands, including all recording fees and documentary stamps related to such conveyance. Ad
14 valorem taxes in connection with the conveyance of the APF Lands shall be prorated as of the date
16 of transfer of title and said prorated amount shall be paid by Owner to Orange County, in escrow,
16 pursuant to Section 196.295, Florida Statutes, unless the conveyance occurs between November 1
18 and December 31 of the year of conveyance, in which case ad valorem taxes shall be paid in full
18 by Owner for the year of conveyance.

20 a) *Title Policy.* No less than thirty (30) days prior to conveyance, Owner shall
22 deliver to County, at Owner's sole cost and expense, an updated commitment to issue an Owner's
22 Policy of Title Insurance naming County as the insured (the "Title Commitment"). The original
24 Owner's Policy of Title Insurance (the "Title Policy") shall be delivered to County within thirty
24 (30) days after the conveyance of the APF Lands.

26 b) *Environmental Audit; due diligence.* No less than thirty (30) days prior to
28 conveyance, Owner shall submit to County a current (within 6 months of conveyance to County)
28 Phase I environmental audit of the areas encompassed by the APF Lands. The Phase I
30 environmental audit shall be conducted in accordance with the requirements of the All
30 Appropriate Inquiries Final Rule, or with the standards set forth in the American Society for
32 Testing and Materials (ASTM) E-1527-13. In the event the Phase I environmental audit presents
32 a matter of concern, as determined by County, then prior to the conveyance, Owner shall submit to
34 County a Phase II environmental audit. If the Phase II environmental audit is performed and
34 reveals the need for remediation to the APF Lands, one of the following events shall occur: (i)
36 Owner shall remediate the APF Lands to County's satisfaction prior to the conveyance; or (ii)
36 Owner and County shall negotiate and enter into a separate agreement whereby Owner shall pay
38 the full cost of remediation; or (iii) County may terminate this Agreement at its option.

38 The Applicant shall perform, or cause to be performed, such other due diligence actions of
40 the type that are usually and customarily performed in connection with real estate conveyances of
40 this type, including but not limited to geotechnical studies, wetland delineations, surveys, and

wildlife studies, at no cost to County, as may reasonably be requested by the County. The Parties
acknowledge and agree that if the property contains wetland(s), mitigation for wetland impacts
shall be mitigated by the Applicant prior to conveyance to County, in compliance with all
applicable laws, rules, and ordinances of any applicable governmental authority with jurisdiction
thereover, so that the properties may each be used for their intended purpose.

c) *Compliance with Section 286.23, Florida Statutes.* Owner shall execute and
deliver to County the "Disclosure of Beneficial Interests" required pursuant to section 286.23,
Florida Statutes.

6. Value of conveyed lands. The parties agree that the value of the APF Lands, as
determined in accordance with Chapter 23 of the Orange County Code, as amended, is ___dollars
and --/100 (\$___). This total results from an agreed-upon fair market value of \$22,500 per acre,
or fraction thereof, and a total acreage of __ acre(s). Promptly upon County's final acceptance of
conveyance of the APF Lands, County shall credit on its books to the account of Owner, for
purposes of Chapter 23 of the Orange County Code, as amended, (type, NOT transportation>
impact fee credits in the amount of such aforementioned value of the APF Lands.

7. Refinement of Size and Location of APF Lands (if conveying later, per second #8
below). The size and location of all APF Lands as depicted on the Master PD Land Use Plan are
approximate, although the final size and location shall be substantially similar to that shown on the
<name of PD LUP / UNP>. The dimensions and locations for a particular component of the APF
Lands shall be finalized by County and Owner prior to County approval of the Preliminary
Subdivision Plan or Development Plan ("PSP/DP") that includes the particular APF Lands, and
shall be in full compliance with this Agreement. **County and Owner agree that the legal
descriptions used to convey the APF Lands to County may be revised based upon final
engineering.**

8. Timing for Conveyance to County. Prior to or in connection with Planned
Development Approval, Owner shall convey the APF Lands to County. Conveyance shall be
defined as submittal of all conveyance documents, approval by the board of county
commissioners, and recordation of the deed(s). The legal description(s) and sketch(es) of
description of the APF Lands are attached hereto and incorporated herein as Exhibit "C."

<or>

8. Option on Conveyance. As an alternative to conveyance prior to or in connection
with Planned Development approval, Owner has elected to convey at a later time, as contemplated
by Sec. 30-714 of the APF/TDR Ordinance. Conveyance shall be defined as submittal of all
conveyance documents, approval by the board of county commissioners, and recordation of the
deed(s).

