

**Developer Mitigation Agreement:  
Mountain View Whisman School District &  
Mountain View Los Altos Union High School District &  
The Sobrato Organization**

**North Bay Shore Precise Plan: 1255 Pear Avenue Mixed-Use Project**

This agreement made and entered **January 28, 2020**, (“**Agreement**”) by and between the **Mountain View Whisman School District**, a California public school district and political subdivision of the State of California (“**MVWSD**”), **Mountain View Los Altos Union High School District**, a California public school district and political subdivision of the State of California (“**MVLAUHSD**”) (collectively MVWSD and MVLAUHSD are “**Districts**” or individually a “**District**”), and **The Sobrato Organization**, a California corporation (“**Developer**”). Each of these three entities may be referred to as “**Party**” or collectively as the “**Parties.**”

**Recitals**

- A. Developer proposes to redevelop that certain real property located at 1255 Pear Avenue in Mountain View, Santa Clara County, California, described in **Exhibit A**, attached hereto and incorporated herein by this reference (“**Property**”) with a new phased mixed-use development consisting of (i) up to 635 residential units (220 units in the “**South Residential**” or “**First Residential Phase**” and 415 in the “**North Residential**” or “**Second Residential Phase**”) and a new 231, 210 square foot (“**sf**”) office building, which will involve the demolition of an existing 103,513 sf existing industrial building and retaining an existing 156,317 sf office building (“**Office Phase**”). The First Residential Phase, Second Residential Phase and the Office Phase are collectively, the “**Project**”; and
- B. The Property is within the North Bay Shore Precise Plan (“**NBPP**”), which was approved by the City of Mountain View (“**City**”) on or about December 12, 2017. The NBPP includes the Local School District Strategy (“**City’s School Strategy**”), a City policy related to impacts on schools that will serve the residents in the North Bayshore Development Area that requires the Developer to “*submit to the School District and the City, a Local School District Strategy intended to support new local schools in or adjacent to the North Bayshore Precise Plan area.*” The NBPP further requires that “[t]he School District and the Developer shall meet and confer in good faith to develop the School District Strategy to support new local schools. The School District Strategy shall be memorialized as a legally binding agreement. The strategy may include, but is not limited to, land dedication for new school development; additional funding for new school development; TDR strategies to benefit developer(s) that provide new school facilities, benefitting new school facilities; or other innovative strategies supporting schools”; and
- C. On October 23, 2018, the City approved the Project by Resolution No. 18259 (Series 2018 (PL-2017-380), including condition of approval no. 94 (Local School Strategy) and no. 95 (School Fees), and the City Council required the payment of school fees totaling \$12 Million for use to serve residents of the Project and certain park fee credits to be applied by the City (“**City Approval**”); and

- D. The Districts expect that the impacts from the projected development within the NBPP will cause the Districts to construct new schools or significantly increase the capacity of existing schools, to accommodate the additional students that will be generated by the new development; and
- E. Pursuant to Government Code section 65995, et seq. and Education Code section 17620, et seq., MVWSD and MVLAUHSD have adopted school impact fees (“**School Fees**”), which may be assessed on new construction within the Districts’ boundaries, including on Developer’s Property; and
- F. The Districts have determined that the School Fees will not generate sufficient funds to concurrently provide the necessary school facilities to house the students anticipated to be generated from the Project; and
- G. Pursuant to the City’s School Strategy, Developer has indicated that it does not have any real property (land) to dedicate to the Districts and instead desires to provide funding to the Districts in lieu of providing land; and
- H. Districts have fully examined the demographic trends of the area, the present and future cost of school facilities construction, the scope of the Project, and the Project’s impacts upon the Districts’ need for school facilities; and
- I. The Developer desires to assist the Districts with assuring that adequate school facilities are available for the students within the Project by providing an amount, in addition to the School Fees, to the Districts pursuant to the City’s School Strategy (“**Additional Funding**”); and
- J. Developer has agreed to pay School Fees and a specific amount of Additional Funding to the Districts, together totaling \$12 Million, as adjusted and paid pursuant to this Agreement (collectively, the “**Total Funding Amount**”), with the understanding that the Districts may not assess any further amounts or fees against the Developer related to the Project and that the School Fees and Additional Funding will be earmarked by the Districts and used to provide facilities for transitional or pre-kindergarten through twelfth grade students that will be generated by Developer’s Project, and that the Additional Funds will be returned, as adjusted and provided in this Agreement, if unused within ten years as provided herein; and
- K. Developer understands that Districts will be relying upon the funding as set forth herein to make certain irreversible decisions regarding planning for school facilities, including without limitation applying for state matching funds, land acquisition, retaining of architects and construction; and the District acknowledges the Developer is under no affirmative obligation to build any or all of the Project.

