

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>,  
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  
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  
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.  
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  
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  
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  
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  
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  
(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  
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  
count and/or square footage, as applicable, may result in an increase in trips on the Deficient  
Segment or other segments within the transportation impact area, as defined by County. Owner  
104 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 addition,  
106 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 of an  
108 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  
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)  
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  
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;  
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  
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  
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:

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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 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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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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