

**THIS DOCUMENT PREPARED BY  
AND RETURN TO:**

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**TRANSPORTATION IMPACT FEE AGREEMENT REGARDING  
TRANSIT ORIENTED DEVELOPMENT (TOD) BETWEEN CITY OF ORLANDO  
AND JEFFERSON EOLA, LLC.**

This AGREEMENT, is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between JEFFERSON EOLA, LLC., a Florida limited partnership whose address is \_\_\_\_\_ (“Jefferson”) and THE CITY OF ORLANDO, a municipal corporation duly enacted under the laws of the State of Florida, whose address is 400 South Orange Avenue, Orlando, Florida, 32802 (the “City”).

**RECITALS**

**WHEREAS**, Section 56.15. I, City Code provides that any development, or portion thereof, defined as Transit Oriented Development (TOD) is exempt from the payment of Transportation Impact Fees;

**WHEREAS**, Transit Oriented Development (TOD) is defined in Section 56.04, City Code as:

A development site, designated through a development order or a parcel of record, which complies with the following:

- Located within ¼ mile of a premium transit station (SunRail or LYMMO). Any portion of the designated site or parcel that falls within the ¼ mile buffer shall be considered for TOD status (see **Exhibit “C”**).
- Comprised of a compact, dense mix of land uses, including a residential component.
- The 1<sup>st</sup> floor shall consist of primarily (>50%) retail use or other active commercial uses.
- The 2<sup>nd</sup> floor and above may contain office and multi-family uses.
- Provides both pedestrian and bicycle friendly facilities which meet or exceed the City's Land Development Code (LDC) and Engineering Standards Manual requirements, no exceptions.
- Reduces parking to the minimum code requirement for each land use (See Chapter 61, Part 3 of the LDC) to encourage transit ridership.
- Requires businesses within the TOD to enter into an agreement to fund or subsidize transit ridership for employees, residents, and/or guests at the development site;

**WHEREAS,** Jefferson is contract purchaser of 1.83+/- acres of property, (“Property”) within the jurisdictional limits of the City of Orlando, with an address 420 Church Street, more particularly described in **Exhibit “A,”** attached hereto and made a part hereof by reference;

**WHEREAS,** On June 6, 2013 Jefferson submitted a TOD application for development of the Property as a 299 unit, multi-family residential and 10,664 square feet retail development (“Project”);

**WHEREAS,** the Project is within the Downtown Development of Regional Impact (DRI), and is within the Downtown (Area 1A) Transportation Impact Fee Rate, and the North Transportation Impact Fee Benefit Area;

**WHEREAS,** Jefferson asserts that the Project meets the requirements of Section 56.15 I, City Code and has therefore requested that the City determine that the Project qualifies for the TOD exemption;

**WHEREAS,** Jefferson has demonstrated that the Project, as defined herein, meets one hundred percent (100%) of the criteria established by City Code to qualify as a TOD. See below:

<b>Qualifier: Located within 1/4 mile of premium transit stop/station</b>		
<b>TOD Characteristics:</b>	<b>Percentage (%)</b>	<b>Development Participation (%)</b>
Composed of mixture of land uses, including 50% ground floor retail/commercial	20	20
Meet or exceed code for pedestrian facilities	20	20
Meet or exceed code for bicycle facilities	20	20
Reduce parking to minimum code requirements	20	20
Enter into an agreement to fund or subsidize transit ridership for employees and residents	20	20
<b>TOTAL:</b>	<b>100</b>	<b>100</b>
<b>Total Transportation Impact Fees:</b>	<b>Current Rate Amount</b>	<b>Reduced Amount</b>
Fee Assessment for 299 MFR Units and 10,664 square feet retail	\$711,933.15	\$0

**WHEREAS,** Jefferson and City agree that the Project is entitled to an exemption from the payment of transportation impact fees, which results in an assessment of Zero Dollars;

**WHEREAS**, the Project is located within the South Eola Neighborhood which was the subject of that certain South Eola Neighborhood Small Area Plan (April 21, 2006) (“South Eola Neighborhood Plan”);

**WHEREAS**, the South Eola Neighborhood Plan adopts a Proportionate Share Transportation Contribution (“Proportionate Share Fees”) to be paid in addition to the City’s Transportation Impact Fees;

**WHEREAS**, the Proportionate Share Fees are in place to pay for the Capital Improvement Recommends found in the South Eola Neighborhood Plan; and

**WHEREAS**, Jefferson has agreed to make non-site related transportation and streetscape improvements in exchange for credits against the Proportionate Share Fees.