In consideration of the covenants and conditions herein, it is mutually agreed between the Parties hereto as follows:

## Agreement

**1. Developer Payments and Timing.** Developer shall make the following payments pursuant to this Agreement for its development of the Project, as follows:

**1.1. School Fees.** For each Phase of the Project (as described in 1.3, below), Developer shall pay the normal and standard amount of School Fees allocated per District, in the specified school rates in effect at the time, at issuance of the first building permit for that Phase.

**1.2. Additional Funding.** In addition to the School Fees, the Developer shall pay the Additional Funding due for each of the First Residential Phase and the Second Residential Phase at the time of issuance of the first building permit for each such Phase, as set forth and adjusted below. The Additional Funding shall be adjusted starting on the later of two (2) years from the issuance of the first building permit for any Phase of the Project or June 30, 2022 (“**Date of Adjustment**”), and on each annual anniversary of the Date of Adjustment, based on the Engineering News-Record construction cost index for San Francisco, California for the prior year (“**CCI**”). The Additional Funding for both residential Phases will be calculated by subtracting the total applicable School Fees for all three Phases from the total of **Twelve Million Dollars** (\$12,000,000) using the rates in effect at the time of calculation or the actual amount of School Fees paid, as applicable, then adjusting the remainder to include CCI, if applicable after the Date of Adjustment, and then splitting the resulting amount 41.2% to MVWSD and 58.8% to MVLAUHSD. For the purposes of clarity, the Districts acknowledge that, if and to the extent School Fees increase over current rates, the amount of Additional Funding will be reduced accordingly such that the Project will not be required to pay any more than the Total Funding Amount.

**1.2.1. First Residential Phase – First Example of Additional Funding Calculation (no CCI).** For example, assume it is January 1, 2020, School Fees remain at the rates in effect as of the execution date of this Agreement, the Office Phase has obtained its building permit and paid the applicable School Fees, and Developer is seeking its first building permit for the First Residential Phase. The calculation of the Additional Funding to be paid for the First Residential Phase would be as follows:

Total Funding	Less Estimated and/or Paid School Fees for all Phases	Pro-rata Share for First Residential Phase = 34.6%	Additional Funding	Distribution to MVWSD 41.2%	Distribution to MVLAUHSD 58.8%
\$12,000,000	(\$2,184,097)	x 0.346	= <b>\$3,396,302</b>	\$1,399,276	\$1,997,026

Additional Funding =  $(\$12,000,000 - \$2,184,097$  [total estimated and/or paid School Fees for all Phases])  $\times 34.6\%$  (pro-rata share for First Residential Phase) =  $\$3,396,302$ , distributed in the amount of  $\$1,399,276$  (41.2%) to MVWSD and in the amount of  $\$1,997,026$  (58.8%) to MVLAUHSD.

