

2 This instrument prepared by  
and after recording return to:

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6 Parcel ID Number(s):

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10 -----[SPACE ABOVE THIS LINE FOR RECORDING DATA]-----  
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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>, a  
20 <state/ type of entity> (“**Owner**”), with its principal place of business at <address>, and ORANGE  
COUNTY, a charter county and political subdivision of the State of Florida (“**County**”), with its  
22 principal address at P.O. Box 1393, Orlando, Florida 32802-1393. Owner and County may  
sometimes be referred to herein individually as “Party” and collectively as “Parties.”

24 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  
26 hereto and incorporated herein by this reference (the “**Property**”); and

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

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

WHEREAS, Owner received a letter from County dated \_\_\_\_, 20\_\_, stating that Owner’s  
32 Capacity Encumbrance Letter (“**CEL**”) application # \_\_\_\_\_ for the Project was denied; and

WHEREAS, the Project will generate \_ deficient PM Peak Hour trip(s) (the “**Excess**  
34 **Trip(s) 1**”) for the deficient roadway segment on \_\_\_\_\_ from  
\_\_\_\_\_ to \_\_\_\_\_ (the “**Deficient**  
36 **Segment 1**”), and Zero (0) PM Peak Hour trips were available on the Deficient Segment 1 on the  
date the CEL was denied, as further described in Exhibit “C” attached hereto and incorporated  
38 herein; and

40 WHEREAS, the Project will generate \_\_\_\_\_ deficient PM Peak Hour trip(s) (the  
41 “**Excess Trip(s) 2**”) for the deficient roadway segment on \_\_\_\_\_ from  
42 \_\_\_\_\_ to \_\_\_\_\_ (the “**Deficient**  
43 **Segment 2**”), and \_\_\_\_\_ PM Peak Hour trips were available on Deficient Segment 2 on the  
44 date the CEL was denied, as further described in Exhibit “C” attached hereto and incorporated  
45 herein; and

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

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

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

54 WHEREAS, Owner and County have agreed that the proportionate share payment  
55 necessary to mitigate the impact of the Excess Trips on the Deficient Segments through the current  
56 anticipated Project buildout is <Spell Out> and --/100 Dollars (\$\_\_\_\_\_.\_\_) (the “**PS**  
57 **Payment**”); and

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

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

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

65 **Section 2. PS Payment; CEL.**

66 (a) *Calculation of PS Payment:* The amount of the PS Payment for the Deficient  
67 Segments, as described in Exhibit “C”, totals <Spell Out> and \_\_/100 Dollars (\$\_\_\_\_\_.\_\_). This  
68 PS Payment was calculated in accordance with the methodology outlined in Section 163.3180,  
69 Florida Statutes, as may be amended. Owner and County agree that the Excess Trips will constitute  
70 the Project’s impact on the aforementioned Deficient Segments based upon (i) Owner’s Traffic  
71 Study titled “[TITLE ON COVER OF TRAFFIC STUDY]” prepared by [NAME OF  
72 CONSULTING FIRM PERFORMING TRAFFIC STUDY], dated \_\_\_\_\_, 20\_\_, for  
73 [NAME OF APPLICANT] (the “**Traffic Study**”), which is incorporated herein by this reference,  
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76 and (ii) upon the calculations described in Exhibit “C”. The Traffic Study was accepted by the  
77 Orange County Transportation Planning Division on \_\_\_\_\_, 20\_\_, and is on file and available  
78 for inspection with that division (CMS # \_\_\_\_). Owner and County further acknowledge and agree  
79 that the PS Payment as set forth above shall be the final and binding calculation of the amount the  
80 Owner is required to pay through the buildout of the currently approved Project as proportionate  
81 share mitigation for impacts of the Project upon roadways within County’s jurisdiction,  
82 notwithstanding any subsequent variance in the actual cost of any improvement(s) to the Deficient  
83 Segments or actual traffic /travel impacts created by the Project; provided, however, that if Owner  
84 modifies the Project’s development program and/or subsequently increases the number of units  
85 and/or square footage, as applicable, of the Project, the Project may then be subject to an additional  
86 concurrency evaluation and proportionate share agreement as set forth in Subsection 2(d) below.  
87 Owner and County further acknowledge and agree that the calculation of an agreement regarding  
88 the amount of the PS Payment constitute material inducements for the Parties to enter into this  
Agreement.

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

108 (c) *Project Development.* Recordation of a subdivision plat and/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.

110 (d) *Increase in Project Trips.* Any change or modification to the Project that increases  
111 the unit count and/or square footage, as applicable, may result in an increase in trips on the  
112 Deficient Segments or other segments within the transportation impact area, as defined by County.

114 Owner understands 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  
116 addition, Owner 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  
118 of an additional Proportionate Share Agreement, along with any other required documentation, for  
the number of increased trips.

