

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

Roy K. Payne, Esq.  
Chief Assistant City Attorney  
City of Orlando  
400 S. Orange Avenue  
Orlando, Florida 32802  
(407) 246-2295

**TRANSPORTATION IMPACT FEE AGREEMENT REGARDING  
TRANSIT ORIENTED DEVELOPMENT (TOD) BETWEEN CITY OF  
ORLANDO AND EAST SDG CITITOWER, LLC**

This AGREEMENT, is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between **EAST SDG CITITOWER, LLC**, a Florida Limited Liability Corporation whose address is 12043 Autumn Fern Lane, Orlando, Florida 32827 (“Citi Tower at Eola Park”) 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) provides an option for a reduction to the payment of Transportation Impact Fees.

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

A development site, as that term is defined in this Section, any portion of which is located within ¼-mile walking distance along a designated roadway from a premium transit stop or station (SunRail or LYMMO) (see Exhibit "C"). Walking distance shall be measured from the development site's nearest property line to a premium transit stop or station utilizing a clear path of travel at least five (5) foot in width, located on a separate surface from the roadway, such as a designated sidewalk or multi-use trail. In calculating the distance for purposes of TOD, temporary obstructions to the path of travel arising from construction projects shall be ignored so long as the obstructed path of travel shall be restored upon completion of the construction project.

**WHERE AS**, Further described Transit Oriented Development (TOD) qualifying criteria within Section 56.15.I, City Code as:

Any new development or portion thereof, located on a development site which is defined as a Transit Oriented Development, "TOD," under this Chapter to the extent that the below criteria are met:

1. The development site shall be composed of a compact, dense mixture of land uses, including residential, with the ground floor consisting of primarily (>50%) active uses, as defined in this Chapter.
2. Pedestrian facilities serving the development site shall meet or exceed City codes and policies.
3. Bicycle facilities serving the development site shall meet or exceed City codes and policies.
4. Reserved.
5. The Developer shall enter into an agreement(s) to fund or subsidize transit ridership for employees, residents, and/or guests at the development site.

Each of the four criteria, if met in full, shall receive a twelve and one-half percent (12.5%) reduction to the Transportation Impact Fee assessed against the development or portion thereof, with the approval of the Transportation Division Manager.

**WHEREAS**, East SDG Cititower, LLC – Citi Tower at Eola Park, owns 0.70+/- acres of property, "Property," within the jurisdictional limits of the City of Orlando, with an address of 101 Lake Avenue, more particularly described in **Exhibit "A,"** attached hereto and made a part hereof by reference; and

**WHEREAS**, On July 21, 2015, East SDG Cititower, LLC, submitted a Transit Oriented Development (TOD) application for development of the Property as a combination of 233 multi-family residential dwelling units and 9,517 square feet of office space, as identified in building permit case BLD2015-05751, 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**, asserts the East SDG Cititower, LLC – Citi Tower at Eola Park 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 impact fee reduction; and

**WHEREAS**, East SDG Cititower, LLC, has demonstrated that the Project, as defined herein, meets twenty-five percent (25%) of the reduction 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>Credit Percentage (%)</b>	<b>Development Participation</b>
1. Composed of mixture of land uses, including residential, 50% 1 <sup>st</sup> floor retail uses	12.5	0
2. Meets or exceeds code for pedestrian facilities	12.5	12.5
3. Meets or exceeds code for bicycle facilities	12.5	12.5
4. Agreement to fund or subsidize transit ridership for employees and residents	12.5	0
<b>TOTAL:</b>	50	25

<b>Total Transportation Impact Fee</b>	<b>Current Rate</b>	<b>Reduced Amount</b>
Fee Assessment – 233 Multi-family Units	\$510,270.00	
Fee Assessment – 9,517 sf General Office	<u>\$34,518.16</u>	
<b>New Fee Assessment</b>	<b>\$544,788.16</b>	
Previously Paid (BLD2008-00495) 184 Multi-family Units	-\$402,960.00	
Previously Paid (BLD2008-00495) 7,571 sf Retail	<u>-\$40,608.03</u>	
<b>FINAL FEE ASSESSMENT:</b>	\$101,220.13	<b>\$75,915.10</b>

**WHEREAS**, East SDG Cititower, LLC and City agree that the Project is entitled to a twenty-five percent (25%) reduction to the payment of transportation impact fees, which results in an assessment of Seventy-five Thousand, Nine Hundred Fifteen Dollars and Ten Cents (\$75,915.10), which must be paid prior to the issuance of the building permit for the Project.

A final inspection of the project and site shall be performed by City Staff for compliance with the qualifying Transit Oriented Development (TOD) criteria awarded above; this inspection will be scheduled prior to the first building permit final inspection for the multi-family residential project.

**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 reduction under Section 56.15 I, City Code, the Project shall be entitled to a twenty-five percent (25%) reduction to 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: East SDG Cititower, LLC, will pay the City Seventy-five Thousand, Nine Hundred Fifteen Dollars and Ten Cents (\$75,915.10), at permit issuance, for the Transportation Impact Fees assessed to the Project.

- 3) Continuing Obligation. As a condition of this Agreement, East SDG Cititower, LLC, shall ensure that, throughout the use and occupation of the Project, the Project will continue to meet twenty-five percent (25%) of the TOD criteria as described in this Agreement. East SDG Cititower, LLC, 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 (1<sup>st</sup>) anniversary of the effective date of this agreement.
- 4) Litigation and Attorney's 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 attorney's fees, paralegal's fees, and costs incurred, whether the same be incurred in pre-litigation negotiation, litigation at the trial level, or upon appeal.
- 5) 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.
- 6) 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.
- 7) 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:

**EAST SDG CITITOWER, LLC**, a Florida Limited Liability Corporation

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

By: East SDG Cititower, LLC

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

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

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

Its: (title)

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015 by \_\_\_\_\_, as \_\_\_\_\_ of both East SDG Cititower, 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

\_\_\_\_\_, 2015

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

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015, 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"**

Parcel ID: 22-22-29-6169-01-000

### **Property Described as:**

OLT 2 PINE STREET APARTMENTS A REPLAT 71/76 LOT 1