**1.2.2. First Residential Phase - Second Example of Additional Funding**

**Calculation (Subject to CCI).** Assume the same facts as above, except that it is July 1, 2022 (after the Date of Adjustment) and the amount of the CCI increase for the prior year is 4%. The calculation of the Additional Funding to be paid would be as follows:

Total Funding	Less Estimated and/or Paid School Fees for all Phases	Pro-rata Share for First Residential Phase = 34.6%	Additional Funding	CCI Adjustment to Additional Funding	Distribution to MVWSD 41.2%	Distribution to MVLAUHSD 58.8%
\$12,000,000	(\$2,184,097)	$\times 0.346$	= \$3,396,302	$\times 1.04 =$ <b>\$3,532,154</b>	\$1,455,247	\$2,076,907

Additional Funding =  $\{(\$12,000,000 - \$2,184,097$  [total estimated and/or paid School Fees for all Phases])  $\times 34.6\%$  (pro-rata share for First Residential Phase)} + 4% (CCI) =  $\$3,532,154$ , distributed in the amount of  $\$1,455,247$  (41.2%) to MVWSD and in the amount of  $\$2,076,907$  (58.8%) to MVLAUHSD.

**1.2.3. Second Residential Phase – Example of Additional Funding Calculation**

**(Subject to CCI).** For example, assume it is July 1, 2023, School Fees remain at the rates in effect as of the execution date of this Agreement, the Office Phase and First Residential Phase have each obtained a building permit and paid the amounts due under this Agreement, the second annual CCI adjustment is 3% (for a total of 7% since the Date of Adjustment) and Developer is seeking its first building permit for the Second Residential Phase. The calculation of the Additional Funding to be paid for the Second Residential Phase would be as follows:

Total Funding	Less Amounts Paid School Fees for all Phases	Pro-rata Share for Second Residential Phase = 65.4%	Additional Funding	CCI Adjustment to Additional Funding	Distribution to MVWSD 41.2%	Distribution to MVLAUHSD 58.8%
\$12,000,000	(\$2,184,097)	$\times 0.654$	= \$6,419,600	$\times 1.07 =$ <b>\$6,868,972</b>	\$2,830,016	\$4,038,956

Additional Funding =  $\{(\$12,000,000 - \$2,184,097$  [total paid School Fees for all Phases])  $\times 65.4\%$  (pro-rata share for Second Residential Phase)} + 7%

(4% +3%) total CCI = \$6,868,972, distributed in the amount of \$2,830,016 (41.2%) to MVWSD and in the amount of \$4,038,956 (58.8%) to MVLAUHSD.

- 1.3. Phases.** The Developer shall pay the School Fees and Additional Funding in no more than three (3) payments each based on the following three (3) phases of construction (each a “Phase” and collectively “Phases”), as follows:
  - 1.3.1. Office Phase.** Developer will pay the then-applicable School Fees in the normal course at the commercial rate for the entire Office Phase at the time when the first building permit is requested for the Office Phase of the Project. No Additional Funding will be paid for this Phase. The Additional Funding, however, will be reduced by the amount of School Fees paid for the Office Phase. The Parties acknowledge that the Office Phase assessable square footage shall be reduced by the existing 103,513 sf existing industrial building which will be demolished in accordance with applicable law.
  - 1.3.2. First Residential Phase.** Developer shall pay the then-applicable School Fees in the normal course at the residential rate for the entire First Residential Phase when required for the issuance of the first building permit for the First Residential Phase of the Project. The pro-rata share of the Additional Funding for the First Residential Phase is **thirty-four-point six percent (34.6%)**.
  - 1.3.3. Second Residential Phase.** Developer shall pay the then-applicable School Fees in the normal course at the residential rate for the entire Second Residential Phase when required for the issuance of the first building permit for the Second Residential Phase of the Project. The pro-rata share of the Additional Funding for the Second Residential Phase is **sixty-five-point four percent (65.4%)**.
- 1.4.** Notwithstanding any provision herein to the contrary, in no event shall the Total Funding be less than \$12,000,000, including School Fees at the time of payment and the Additional Funding, as adjusted by CCI as applicable under Section 1.2, at the time all three Phases have received building permits and such payments are due and owing as provided herein. For the purpose of clarity, nothing in this Agreement commits the Developer to build any or all Phases of the Project or to pay School Fees or Additional Funding except in connection with Developer’s development as evidenced by Developer’s request for issuance of a building permit for each Phase, and if the Developer does not request a building permit for any (or all) Phase(s), no School Fees or Additional Funding attributable to that Phase shall be owed.