(e) *Satisfaction of Transportation Improvement Requirements.* County hereby  
120 acknowledges and agrees that upon Owner's payment of the PS Payment as required herein, and  
absent any change or modification to the Project as set forth in Subsection 2(d) above, Owner shall  
122 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 County's jurisdiction through buildout of the Project.  
124 Owner shall be entitled to fully and completely develop the Project, without regard to whether  
improvements to the Deficient Segments are actually constructed; provided, however, Owner shall  
126 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  
128 Certificate in accordance with its terms. Additionally, nothing herein shall be construed to exempt  
Owner from meeting the requirements of all other applicable laws, rules, regulations, and/or  
130 Orange County Code provisions or from making the required payment of transportation and other  
impact fees applicable to the Project, subject to any credits as set forth in Section 3 below. For  
132 avoidance of doubt, nothing herein is intended to, nor shall, constitute prepayment of any densities  
and/or intensities of development or of any development program.

134 ***Section 3. Transportation Impact Fee Credits.*** County and Owner agree that in  
accordance with Section 163.3180(5)(h)(2)(e), Florida Statutes, as may be amended, Owner shall  
136 receive a credit on a dollar for dollar basis for impact fees, paid or payable in the future for the  
Project in an amount up to but not exceeding the PS Payment as specifically described in Exhibit  
138 "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 paid by  
140 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  
142 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  
144 PS Payment in excess of such transportation impact fees or capacity reservation fees. For  
avoidance of doubt, nothing herein is intended to, nor shall, constitute prepayment of any densities  
146 and/or intensities of development or of any development program.

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

150           **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  
152 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  
154 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:

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, 2<sup>nd</sup> Floor  
Orlando, Florida 32801

Orange County Public Works Department  
Manager, Transportation Planning Division  
4200 South John Young Parkway, 2<sup>nd</sup> Floor  
Orlando, Florida 32839

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

156           **Section 6. Covenants Running with the Property.** This Agreement shall be binding  
upon and shall inure to the benefit and burden of the heirs, legal representatives, successors, and  
158 assigns of the Parties, and shall be a covenant running with the Property and be binding upon the

160 successors and assigns of Owner and upon any person, firm, corporation, or entity who may  
161 become a successor in interest to the Property.

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

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

168 **Section 9. Specific Performance.** County and Owner shall each have the right to  
169 enforce the terms and conditions of this Agreement only by an action for specific performance.  
170 Venue for any action(s) initiated under or in connection with this Agreement shall lie in the Circuit  
171 Court of the Ninth Judicial Circuit in and for Orange County, Florida. With the exception of the  
172 timing of the PS Payment as set forth in Section 2(b) hereof, the parties acknowledge and agree  
173 that no party shall be considered in default for failure to perform under this Agreement until such  
174 party has received written notice, in accordance with Section 5, specifying the nature of such  
175 default or failure to perform and said party fails to cure said default or fails to perform within thirty  
176 (30) days of receipt of written notice.

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

181 **Section 11. Construction of Agreement; Severability.** Captions of the Sections and  
182 Subsections of this Agreement are for convenience and reference only; any words contained  
183 therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction,  
184 or meaning of the provisions of this Agreement. If any provision of this Agreement, the deletion  
185 of which would not adversely affect the receipt of any material benefits by any party hereunder or  
186 substantially increase the burden of any party hereunder, shall be held to be invalid or  
187 unenforceable to any extent by a court of competent jurisdiction, the same shall not affect in any  
188 respect whatsoever the validity or enforceability of the remainder of this Agreement.

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

192 **Section 13. Termination.** In the event either (i) Owner has not paid the PS Payment to  
193 County within one hundred eighty (180) days after the Effective Date, as contemplated in  
194 Subsection 2(b), or (ii) Owner has timely paid the PS Payment to County and the Project has been

194 constructed on the Property and completed, pursuant to a County building permit, this Agreement  
shall automatically terminate and thereafter be null and void for all purposes.

196 **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  
198 constitute one and the same instrument.

200 [Signatures appear on following pages]

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234           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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**“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:**

**“OWNER”**

\_\_\_\_\_  
Signature of Witness

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

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

By: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

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

\_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Signature of Witness

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

Mailing Address: \_\_\_\_\_

\_\_\_\_\_

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**STATE OF:** \_\_\_\_\_

258 **COUNTY OF:** \_\_\_\_\_

260 The foregoing instrument was acknowledged before me by means of  physical presence  
or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_  
262 \_\_\_\_\_, as \_\_\_\_\_ of <owners name>, a <state / type of entity>, on behalf of such  
<entity>, who  is personally known to me or  has produced \_\_\_\_\_  
264 as identification.

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(Notary Stamp)

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\_\_\_\_\_  
Signature of Notary Public  
Print Name: \_\_\_\_\_  
Notary Public, State of: \_\_\_\_\_  
Commission Expires: \_\_\_\_\_  
(mm/dd/yyyy)

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**Exhibit “A”**

**“[PROJECT NAME]”**

**Project Location Map**

**MAP GUIDELINES**

**1-2 Mile Radius**

**Must Reflect Street Names**

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

**Please Note: Maps can be printed from [www.OCPAFL.org](http://www.OCPAFL.org)**

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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**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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