2 The parties agree that, prior to conveyance to County, Owner shall have the reasonable
3 right to grade and to import or export fill material upon the APF Lands, subject to and in
4 accordance with an approved grading permit and/or excavation fill permit. Further, Owner agrees
5 to relinquish control of the APF Lands and convey such APF Lands to County, within 120 days of
6 demand by County. If conveyance does not occur within such 120-day period, the Manager of
7 County's Real Estate Division may grant one extension of up to 120 days to complete the
8 conveyance. Owner acknowledges and agrees that any development in connection with the PD
9 Property shall not proceed beyond five percent (5%) of the PD Property's entitlements prior to
10 such conveyance and/or payment of any APF fee in lieu of conveyance. For purposes of this
11 Agreement, the parties agree that 5% of development is defined as <identify here>. Until such
12 time as the conveyance process begins, Owner may continue to use the APF Lands in a manner
consistent with County's intended use.

14 With respect to the APF Lands, Owner shall continue to be responsible for any and all risk
15 of injury and property damage attributable to the acts or omissions of its officers and employees
16 and agrees to defend, indemnify, and hold harmless County and its officers, employees, and agents
17 from and against all claims, actions, losses, judgments, fines, liabilities, costs, and expenses in
18 connection therewith. More specifically, to the extent permitted by law, Owner shall indemnify
19 and hold harmless County, its officers, agents, and employees from and against any all claims,
20 liability, demands, damages, surcharges, expenses, fees, fines, penalties, suits, proceedings, and
21 actions (including, without limitation, reasonable paralegal and attorney fees and expenses,
22 whether in court, out of court, in administrative proceedings, or on appeal), including damage to
23 property or property rights that may arise and which are proximately caused by the acts, errors, or
24 omissions of Owner, its agents, and/or representatives, arising out of its activities related to the
25 APF Lands. In addition, without limiting the foregoing, in the event that any act or omission of
26 Owner, its agents, and/or representatives, arising from or related to this Agreement, results in any
27 spill or release of hazardous materials or other pollutants, as those terms are defined in federal and
28 state environmental laws and regulations, including, without limitation, any petroleum-based
29 substances, then, to the extent permitted by law, Owner shall indemnify and hold harmless
30 County, its officers, agents, and employees from and against any and all claims, liability,
31 demands, damages, surcharges, expenses, fees, fines, penalties, suits, proceedings, and actions,
32 including, without limitation, all reasonable, actual cleanup and/or remediation costs and expenses
33 expended by County at the direction of any federal or state agency having jurisdiction, and further
34 including, without limitation, reasonable paralegal and attorney fees and expenses, whether in
35 court, out of court, in administrative proceedings, or on appeal. Owner shall be responsible for the
36 immediate notification to County of any environmental condition, spill, or release, or any other
37 condition or occurrence of which it becomes aware that may result in a claim for damages, or that
38 occurs as a result of Owner's activities related to the APF Lands.

39 In the event that any of the above occurs, County may refuse to accept conveyance of the
40 APF Lands and Owner may be required to pay an APF fee in lieu of conveyance or to convey
alternative adequate public facilities lands acceptable to County. Notwithstanding anything

2 seemingly to the contrary above, the parties acknowledge and agree that full satisfaction of
Owner's APF obligations must take place prior to County approval of the initial plat for the PD
Property.

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6 9. Recording. Within thirty (30) days of the Effective Date, this Agreement shall be
recorded in the Public Records of Orange County, Florida, at Owner's expense

8 10. Limitation of Remedies. County and Owner expressly agree that the consideration,
in part, for each of them entering this Agreement is the willingness of the other to limit the
10 remedies for all actions arising out of or in connection with this Agreement.

12 a) Limitations on County's Remedies. Upon any failure by OWNER to perform its
obligations under this Agreement, COUNTY shall be limited strictly to only the following
14 remedies:

- 16 (i) action for specific performance; or
(ii) action for injunction; or
18 (iii) the withholding of development permits and other approvals and/or
permits in connection with the Project and/or the PD Property; or
20 (iv) any combination of the foregoing.

In addition to the foregoing, nothing in this Agreement prohibits or estops COUNTY from
22 exercising its power of eminent domain with respect to the APF Lands or any portion of the
<name> PD as County may lawfully elect.

