

PREPARED BY:
Roy K. Payne, Esq.
Chief Assistant City Attorney
City of Orlando
400 S. Orange Avenue
Orlando, Florida 32801
(407) 246-2295

TRANSPORTATION IMPACT FEE AGREEMENT

ELAN AT AUDUBON PARK

THIS AGREEMENT made and entered into this ____ day of _____, 2015, by and between the **City of Orlando**, a municipal corporation duly enacted under the laws of the State of Florida, whose address is 400 S. Orange Ave., Orlando, FL, 32801, “City”, and **CRP-GREP Elan Audubon Owner, L.L.C.**, a Delaware limited liability company, whose address is 1001 Pennsylvania Avenue, NW, Washington, DC 20004, “Elan.”

RECITALS

WHEREAS, Elan owns certain property located at 2901 Davisville Street, in the City of Orlando, more particularly described in **Exhibit “A”**, attached hereto and made a part hereof by reference, “Subject Property”; and

WHEREAS, Elan is developing the Subject Property as a 449 unit multi-family project, “Project”; and

WHEREAS, in conjunction with development of the Project, the City requested and Elan agreed, to dedicate certain property, “Right of Way,” to the City for construction and operation of the extension of Warehouse Road, a City street; and

WHEREAS, pursuant to Section 56.11, City Code, Elan is entitled to a Transportation Impact Fee Credit for the fair market value of the Right-of-Way; however Section 56.11(B)(2), provides that the credit for dedication of land is limited to 150% of the tax assessed value of the property dedicated; and

WHEREAS, City and Elan agree that 150% of the current 2014 tax assessed value of the Right-of-Way property would be less than the actual fair market value; and

WHEREAS, an increase in the tax assessment will equate to an increased Transportation Impact Fee Credit, which will result in a reduced Transportation Impact Fee for development of the Project; and

WHEREAS, pursuant to the terms of this Agreement, City will retain in escrow a sufficient portion of the Transportation Impact Fee assessed for the Project to accommodate the return of funds to Elan based on the 2015 assessment of the Right-of-Way; and

WHEREAS, pursuant to Section 56.10, City Code, the parties desire to memorialize their agreement.

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 are hereby incorporated into the substantive body of this Agreement.

2. Transportation Impact Fee Credit and Refund. The Transportation Impact Fee required for development of the Project under City Code is estimated to be \$1,134,623.00 "Fee". The Transportation Impact Fee Credit arising from Elan's dedication of the Right-of-Way under current City Code provisions is \$73,102.50, "Credit", based on the 2014 tax assessed value of the Subject Property. The parties anticipate that the tax assessed value will increase in 2015 due to Elan's purchase of the Subject Property and development of the Project. Elan agrees to pay the Fee as offset by the Credit prior to the issuance of building permits for construction of the Project. City agrees to hold a portion of the Fee in escrow pending establishment of the 2015 assessment for the Subject Property, including the Right-of-Way. Establishment of the 2015 tax assessment for the Subject Property shall occur when the Orange County Property Appraiser notifies Elan of the proposed 2015 assessment for the Subject Property and Elan either waives its right to appeal or said appeal time expires, so that the proposed 2015 tax assessment value cannot be further revised. Within thirty (30) days of the establishment of the 2015 assessment, as determined by the City, City agrees to revise the Credit to reflect the increased tax assessed

value, "Adjusted Credit". The Adjusted Credit shall not exceed \$227,561.67, which amount is based on the land value paid by Elan for purchase of the Subject Property. The City will return the difference between the Adjusted Credit and the Credit to Elan within thirty (30) days of the City's determination of the Adjusted Credit.

3. 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 in writing or upon default as described in Paragraph 5, 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. 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.

7. 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, supplemented, waived or changed orally, but only by a writing signed by each of the parties hereto.

8. 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.

9. 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.

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

ATTEST:

CITY OF ORLANDO, FLORIDA, a municipal corporation, organized and existing under the laws of the State of Florida

By: _____
Alana Brenner, City Clerk

By: _____
Mayor / Mayor Pro Tem

Date: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing was acknowledged before me this ___ day of _____, 2015 by _____, Mayor Pro Tem and _____, City Clerk, who is personally known to me who did (did not) take an oath.

Name
Notary Public
Serial Number: _____
My Commission Expires: _____

CRP-GREP ELAN AUDUBON OWNER, L.L.C.,
a Delaware limited liability company

By: CRP-GREP Elan Audubon, L.L.C.,
a Delaware limited liability company
Its: Sole Member

By: GS Audubon Holdings, L.L.C.,
a Delaware limited liability company
Its: Authorized Member

By: _____
Ashley Heggie
Its: Vice President

STATE OF SOUTH CAROLINA
COUNTY OF _____

The foregoing was signed, sealed and acknowledged before me this ___ day of _____, 2015, by Ashley Heggie, the Vice President of GS Audubon Holdings, L.L.C., the Authorized Member of CRP-GREP Elan Audubon, L.L.C., the Sole Member of CRP-GREP Elan Audubon Owner, L.L.C., for and on its behalf. He is personally known to me.

Signature of Notary Public
Print Name: _____
My Commission Expires: _____

EXHIBIT "A"