

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]-----

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

14 _____
<NAME OF ROADWAY>

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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
19 <state/ type of entity> (“**Owner**”), with a principal place of business at <address>, and ORANGE
20 COUNTY, a charter county and political subdivision of the State of Florida (“**County**”), with its
principal address at P.O. Box 1393, Orlando, FL 32802-1393. Owner and County may sometimes
21 be referred to herein individually as “Party” and collectively as “Parties.”

22
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
hereto and incorporated herein by this reference (the “**Property**”); and

26 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

28 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

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

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

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

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

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

50 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
52 amended, Owner has offered to provide County with proportionate share mitigation for the Excess
Trips; and

54 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
56 anticipated Project buildout is <spell out> and --/100 Dollars (\$_____.__) (the “PS
Payment”); and

58 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.

60 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
62 sufficiency of which are hereby acknowledged, the Parties stipulate and agree as follows:

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

Section 2. PS Payment; CEL.

66 (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
68 PS Payment was calculated in accordance with the methodology outlined in Section 163.3180,
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
Study titled “[TITLE ON COVER OF TRAFFIC STUDY]” prepared by [NAME OF
72 CONSULTING FIRM PERFORMING TRAFFIC STUDY], dated _____, 20__ for

[NAME OF APPLICANT] (the “**Traffic Study**”), which is incorporated herein by this reference, and (ii) upon the calculations described in Exhibit “C”. The Traffic Study was accepted by the Orange County Transportation Planning Division on _____, 20__ and is on file and available for inspection with that division (CMS #____). Owner and 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 currently approved Project as proportionate share mitigation for impacts of the Project upon roadways within County’s jurisdiction, notwithstanding any subsequent variance in the actual cost of any improvement(s) to the Deficient Segments or actual traffic /travel impacts created by the Project; provided, however, that if Owner modifies the Project’s development program and/or subsequently increases the number of units and/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 Subsection 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.

(b) *Timing of PS Payment, Issuance of CEL.* Not later than ninety (90) days following the Effective Date, Owner shall deliver a check to County in the amount of <spell out> and __/100 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 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 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 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 applied toward the amount of the initial capacity 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 ninety (90) days after the Effective Date, one extension of ninety (90) additional days may be granted by the manager of County’s Transportation Planning Division. In the 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.

(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.

(d) *Increase in Project Trips.* Any change or modification to the Project that increases the unit count 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.

112 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
114 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
116 of an additional Proportionate Share Agreement, along with any other required documentation, for
the number of increased trips.

118 (e) *Satisfaction of Transportation Improvement Requirements.* County hereby
acknowledges and agrees that upon Owner’s payment of the PS Payment as required herein, and
120 absent any change or modification to the Project as set forth in Subsection 2(d) above, Owner shall
be deemed to have satisfied all requirements for the mitigation of the traffic impacts of the Project
122 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 regard to whether
124 improvements to the Deficient Segments are actually constructed; provided, however, Owner shall
be required to obtain a Capacity Reservation Certificate prior to the expiration of Owner’s Capacity
126 Encumbrance Letter and shall be required to maintain the validity of the Capacity Reservation
Certificate in accordance with its terms. Additionally, nothing herein shall be construed to exempt
128 Owner from meeting the requirements of all other applicable laws, rules, regulations, and/or
Orange County Code provisions or from making the required payment of transportation and other
130 impact fees applicable to the Project, subject to any credits as set forth in Section 3 below. For
avoidance of doubt, nothing herein is intended to, nor shall constitute, prepayment of any densities
132 and/or intensities of development or of any development program.

Section 3. Transportation Impact Fee Credits. County and Owner agree that Owner
134 shall be entitled to receive transportation impact fee credits, applicable only toward development
of the Project on the Property, on a dollar for dollar basis in an amount up to but not exceeding the
136 PS Payment in accordance with Section 163.3180, Florida Statutes, as may be amended, and as
specifically described in Exhibit “C”. County further agrees that such credits may be applied on a
138 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
140 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
142 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
144 reservation fees. For 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.

146 **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
148 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:

156

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

158 **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
160 assigns of the Parties, and shall be a covenant running with the Property and be binding upon the
successors and assigns of Owner and upon any person, firm, corporation, or entity who may
become a successor in interest to the Property.

162 **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
164 than thirty (30) days after the Effective Date.

166 **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.

168 **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.
170 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
172 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
174 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
176 (30) days of receipt of written notice.

178 **Section 10. Attorney Fees.** In the event either Party 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
180 responsible for its own attorney and legal fees.

182 **Section 11. Construction of Agreement; Severability.** Captions of the Sections and
Subsections of this Agreement are for convenience and reference only; any words contained
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
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
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.

190 **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.

192 **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
194 Subsection 2(b), or (ii) Owner has timely paid the PS Payment to County and the Project has been
constructed on the Property and completed, pursuant to a County building permit, this Agreement
196 shall automatically terminate and thereafter be null and void for all purposes.

Section 14. Counterparts. This Agreement may be executed in up to two (2)
198 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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230 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”

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

Print Name: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

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240

STATE OF: _____

242 **COUNTY OF:** _____

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

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

250 (Notary Stamp)

Signature of Notary Public

252 Print Name: _____

Notary Public, State of: _____

254 Commission Expires: _____

(mm/dd/yyyy)

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Exhibit “A”

258

“[PROJECT NAME]”

Project Location Map

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MAP GUIDELINES

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Black & White

1-2 Mile Radius

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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

298

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]”

DEFICIENT SEGMENT [#]

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