24 b) Limitations on OWNER'S Remedies. Upon any failure by COUNTY to
26 perform its obligations under this Agreement, OWNER shall be limited strictly to only the
following remedies:

- 28 (i) action for specific performance; or
30 (ii) action for injunction; or
(iii) action for declaratory judgment regarding the rights and
32 obligations of Owner; or
34 (iv) any combination of the foregoing.

Both parties expressly waive their respective rights to sue for damages of
36 any type for breach of or default under this Agreement by the other. Venue for any actions
initiated under or in connection with this Agreement shall be in the Circuit Court of the
38 Ninth Judicial Circuit in and for Orange County, Florida.

40 11. Binding Effect. This Agreement shall be binding upon and shall inure to the

benefit and burden of the parties hereto and their respective heirs, successors, and assigns and shall run with title to the PD Property and be binding upon any person, firm, corporation, or other entity acquiring any interest in all or any portion of the PD Property.

12. Severability. If any provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefits by any party hereunder nor 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.

13. Notices. Any notice delivered with respect to this Agreement shall be in writing and shall 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 to such other person as the party shall have specified by written notice to the other party delivered in accordance herewith.

COUNTY: Orange County, Florida, c/o County Administrator
Post Office Box 1393
Orlando, Florida 32802-1393
Telephone: 407. 836.7370

With copies to: Orange County Community, Environmental,
and Development Services Department
Manager, Planning Division
Post Office Box 1393
Orlando, Florida 32802-1393
Telephone: 407.836.5600

Orange County Community, Environmental,
and Development Services Department
Manager, Transportation Planning Division
Orange County Public Works Complex
4200 S. John Young Parkway
Orlando, Florida 32839-8070
Telephone: 407.836.8070

OWNER: < >

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14. Disclaimer of Third Party Beneficiaries. This Agreement is solely for the benefit of the formal parties hereto and no right or cause of action shall accrue by reason hereof to or for the benefit of any third party not a formal party hereto. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give any person or entity any right, remedy, or claim under or by reason of this Agreement or any provisions or conditions hereof, other than the parties hereto and their respective representatives, heirs, successors, and assigns.

15. Applicable Law. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

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16. Interpretation. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that all parties have contributed substantially and materially to the preparation hereof. Captions and section headings in this Agreement are provided for convenience only and shall not be deemed to explain, modify, amplify, or aid in the interpretation, construction, or meaning of this Agreement.

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17. Attorney Fees. Each party to this Agreement agrees to bear its own attorney and other legal fees and costs in connection with all actions to be undertaken in compliance with, and enforcement of, this Agreement.

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18. Survival. The obligations of this Agreement shall survive conveyance of the APF Lands to COUNTY.

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19. Amendments. No amendment, modification, or other change to this Agreement shall be binding upon the parties unless in writing and formally executed in the same manner as this Agreement.

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20. Entire Agreement. This Agreement embodies and constitutes the entire understanding of the parties with respect to the subject matter addressed herein, and all prior or contemporaneous agreement, understandings, representations, and statements, oral or written, are merged into this Agreement.

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21. Counterparts. This Agreement may be executed in up to two (2) counterparts, both of which taken together shall constitute one and the same instrument and any party or

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signatory hereto may execute this Agreement by signing either such counterpart.

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22. Authority to Contract. The execution of this Agreement has been duly authorized by the appropriate body or official of each party hereto.

23. Termination; Effect of Annexation. This Agreement shall remain in effect so long as the Property remains in unincorporated Orange County, Florida, unless the Parties terminate it, in writing, with the same formality as its execution. If any portion of the Property is proposed to be annexed into a neighboring municipality, County may, in its sole discretion, terminate this Agreement upon notice to Owner.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

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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.

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ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

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By: _____

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Teresa Jacobs,
Orange County Mayor

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Date: _____

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

22

By: _____

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Deputy Clerk

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Printed Name: _____

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<NAME OF OWNER,> a _____

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By: _____

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Printed Name: _____

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Title: _____

Date: _____

WITNESSES:

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Printed Name: _____

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Printed Name: _____

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14 STATE OF FLORIDA
COUNTY OF ORANGE

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18 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 the foregoing, this ____ day
20 of _____, 20__. S/he is personally known to me or has produced _____
as identification and did/did not take an oath.

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

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Notary Public

Print Name: _____

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My Commission Expires: _____

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Exhibit "A"

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**Legal Description and Sketch of
Description for the PD Property
[__ pages follow]**

Exhibit "B"
Project Area Location Map

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Exhibit “C”

(if applicable)

**Legal description and sketch of description
For APF Lands**

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