

**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 UC ORLANDO CENTRAL LLC**

This AGREEMENT, is made and entered into this _____ day of _____, 2016, by and between **UC ORLANDO CENTRAL LLC**, a Delaware limited liability company, whose address is 315 East Robinson Street, Suite 290, Orlando, Florida 32801 (“Modera Central”) 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 32801 (the “City”). Requests a transportation impact fee reduction under the TOD provision of City Code, for a proposed mixed-use project to be located at 150 E. Central Blvd. Orlando, Florida

RECITALS

WHEREAS, Section 56.15. I, City Code provides that any development, or portion thereof, defined as a Transit Oriented Development (TOD) shall receive a reduction to the Transportation Impact Fee assessed to the development or portion thereof provided certain criteria are met; 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). 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.”

and;

WHEREAS, the qualifying criteria set forth within Section 56.15.I, City Code, for a Transit Oriented Development (TOD) to receive a reduction to the Transportation Impact Fee assessed against the development or portion thereof are:

- “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.”

and;

WHEREAS, Section 56.15.I, City Code provides that 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; and

WHEREAS, Modera Central is the contract purchaser of 1.24+/- acres of property within the jurisdictional limits of the City of Orlando, with an address of 150 E. Central Boulevard, more particularly described in **Exhibit “A”** attached hereto and made a part hereof by reference (“Property”); and

WHEREAS, the Property is owned by WSHC, LLC, a Florida limited liability company (“WSHC”), and is improved with a 24,483+/- sq. ft. building containing dining, meeting, fitness, athletic, and indoor recreation facilities that are operated as an exclusive membership (private) social club known as The University Club of Orlando (the “University Club”); and

WHEREAS, on November 25, 2015, Modera submitted a Transit Oriented Development (TOD) application for development of the Property as a combination of 350 multi-family residential dwelling units, 12,384 square feet of ground floor retail space, 9,650 square feet of space on the ground floor for a new University Club facility (with an additional 5,330 square feet of ground floor mezzanine space), 10,551 square feet of second floor space for a new University Club facility (with an additional 5,544 square feet of second floor mezzanine space), for a total of 43,459 square feet of commercial space, as identified in building permit case BLD2016-01899 (the “Project”); and

WHEREAS, the City has determined that dining, meeting, fitness, athletic, and indoor recreation facilities operated as an exclusive membership (private) social club constitute “active uses” under Chapter 56 of the City Code; and

WHEREAS, the City has determined that dining and meeting facilities within the new University Club facility shall have Transportation Impact Fees assessed at the “Quality Restaurant” rate and that fitness, athletic, and indoor recreation facilities contained within the new University Club facility shall have Transportation Impact Fees assessed at the “Retail” rate, consistent with land use definitions contained in the Institute of Transportation Engineers, Trip Generation Manual, 9th

edition, with the specific Retail rate used based on the square footage subcategories currently used for other Retail land uses; 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; and

WHEREAS, Modera Central asserts that the Project meets the requirements of Section 56.15 I, City Code and has therefore requested the City determine that the Project qualifies for the TOD impact fee reduction; and

WHEREAS, Modera Central has demonstrated that the Project, as defined herein, meets three of the four reduction 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:	Credit Percentage (%)	Development Participation
1. Composed of mixture of land uses, including residential, 50% ground floor active uses	12.5	12.5
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
TOTAL:	50	37.5

Total Transportation Impact Fee	
Fee Assessment – 350 Multi-family Units	\$766,500.00
Fee Assessment – (Ground Floor) 12,384 sf Retail & 9,650 sf Retail/Fitness Club	\$118,249.87
Fee Assessment – (Ground Floor Mezzanine) 5,330 sf Retail/Fitness Club	\$28,604.51
Fee Assessment – (Second Floor) 10,551 sf Quality Restaurant	\$131,328.30
Fee Assessment – (Second Floor Mezzanine) 5,544 sf Quality Restaurant	\$69,006.17
New Fee Assessment	\$1,113,688.85
Previous Use/Demolition Credit (12,270 sf Quality Rest. & 12,213 Retail/Fitness Club)	-\$218,268.20
Sub-total	\$895,420.65
Intensity Bonus awarded for an additional 10% reduction (or 47.5%)	-\$425,324.81
FINAL FEE ASSESSMENT:	\$470,095.84

WHEREAS, Modera Central and City agree that the Project is entitled to a forty-seven and one-half percent (47.5%) reduction to the payment of Transportation Impact Fees, which results in an assessment of Four Hundred Seventy Thousand, Ninety-Five Dollars and Eighty-Four Cents (\$470,095.84), 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 forty-seven and one-half percent (47.5%) 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: Modera Central will pay the City Four Hundred Seventy Thousand, Ninety-Five Dollars and Eighty-Four Cents (\$470,095.84), at permit issuance, for the Transportation Impact Fees assessed to the Project.
- 3) Continuing Obligation. As a condition of this Agreement, Modera Central shall ensure that, throughout the use and occupation of the Project, the Project will continue to meet three of the four TOD criteria as described in this Agreement. Modera Central 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.
- 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. This Agreement shall be automatically terminated and of no further force or effect in the event that Modera Central does not acquire title to the Property from WSHC on or before July 31, 2016, evidenced by a deed recorded in the Public Records of Orange County, Florida.
- 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. Within thirty (30) days of the termination of this Agreement, Modera Central or its successor or assign 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.

- 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) 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.
- 12) 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:

MCRT MODERA CENTRAL LLC,
a Delaware limited liability company

Print Name:_____

By: MCRT Modera Central LLC,
a Delaware limited liability company,
its Managing Member

Print Name:_____

By:_____
Print Name:_____
Title:_____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this ____ day of _____, 2016 by _____, as _____ of MCRT Modera Central LLC, a Delaware limited liability company, as Managing Member of UC ORLANDO CENTRAL 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.

(NOTARY SEAL)

Notary Public Signature

(Name typed, printed or stamped)

CITY:

ATTEST:

CITY OF ORLANDO, FLORIDA

By: _____
City Clerk

By: _____
Mayor

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

_____, 2016

Assistant City Attorney

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, 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: 25-22-29-8216-00-010

Property Described as:

Lots 1 through 8, inclusive, SPERRY'S SUBDIVISION OF THE NORTH ½ OF BLOCK 13 OF SUMMERLIN'S ADDITION TO ORLANDO, according to the Plat thereof as recorded in Plat Book B, Page 89 of the Public Records of Orange County, Less and Except therefrom the West 15 Feet of Lots 4 and 5.