- 2. Additional Charges.** The Developer Payments proposed by this Agreement are in lieu of any fees the Districts might have imposed under the School Fee Legislation or any other

authorization the Districts may have to collect fees and in lieu of providing a land dedication under the City School Strategy. Developer shall not be required to pay the Districts any fees, charges or dedications in addition to the Mitigation Amount required by this Agreement above except as follows:

- 2.1.** Nothing in this section shall prevent the Districts from seeking voter approval for additional funding for school facilities, for example from general obligation bonds submitted to the voters in the community. Developer shall not be relieved from paying additional amounts for school facilities approved by the voters so long as the additional amounts are applicable to the majority of owners of property in the Districts and are not intended to apply primarily to new development or new construction; provided, however, the Developer does not waive any legal rights to participate in and/or protest and/or vote against such proposed approvals.
- 2.2.** Nothing in this section shall prevent the Districts from collecting assessments already levied or levied in the future for a maintenance and recreation assessment, provided any new assessment is not intended to apply primarily to new development or new construction.
- 2.3.** Judicial decisions and/or future legislation that alters the authority of Districts or any other governmental entity to impose, levy or collect school mitigation fees shall not affect the validity of the terms or conditions of this Agreement.
- 3. Changes in Law.** The parties acknowledge and agree that the Legislature may enact new laws or amend existing laws with regard to the authority of school districts and/or other governmental agencies to impose, levy or collect school mitigation fees, including but not limited to the operation of School Fee Legislation, (collectively “**Changes in the Law**”). The parties agree that any Changes in the Law shall not affect the validity of any of the terms or conditions of this Agreement.
- 4. Mitigation.** Districts agree that the measures set forth herein, when implemented, will satisfy in full Developer’s obligations respecting school facilities for the Project. Districts agree not to oppose the Project and its development, whether directly or indirectly through interactions with any applicable city, county, or any other federal, state or local entity. As long as Developer is in compliance with this Agreement, Districts agree not to seek other forms of mitigation of any kind from Developer or the City within the Project related to the provision of school and educational facilities to serve the students from the Project.
- 5. Exclusive Use of Developer Payments.** Districts further agree that the Additional Funding will be exclusively used to provide facilities to any transitional or pre-kindergarten through twelfth grade students that will be generated by Developer’s Project. The Developer Payments will be held in Fund 25, the account into which all school district developer fees must be held. These funds will not be co-mingled with the Districts’ general funds. The Developer, and its successors and assigns of the residential portions of the Project, shall have the right to challenge the use of these funds for these purposes, as described in the

Mitigation Fee Act (Gov. Code § 66001, et seq.). The statute of limitations for actions under the Mitigation Fee Act (Gov. Code §, 66020, subdiv. (d)) shall be tolled for 10 years after the date of occupancy of the last residential Phase. If the Additional Funding is not expended by the District for an approved use as indicated here within ten (10) years of occupancy of the last residential Phase for which the Additional Funding was paid, that Additional Funding shall be refunded in full to the Developer. The Districts understand that Developer intends to present this Agreement to the City to demonstrate Developer’s compliance with the City’s School Strategy, but such presentation is not a condition of this Agreement.

6. **Support, Cooperation and Waiver of Protest.** Payment of the Mitigation Amount as set forth herein shall be made by Developer without protest. Developer voluntarily enters this Agreement and knowingly and willingly waives all rights of protest under Government Code sections 66020, 66021 or 66024, except as described in the “Exclusive Use of Developer Payments” section above as a challenge to the Districts’ use of the Developer Payments. Developer agrees that the payments provided for herein may be in excess of any amounts payable pursuant to the School Fee Legislation and that such payments are not fees, charges, dedications or any other requirements within the meanings of the School Fee Legislation, but are completely voluntary payments made by Developer to obtain the City Approvals and assist the Districts in providing school facilities and to enhance the marketability of the Project.
  
7. **State Funding.** The Parties acknowledge that the Developer’s payment of the Developer Payments will not be adjusted if either District seeks and receives any funds from the State.
  
