

**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
JAG DEVELOPMENT COMPANY, LLC**

This AGREEMENT, is made and entered into this _____ day of _____, 2015, by and between **JAG Development Company, LLC**, a Delaware limited liability company whose address is 112 Lake Avenue, Orlando, FL 32801 (“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; and

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.

WHEREAS, to the extent that the following criteria are met, the TOD, or a portion thereof, may qualify for an exemption to the assessment of transportation impact fees:

- 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. Reduces parking to a minimum code requirement for each land use to encourage transit ridership.
- 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 five criteria, if met in full, shall receive a twenty percent (20%) reduction to the Transportation Impact Fee assessed against the development or portion thereof, with the approval of the Transportation Division Manager.

WHEREAS, Jefferson has engaged in a multi-year effort to consolidate a number of parcels of land into a unified single development, hereinafter referred to as the “Jefferson Development”; and

WHEREAS, the first parcel composing a portion of the Jefferson Development is under construction, and it contains 289 residential units, 10 retail/live work units, 12,500 square feet of retail space or other active commercial use and 490 parking spaces (the “420 Church Street” Phase 1 parcel) which property is the subject of a TOD Agreement with the City dated February 11, 2014; and

WHEREAS, WHEREAS, Jefferson is a contract purchaser of approximately +/- 1.80 acres of property, (“Property”) within the jurisdictional limits of the City of Orlando, with an address 520 Church Street, more particularly described in **Exhibit “A,”** attached hereto and made a part hereof by reference;

WHEREAS, On September 21, 2015, Jefferson submitted a TOD application for development of the Property with 356 residential units, including 9 retail live/work units, 14,081 square feet of retail or other active commercial use (as defined in Section 56.04, City Code) and 622 parking spaces hereinafter referred to as (the “Project”); and

WHEREAS, Jefferson has expended many years and significant resources in order to consolidate ownership of the Jefferson Development, of which the Property is a part; and

WHEREAS, the consolidation of such lands into a unified ownership structure makes for superior planning opportunities and provides the City with the type of housing opportunities necessary to support its growing downtown area and to develop live/work units to provide an opportunity for the development of small business opportunities; and

WHEREAS, Jefferson shall obtain a building permit for the construction of the foundation of the “520 Church Street” portion of the Project on or before December 31, 2015; and

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; and

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; and

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:

Qualifier: Located within 1/4 mile of premium transit stop/station		
TOD Characteristics:	Percentage (%)	Development Participation (%)
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	20	20
TOTAL:	100	100
Total Transportation Impact Fees:	Current Rate Amount	Reduced Amount
Fee Assessment for 356 MFR Units and 14,081 square feet retail (BLD2015-09518(A1))	\$855,208.50	0

WHEREAS, Jefferson and City agree that the Project is entitled to an exemption from the payment of transportation impact fees; and

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

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; and

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

WHEREAS, City and Jefferson agree that Jefferson has the option to make non-site related transportation and streetscape improvements in exchange for credits against the Proportionate Share Fees. Improvements that qualify for credits include: new sidewalks (off site), improvements to parkways, and contributions for transit shelters to be located off the Project site as well as undergrounding overhead power lines and cables on S. Osceola Ave.

between E. Church St. and E. Mariposa St. and undergrounding overhead power lines and cables on S. Eola Dr. between E. Church St. and E. Mariposa St. and on E. Mariposa St. between S. Osceola Ave. and S. Eola Drive, and other pedestrian improvements (approved by the City) located within the South Eola Neighborhood.

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 described herein, 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 will meet the requirement of fifty percent (50%) active retail/commercial use on the 1st floor; (ii) Pedestrian and bicycle friendly facilities will be provided in accordance with Land Development Code, Orlando Engineering Standards Manual, and intent of the South Eola Neighborhood Small Area Plan; and (iii) Jefferson's agreement to fund and subsidize transit ridership for its employees, 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, (the "Impact Fee").

3) Agreement to Subsidize Ridership for Employees. As a condition of this Agreement, and for fifteen (15) years from the first Certificate of Occupancy issued for the Project, Jefferson shall 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) Continuing Obligation. As a further condition of this Agreement, Jefferson shall ensure that, throughout the use and occupation of the Project, the Project will continue to meet one-hundred percent (100%) of the TOD criteria as described in this Agreement. Upon request by the City, Jefferson 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.

5) South Eola Neighborhood Plan. In accordance with the subarea policy, the proportionate share contribution for transportation system impacts are as follows:

<u>Land Use</u>	<u>New Units/Area</u>	<u>Rate</u>	<u>Fee</u>
Multi-Family Residential	356	\$888/unit	\$316,128.00
Retail	14,081 sf	\$1,667/1000 sq. ft.	\$21,129.89

Sub-total	\$337,248.89
Less Demolition Credit	\$23,420.11
Final Fee Due	\$313,828.78

6) 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.

7) South Eola Neighborhood Plan Proportionate Share Fee Credits. In accordance with the recommendations of the South Eola Neighborhood Plan, Jefferson may elect to make 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 (i) must have reviewed and approved the construction plans for the proposed improvements prior to construction. Jefferson agrees to adjust and modify the construction plans for the proposed improvements as necessary to obtain City’s approval; and (ii) inspect and approve the improvements after construction. City shall also be entitled to inspect the proposed improvements at any time during construction. Only reasonable costs actually incurred by Jefferson for construction of the approved improvements shall be creditable. Such improvements shall be made in conjunction with the development of the 520 Church Street parcel. Jefferson[A2] acknowledges that City is not authorized, and shall not be responsible, to pay Jefferson any portion of the credits that exceed the Proportionate Share Fees.

8) 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.

9) 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.

10) 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.

11) Estoppel Letter. The City shall execute and deliver to Jefferson, within thirty (30) days after any written request by Jefferson, a letter signed by the City's Transportation Division Manager, 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.

12) 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.

13) 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.

14) 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.

15) 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.

16) 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.

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

Signatures Start Next Page

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:

JAG Development Company, LLC, a
Delaware limited liability company

By: _____

Print Name: _____

Name: _____

Its: _____

Print Name: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this ____ day of _____, 2015 by _____, as Vice President of JAG Development Company, LLC., a Delaware 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: _____

SIGNATURES CONTINUE NEXT PAGE

CITY:

ATTEST:

CITY OF ORLANDO, FLORIDA

By: _____
City Clerk

By: _____
Mayor / Mayor Pro Tem

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)

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

_____, 2015
Roy K. Payne
Chief Assistant City Attorney