

2 This instrument prepared by  
and after recording return to:

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6 Parcel ID Number(s):

8 -----[SPACE ABOVE THIS LINE FOR RECORDING DATA]-----  
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12 **PROPORTIONATE SHARE AGREEMENT FOR**  
**<PROJECT NAME>**

14 \_\_\_\_\_  
**<NAME OF ROADWAY>**

16 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>,  
18 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  
20 (“**County**”), whose address is P.O. Box 1393, Orlando, FL 32802-1393.

22 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

24 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,  
26 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 Deficient Segment 1 on the  
date the CEL was denied, as further described in Exhibit “C” attached hereto and incorporated  
36 herein; and

38

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

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

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

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

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

60 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.

62 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  
sufficiency of which are hereby acknowledged, the parties hereto stipulate and agree as follows:

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

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

(a) **Calculation of PS Payment:** The amount of the PS Payment for the Deficient  
68 Segments, as described in Exhibit “C,” totals <spell out> and \_\_/100 Dollars (\$\_\_\_\_\_.\_\_).  
This PS Payment was calculated in accordance with the methodology outlined in Section  
70 163.3180, Florida Statutes. Owner and County agree that the Excess Trips will constitute the  
Project’s impact on the aforementioned Deficient Segments based upon (i) Owner’s Traffic  
72 Study titled “[TITLE ON COVER OF TRAFFIC STUDY]” prepared by [NAME OF  
CONSULTING FIRM PERFORMING TRAFFIC STUDY], dated \_\_\_\_\_, 20\_\_ for  
74 [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  
76 Orange County Transportation Planning Division on \_\_\_\_\_, 20\_\_ [DATE OF MEMO  
FROM TRANSPORTATION PLANNING’S CONSULTANT APPROVING TRAFFIC  
78 STUDY], and is on file and available for inspection with that division (CMS #\_\_\_\_). Owner and

80 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  
82 currently approved Project as proportionate share mitigation for impacts of the Project upon  
roadways within Orange County's jurisdiction, notwithstanding any subsequent variance in the  
84 actual cost of improvement to the Deficient Segments or actual traffic impacts created by the  
Project; provided, however, that if Owner subsequently increases the number of units 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 Section 2(d) below.  
Owner and County further acknowledge and agree that the calculation of, and agreement  
88 regarding, 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.* Within ninety (90) days following 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 Board of County Commissioners" and shall be delivered to the Fiscal and Operational  
94 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  
96 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  
98 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  
100 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  
102 (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  
104 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  
106 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.

108 (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  
110 Reservation Certificate as contemplated in subparagraph 2(b) above.

112 (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  
Segments or other segments within the transportation impact area, as defined by County. Owner  
114 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,  
116 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  
118 additional Proportionate Share Agreement, along with any other required documentation, for the  
number of increased trips.

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122 (e) *Satisfaction of Transportation Improvement Requirements.* County hereby  
acknowledges and agrees that upon Owner’s payment of the PS Payment as required herein, and  
124 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  
126 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,  
without regard to whether the improvements to the Deficient Segments are actually constructed;  
128 provided, however, Owner shall 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  
130 validity of the Capacity Reservation Certificate in accordance with its terms. Additionally,  
nothing herein shall be construed to exempt Owner from meeting the requirements of all other  
132 applicable laws, regulations, and/or Orange County Code provisions or from making the required  
payment of transportation impact fees applicable to the Project, subject to credits as set forth in  
134 Section 3 below.

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

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

148 **Section 5. *Notice.*** With the exception of the 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  
150 default for failure to perform under this Agreement until such party has received written notice  
specifying the nature of such default or failure to perform and said party fails to cure said default  
152 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  
154 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  
156 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  
158 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, 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

162           **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  
164 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.

166           **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  
168 ten (10) business days after the Effective Date.

170           **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.

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174           **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.  
176           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.

178           **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  
arising out of this Agreement, each party in such action or proceeding, including appeals  
180           therefrom, shall be 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  
184           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  
186           Agreement, the deletion of which would not adversely affect the receipt of any material benefits  
by any party hereunder or substantially increase the burden of any party hereunder, shall be held  
188           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.

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  
192           parties.

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

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

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[Signatures appear on following pages]

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210 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:**

**“OWNER”**

\_\_\_\_\_

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

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

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

\_\_\_\_\_

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

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

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

Date: \_\_\_\_\_

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

234 **COUNTY OF:** \_\_\_\_\_

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The foregoing instrument was acknowledged before me by means of  physical presence  
or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_,  
238 as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on behalf of  
such \_\_\_\_\_, who [\_\_\_\_] is personally known to me or [\_\_\_\_] has produced  
240 \_\_\_\_\_ as identification.