8. **Agreement Binding on Successors in Interest.** The burdens of this Agreement bind and the benefits of this Agreement inure to the successors in interest to the parties. This Agreement may be recorded and shall run with the land only until conclusion of the Term or June 30, 2029, whichever is earlier. The Developer has the right to sell each Phase of the Project and shall provide a copy of this Agreement to any purchaser(s). The Developer has the right to partially assign this Agreement to such purchaser of any Phase and upon sale and transfer the Developer shall be released from the portion sold and assigned. The Developer and/or the new owner shall provide notice to the District of such sale within 30 days of closing.
  
9. **Notices.** All notices, or other communications required or permitted by this Agreement shall be in writing and shall be duly served and given when personally delivered or sent via overnight delivery, addressed as follows:

<p><b><u>MVWSD:</u></b>          Mountain View Whisman School District          1400 Montecito Avenue          Mountain View, CA 94043          Attention: Superintendent</p>	<p><b><u>With copy to:</u></b>          Philip J. Henderson          Orbach Huff Suarez + Henderson, LLP          6210 Stoneridge Mall Rd., Suite 210          Pleasanton, CA 94588</p>
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<p><b><u>MVLAUHSD:</u></b>  Mountain View Los Altos Union High School District  1299 Bryant Avenue  Mountain View, CA 94040  Attention: Superintendent</p>	<p><b><u>With copy to:</u></b>  Charles Seaman  Reed Smith  101 Second Street, Suite 1800  San Francisco, CA 94105</p>
<p><b><u>Developer:</u></b>  <b>The Sobrato Organization</b>  599 Castro St., Suite 400  Mountain View, CA 94041  Attention: Tim Steele</p>	<p><b><u>With copy to:</u></b>  Holland &amp; Knight  50 California St., Suite 2800  San Francisco, CA 94111  Attention: Tamsen Plume</p>

10. **Term.** This agreement shall become effective upon execution and shall remain in full force and effect until the earlier of (i) the termination/expiration of the City Approval or (ii) the Project is fully developed and completed pursuant to the City Approval, and the Districts’ respective obligations under Section 5 have been satisfied (“**Term**”). Notwithstanding these provisions, this agreement will terminate no later than June 30, 2029.
11. **Entire Agreement.** This Agreement constitutes the entire understanding and agreement between the parties and supersedes all previous negotiations among them. Except as otherwise expressly provided, neither this Agreement nor any of its terms may be amended, modified or waived except by written agreement.
12. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same Agreement.
13. **California Law.** This Agreement shall be governed and construed in accordance with the laws of the State of California and venue for any action concerning this Agreement shall be in Santa Clara County, California.
14. **Additional Representations and Warranties.**
  - 14.1. Developer represents and warrants that the individual(s) executing this Agreement on its behalf have the legal power, right and actual authority to bind the Developer to the terms and conditions of this Agreement.
  - 14.2. Districts represents and warrants that the individual(s) executing this Agreement on behalf of Districts have the legal power, right and actual authority to bind the Districts to the terms and conditions of this Agreement.
15. **Incorporation of Recitals and Exhibit.** The Recitals and Exhibit A attached hereto are hereby incorporated herein by reference.
16. **Time.** Time is of the essence of this Agreement and of each and every term.

**17. Attorneys' Fees.** In the event of any action or proceeding brought by either party against the other party under this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs in such action or proceeding in such amount as the court may adjudge.

**Accepted and agreed on the date indicated below:**

Dated: \_\_\_\_\_, 2020

**Mountain View Whisman School District**

Signature: \_\_\_\_\_

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

Print Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 2020

**The Sobrato Organization**

Signature: \_\_\_\_\_

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

Print Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 2020

**Mountain View Los Altos Union High School District**

Signature: \_\_\_\_\_

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

Print Title: \_\_\_\_\_

**Exhibit A**

**MAP AND  
LEGAL DESCRIPTION OR STREET ADDRESS OF  
SUBJECT PROPERTY ARE ATTACHED ON NEXT PAGE.**