**NOW THEREFORE**, in consideration of the mutual covenants herein contained, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1) Recitals. The above recitals are incorporated into the substantive body of this Agreement.

2) Transportation Impact Fee. Subject to the terms of this Agreement and based on the TOD exemption under Section 56.15 I, City Code, the Project shall be entitled to a one hundred percent (100%) exemption from the payment of Transportation Impact Fees. The City’s determination is based on development of the Project strictly as defined herein and is further conditioned upon the following, the satisfaction of which is in the City’s reasonable discretion: (i) the development meets the requirement of fifty percent (50%) active retail/commercial use on the 1st floor; (ii) Pedestrian and bicycle friendly facilities are provided in accordance with the Land Development Code, Orlando Engineering Standards Manual, and intent of the South Eola Neighborhood Small Area Plan ; (iii) Parking is provided at the minimum amount required by City Code; and (iv) Jefferson’s agreement to fund and subsidize transit ridership for employees and residents, including, though not exclusively, by means of subsidized transit passes. Based on the City’s determination of the extent of Project exemption herein, the Transportation Impact Fee assessed to the Project shall be Zero Dollars (\$0.00), “Impact Fee.”

3) Agreement to Subsidize Ridership for Employees. Jefferson or its assigns agree to subsidize LYNX and SunRail public transit ridership for its employees, the employees of commercial businesses located in the Project, and residents of the Project by reimbursing 50% of employee’s and resident’s cost for public transit. The transit subsidy shall be included in each residential and commercial lease.

4) City Representations as to Requirements. The City agrees that, if Jefferson builds and uses/occupies the ground floor in substantial compliance with the approved plans (ZON 2013-00014), then:

(a) the Project meets or exceeds the requirement of 50% active commercial (equal to or greater than 10,664 sq. ft. active commercial). In the event there is a change of use of the

currently proposed retail and/or gallery space, the retail/live/work units may be included in the active commercial calculation if the occupants pull a Business Tax Receipt and such use is actual and permitted in the zoning district;

- (b) the Project meets the City Code for pedestrian facilities; and
- (c) the Project meets the City Code for bicycle facilities.

Further, as long as the Project is not altered during construction or actual use and occupancy so that it does not meet the requirements of (a)-(c) above, the Project will continue to meet these criteria.

Prior to the issuance of Certificate of Occupancy, a final inspection of the Project and Property site will be performed by City Staff, for compliance with the qualifying TOD criteria.

5) Continuing Obligation. As a condition of this Agreement, Jefferson shall ensure that (i) the Project continues to meet the requirements listed in paragraph 6(a)-(c) above and (ii) it will subsidize public transit ridership for employees and residents, as set forth in paragraph (3) above, for fifteen (15) years from the first certificate of occupancy issued for the Project. Jefferson shall submit to the City's Transportation Planning Division Manager all documentation necessary to verify its compliance with this Paragraph, on an annual basis beginning one year from the effective date of this Agreement.

6) South Eola Neighborhood Plan. The South Eola Neighborhood Plan (page A-7) shows that the Property was approved for 185 dwelling units and 16,000 square feet prior to the implementation of the Study and its additional impact fees. Accordingly, the Project will only be required to pay Proportionate Share Fee for that development which is in excess of 185 dwelling units and 16,000 square feet of retail as shown below:

<u>Land Use</u>	<u>New Units/Area</u>	<u>Rate</u>	<u>Fee</u>
Multi-Family Residential	114	\$888/unit	\$101,232
Retail	0	\$1,667/1000 sq. ft.	0
TOTAL:			\$101,232

7) South Eola Neighborhood Plan Transportation Improvement Recommendations. The South Eola Neighborhood Plan recommends that "Pedestrian and bicycle mobility and safety must be improved to offer alternate transportation modes and to respond to pedestrian/bicycle traffic generated by the existing and new development in the study area." IT also includes several ways in which this recommendation may be accomplished including: Upgrading sidewalks; Pedestrian related improvements; construction of new sidewalks and

streetscape that maintain the character of existing large oak trees and parkways in the area; and provisions for transit shelters. (A-10 and B-14-15)

8) South Eola Neighborhood Plan Proportionate Share Fee Credits. In accordance with the recommendations of the South Eola Neighborhood Plan, Jefferson may elect to make the following non-site improvements located on City owned property or dedicated right-of-way, the costs of which, as verified by the City, are Proportionate Share Fee creditable: (In order for costs to be creditable, City must review and approve the design of the proposed improvements prior to construction. Only reasonable costs actually incurred by Jefferson for construction of the approved improvements shall be creditable.)

