

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

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Chief Assistant City Attorney
City of Orlando
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**TRANSPORTATION IMPACT FEE AGREEMENT REGARDING
TRANSIT ORIENTED DEVELOPMENT (TOD) BETWEEN CITY OF
ORLANDO AND ORANGE RI HOTEL VENTURE, LLC**

This AGREEMENT, is made and entered into this _____ day of _____, 2014, by and between **ORANGE RI HOTEL VENTURE, LLC**, a Florida Limited Liability Corporation whose address is 801 North Orange Avenue, Suite 530, Orlando, Florida, 32801, (“Developer”) 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 1st floor shall consist of primarily (>50%) retail use or other active commercial uses.
- The 2nd 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 residents, employees and guests; and

WHEREAS, Developer owns 0.89+/- acres of property, “Property,” within the jurisdictional limits of the City of Orlando, with an address of 680 North Orange Avenue, more particularly described in **Exhibit “A,”** attached hereto and made a part hereof by reference; and

WHEREAS, On September 3, 2013, Developer submitted a Transit Oriented Development (TOD) application for a development consisting of 126 Hotel rooms, (Residence Inn by Marriot) as identified in building permit case BLD2013-07458, referred to herein as the “Project; and

WHEREAS, the Project is within the (Orlando) 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, Developer asserts that the Project meets a portion of the requirements of Section 56.15. I, City Code and has therefore requested that the City determine that the Project qualifies for a partial TOD impact fee reduction; and

WHEREAS, Developer has demonstrated that the Project, as defined herein, meets forty percent (40%) of the criteria established by City Code to qualify as a TOD. See below:

Qualifier: Located within 1/4 mile of premium transit stop/station		
TOD Characteristics:	Percentage (%)	Development Participation (%)
1. Composed of mixture of land uses, including 50% ground floor retail/commercial & Residential component	20	0
2. Meets or exceeds code for pedestrian facilities	20	20
3. Meets or exceeds code for bicycle facilities	20	20
4. Reduces parking to minimum code requirements	20	0
5. Enter into an agreement to fund or subsidize transit ridership for employees and residents	20	0
TOTAL:	100	40
Total Transportation Impact Fees:	Current Rate	Reduced Amount
Fee Assessment – 138 Hotel Rooms BLD2013-07458 Fee Assessment – 3,787 sf Retail BLD2013-07458	\$323,371.69	
Prior Use-Demolition Credit – DEM2013-00104 5,060 sf General Office DEM 2013-00104 4,300 sf Medical Office	\$62,234.55	
Final Fee Assessment	\$261,137.14	\$156,682.28

WHEREAS, Developer and City agree that the Project is entitled to a forty percent (40%) reduction to the payment of transportation impact fees along with the Prior Use-Demolition Credit, which results in an assessment of One Hundred Fifty-six Thousand, Six Hundred Eighty-two Dollars and Twenty-eight Cents (\$156,682.28), which must be paid prior to the issuance of a building permit for any portion of the Project.

WHEREAS, Developer has not met the TOD criteria #5 for the Project, related to funding transit ridership but has requested that the City place the twenty percent portion of the Transportation Impact Fee, assigned to this criteria, \$52,227.43, in escrow to allow Developer the opportunity to explore whether to pursue the transit ridership TOD option; and

WHEREAS, if Developer does not establish a qualified transit ridership program, as determined by City in its sole discretion, within ninety (90) days of the effective date of this Agreement, the escrowed portion of the transportation impact fee shall be transferred to the applicable impact fee benefit fund and shall no longer be eligible for refund; and

WHEREAS, if Developer establishes a qualified transit ridership program, as determined by the City in its sole discretion, within ninety (90) of the effective date of this Agreement, as memorialized by a separate agreement between City and Developer, then the escrowed portion of the transportation impact fee shall be refunded to Developer, without interest, per the terms of the separate agreement; and

WHEREAS, a final inspection and review of the Project and Project site shall be performed by City Staff to ensure compliance with the qualifying Transit Oriented Development (TOD) criteria awarded above and said final inspection shall be performed prior to the building permit final inspection for the Project reviewed and permitted under case BLD2013-07458.

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 true and correct and incorporated into the substantive body of this Agreement as if stated herein.
- 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 forty percent (40%) exemption from the payment of Transportation Impact Fees. The City's determination is based on development of the Project strictly as permitted by the City and as defined herein.. The parties have agreed that Developer will pay the City One Hundred Fifty-six Thousand, Six Hundred Eighty-two Dollars and Twenty-eight Cents (\$156,682.28), at permit issuance, for the Transportation Impact Fee assessed to the Project.
- 3) Refund. Developer may be entitled to a refund of the portion of the transportation impact fee associated with the transit ridership program as provided in the Recitals above.
- 3) Continuing Obligation. As a condition of this Agreement, Developer shall ensure that, throughout the use and occupation of the Project, the Project will continue to meet forty percent (40%) of the TOD criteria as described in this Agreement. Developer or its successor, shall submit to the City all documentation necessary to verify its continual compliance with the qualifying Transit Oriented Development (TOD) criteria awarded with this agreement, on an annual basis starting on or before the first (1st) anniversary of the effective date of this agreement.

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.

- 4) Termination. This Agreement may be terminated by mutual consent of the parties hereto or upon default as described in Paragraph 6, below. Upon termination, the parties shall have no further obligation under this Agreement.
- 5) 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. Within thirty (30) days of the termination of this Agreement, Developer shall pay to the City, the amount of the transportation impact fee for the Project that was exempted under the terms of this Agreement. 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.
- 6) 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.
- 8) 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.
- 9) 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.

10) 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.

11) 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:

ORANGE RI HOTEL VENTURE, LLC, a Florida
Limited Liability Corporation

Print Name: _____

By: Orange RI Hotel Venture, LLC

By: _____

Print Name: _____

Name: _____
Its: (title)

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this ____ day of _____, 2013 by _____, as _____ of both Orange RI Hotel Venture, LLC, a Florida Limited Liability Corporation, 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

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

_____, 2013

Assistant City Attorney

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

(Name typed, printed or stamped)

Exhibit "A"

1- Property Described as:

PARCEL ID: 26-22-29-9280-00-230

PLAN OF JAMES M. WILCOX ADDITION TO THE TOWN OF ORLANDO, FLORIDA C/64, LOT 23 (LESS W. 10 FT.) & (LESS E. 10 FT. FOR ROW)

2- Property Described as:

PARCEL ID: 26-22-29-1135-01-000

CAMDEN ORANGE COURT BOOK 66, PAGE 11, LOT 1, A REPLAT OF A PORTION OF JAMES M. WILCOX ADDITION TO THE TOWN OF ORLANDO, SECTION 26, TOWNSHIP 22 SOUTH, RANGE 29 EAST, CITY OF ORLANDO, ORANGE COUNTY FLORIDA