242

WITNESS my hand and official seal in the County and State last aforesaid this \_\_\_\_ day  
of \_\_\_\_\_, 20\_\_.

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(Notary Stamp)

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\_\_\_\_\_

Signature of Notary Public

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

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Notary Public, State of: \_\_\_\_\_

Commission Expires: \_\_\_\_\_

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**Exhibit A**

**“[PROJECT NAME]”**

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**Project Location Map**

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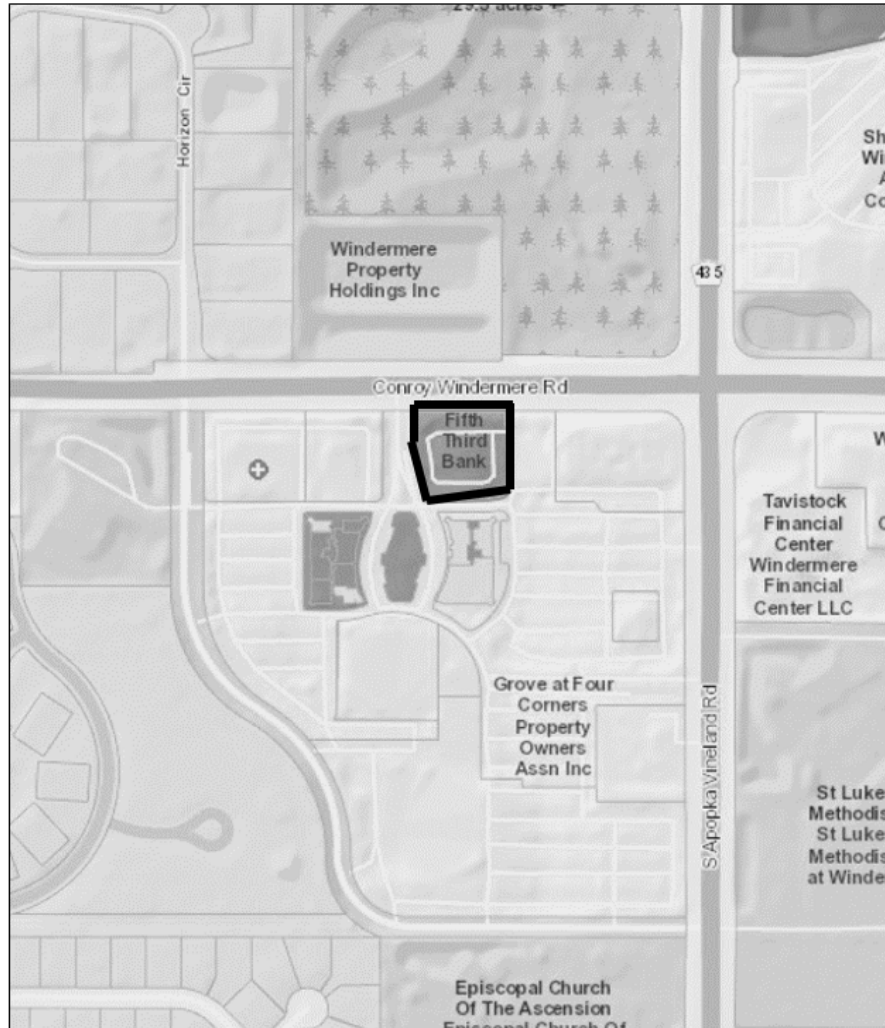
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**MAP GUIDELINES**

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**Black & White**

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**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](http://www.OCPAFL.org)**

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

**Exhibit “B”**

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**“[PROJECT NAME]”**

Parcel ID: \_\_\_\_\_

298 **Legal Description:**

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

364

**JOINDER AND CONSENT TO**

366

**<title of agreement>**

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

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**<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,**

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

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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.

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*[Signatures follow on next page.]*

390 **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: \_\_\_\_\_

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

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Print Title: \_\_\_\_\_

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393 **STATE OF:** \_\_\_\_\_  
394 **COUNTY OF:** \_\_\_\_\_

396 The foregoing instrument was acknowledged before me by means of  physical presence  
or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_,  
398 as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on behalf of  
such \_\_\_\_\_, who [\_\_\_\_] is personally known to me or [\_\_\_\_] has produced  
400 \_\_\_\_\_ as identification.

401 WITNESS my hand and official seal in the County and State last aforesaid this \_\_\_\_ day  
402 of \_\_\_\_\_, 20\_\_.

404  
405 (Notary Stamp)

\_\_\_\_\_  
Signature of Notary Public  
Print Name: \_\_\_\_\_  
Notary Public, State of: \_\_\_\_\_  
Commission Expires: \_\_\_\_\_

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

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S:\RALfonso\RAC\RAC Prop Share Template - Multiple Deficient Segments - June 2019.docx