(a) Streetscape Improvements to Church Street including replacement of chain link fence, replacement of gates, replacing sidewalks, street lighting, benches and installing street trees and landscaping.

(b) Streetscape Improvements to Osceola Ave. and/or Lake Avenue.

(c) Undergrounding overhead power lines and cables to Osceola Avenue, Lake Avenue and Mariposa Street.

9) Litigation and Attorneys' Fees. In the event any party to this Agreement should bring suit to enforce or interpret any provision hereof, the predominantly prevailing party shall be entitled to recover reasonable attorneys' fees, paralegals' fees, and costs incurred, whether the same be incurred in pre-litigation negotiation, litigation at the trial level, or upon appeal.

10) Termination. This Agreement may be terminated by mutual consent of the parties hereto or upon default as described in Paragraph 11, below. Upon termination, the parties shall have no further obligation under this Agreement. In addition, this Agreement shall terminate fifteen (15) years after the date on which the first Certificate of Occupancy is issued for the Project.

11) Defaults. Failure by either party to comply with or perform any of the terms, conditions, covenants, agreements or obligations contained in this Agreement to be performed by each of them respectively, shall constitute a default under this Agreement, and (i) if such default is not cured or remedied within sixty (60) days after the non-defaulting party provides written notice to the defaulting party specifying with particularity the nature of such default, or (ii) if such default cannot be reasonably cured or remedied within such sixty (60) day period, the defaulting party fails to commence to cure or remedy the default within such sixty (60) day period and thereafter fails to diligently and expeditiously pursue such cure or remedy, the non-defaulting party, in its sole discretion, shall be entitled to exercise any and all rights and remedies available to it under this Agreement, at law and in equity, including without limitation, the right to terminate this Agreement by providing ten (10) days written notice to the defaulting party of such termination. Upon termination, this Agreement and all rights and obligations created hereunder shall be deemed null and void and of no further force or effect, except as otherwise provided herein.

12) Estoppel Letter. The City shall execute and deliver to Jefferson, within fifteen (15) days after any written request by Jefferson, a certificate addressed as indicated by stating (i)

whether this Agreement is in full force and effect; (ii) whether this Agreement has been modified or amended in any respect; (iii) whether there are any existing defaults hereunder known to the City; and (iv) such other matters as may be reasonably requested.

13) Severability. The invalidity or unenforceability of any term or provision of this Agreement or the non-applicability of any such term or provision to any person or circumstance shall not impair or affect the Agreement.

14) Entire Agreement. This Agreement represents the entire understanding and Agreement between the parties with respect to the subject matter hereof. None of the terms and provisions hereof may be amended, supplement, waived or changed orally, but only by a writing signed by each of the parties hereto.

15) Controlling Laws. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida, and all duly adopted ordinances, regulations and policies of the City now in effect and those hereinafter adopted.

16) No Waiver. This Agreement does not, in any way, constitute a waiver of the City's regulatory authority or the application of City Code, or any other applicable law, rule or regulation.

17) Successors and Assigns Bound. The rights and obligations contained in this Agreement shall run with the land and be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto, including any successor in title to Jefferson with respect to the Property.

18) Effective Date. This Agreement shall become effective on the date of full and complete execution by the parties hereto.

**IN WITNESS WHEREOF**, this agreement regarding a transit oriented development (TOD) reduction to the payment of transportation impact fees has been duly executed by the parties as of the day and year first above written.

TWO WITNESSES:

**JEFFERSON EOLA, LLC**, a Florida limited liability company

Sign: \_\_\_\_\_

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

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

Sign: \_\_\_\_\_

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

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

Its: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014 by \_\_\_\_\_, as Vice President of JEFFERSON EOLA, LLC., a Florida limited liability company, who executed the foregoing instrument and acknowledged before me that he executed the same for the purposes therein expressed and who is personally known to me or who has produced \_\_\_\_\_ as identification and who did (did not) take an oath.

\_\_\_\_\_  
Name  
Notary Public  
Serial Number: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**CITY:**

ATTEST:

**CITY OF ORLANDO, FLORIDA**

By: \_\_\_\_\_  
Alana C. Brenner, City Clerk

By: \_\_\_\_\_  
Mayor / ProTem

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014, by \_\_\_\_\_, as Mayor of the City of Orlando, on behalf of the City of Orlando. He ☐ is personally known to me or ☐ has produced \_\_\_\_\_ as identification.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public Signature

APPROVED AS TO FORM AND LEGALITY  
FOR THE USE AND RELIANCE OF THE  
CITY OF ORLANDO, FLORIDA, ONLY

\_\_\_\_\_, 2014

\_\_\_\_\_  
Chief Assistant City Attorney