Los Gatos Union School District
17010 Roberts Road
Los Gatos, CA 95032
(408) 335-2000 Phone
(408) 395-6481 Fax
www.lgusd.k12.ca.us
Dr. Diana G. Abbati, Superintendent

CELEBRATING 150 YEARS
1863 2013
LOS GATOS UNION SCHOOL DISTRICT
Our Community • Our Students • Our Future

SENT VIA MAIL and EMAIL at jpaulson@losgatosca.gov

April 10, 2015

Town of Los Gatos
c/o Joel Paulson, Community Development Department
110 E. Main Street
Los Gatos, CA 95031

Re: North 40 Specific Plan Area - Voluntary Contribution Agreement between the Los Gatos Union School District and North 40 Developers

Honorable Mayor, Town Council Members and Staff:

Thank you for the opportunity to provide additional comments on the North Forty Specific Plan and share the views of the Los Gatos Union School District ("District") as to the scope and content of the proposed project's impact on our schools.

I am pleased to announce that the District and the North 40 Developers reached a unique agreement (see attachment) to address the need for the expansion of school facilities. At the Monday, April 13, 2015 District Board meeting, the Superintendent and the Assistant Superintendent will be recommending that the Board of Trustees accept the agreement with the North 40 Developers for the following reasons:

- The North 40 Specific Plan is an appropriate way for the Town of Los Gatos to achieve its State Regional Housing Needs Allocation (RHNA) requirement, and with this agreement, accommodate future impacts to school district enrollment.

- The District is based on the principle of community or neighborhood schools. The District believes that dividing neighborhoods between school districts does not support this principle.

If you require any additional information, please feel free to contact me. I also invite you to join the Board of Trustees on Monday, April 13th at 6:30 p.m. at the District office.

Very truly yours,

Diana G. Abbati

Diana G. Abbati, Ed.D.
Superintendent

cc: Los Gatos Union School District Board of Trustees
Assistant Superintendent-Business Services/CBO
Town of Los Gatos Mayor, Council Members and Planning Commissioners

Enclosure (1): Voluntary Agreement between the Los Gatos Union School District and North 40 Developers

Board of Trustees • Scott Broomfield • Emi Eto • Leigh-Anne Marcellin • Alex Potts • Peter Noymer

VOLUNTARY CONTRIBUTION AGREEMENT

This Voluntary Contribution Agreement ("Agreement") is made and entered into on this _____ day of April, 2015 ("Effective Date"), by and between Los Gatos Union School District ("District") on the one hand, and Grosvenor USA Ltd. and SummerHill Homes LLC (each a "Developer," collectively "Developers") on the other, each sometimes referred to herein as a "Party" and collectively as the "Parties."

RECITALS

A. The Town of Los Gatos ("Town") is in the process of developing for approval by the Town Council a Specific Plan (the "North Forty Specific Plan") for certain property within the Town known as the "North Forty Property."

B. Developers have certain contractual relationships with the owners of portions of the North Forty Property, and intend to attempt to develop the property with a mixed use project (the "Project") potentially involving residential, commercial, hotel and/or office uses consistent with the adopted North 40 Specific Plan. Attached hereto as Exhibit A is a description of the North Forty Property in which Developers have a contractual interest.

C. District has publicly expressed concerns about its need for new school capital facilities both to house students who would live within the new residential units in the Project as well as to address existing capacity challenges, and has requested that the Town consider setting aside a portion of the North Forty Property for school purposes.

D. Developers desire to assist in ameliorating impacts on District's schools by contributing land and/or funds to District in excess of what they are required to pay through the normal SB50 school fee process. District desires to receive such additional contribution and in return publicly acknowledges that the above-stated concerns have been satisfied, and that it supports both the North Forty Specific Plan and the Project.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and conditions contained herein, the Parties hereto agree as follows:

1) Options for Contribution. Upon the terms and conditions set out herein, Developers shall jointly select for their contribution to the District either Option A or Option B, which are described in sections 2 and 3 of this Agreement.

2) Option A – Land and Fees. The District needs, at a minimum, two (2) acres of land (referred to as "School Property") for construction of needed school facilities. The School Property must be contiguous, located within the District's boundaries, and is subject to approval by the District, the California Department of Education, and the Department of Toxic Substance Control, among other state agencies. This option is based on the following parameters:

a) *Dedication/Acquisition of Land.* The District will work with Developers to secure the best suitable parcel, at a minimum, two (2) acres of land for a School Property within District boundaries. Developers will consider dedication of land for School Property

within the portions of the North Forty Property that they have under contract. If it is determined by the Parties that land within the North Forty Property cannot be dedicated for use by the District, Developers will attempt in good faith to locate other land within the District boundaries for School Property prior to issuance of building permits for the first phase of Developers' Project. Further, the District retains the right to work collaboratively with Developers to provide additional funds for the purchase of a parcel over two acres.

b) *Payment of District School Impact Fees.* In addition to dedication or acquisition of School Property, each Developer shall also pay to District SB50 mandated School Impact Fees pursuant to Sections 17620 et seq. of the Education Code and Sections 65995 et seq. of the Government Code ("School Impact Fees") for all commercial and residential square footage within that portion of the North Forty Property which is in contract by said Developer as of the Effective Date, and to which said Developer ultimately obtains title. The rate for residential development shall remain at the current approved rate of Two Dollars Twenty-Nine Cents ($2.29) per square foot for thirty-six (36) months from the Effective Date. Should the School Impact Fees rate per square foot increase after the 36 months for future residential development in the Project, the School Impact Fees rate per square foot shall not exceed the lesser of the School Impact Fees rate per square foot then in effect or Five Dollars ($5.00) per residential square foot.

c) *School Impact Fees for the Los Gatos-Saratoga High School District.* The District is the agent for the Los Gatos-Saratoga Union High School District ("High School District") and collects and distributes School Impact Fees to the High School District. Developers agree to pay School Impact Fees for the High School District at the fee rates in effect at the time building permits are issued for all commercial and residential square footage within the Project.

3) Option B – Monetary Payment. As an alternative to Option A, the applicable Developer will make a voluntary contribution ("Additional Payment") to the District at the time of Building Permit issuance for each unit within that portion of the Project that is owned in fee simple by the Developer in question for which a building permit is pulled by the Developer pulling such building permit, in the total amount of Twenty-Three Thousand Five Hundred Dollars ($23,500) per entitled market rate residential unit that is built by the Developer in question in the Project within the District's boundaries. No Additional Payment shall be due on affordable or below - market-rate housing units. No Developer will owe Additional Payment that is due and owing by the other Developer. This option is based on the following parameters.

a) Payment Breakdown.

i) *Additional Payment.* Using the example provided in the North Forty current application, the Project contains 271 residential market rate units in the District boundaries for an estimated total of $6,368,500 (271 units x $23,500). The Parties agree that the Additional Payment may increase or decrease depending on the number of market rate units approved in the Project.

ii) *Payment of District School Impact Fees.* In addition to making the Additional Payment, each Developer shall also pay to District SB50 mandated School Impact Fees pursuant to Sections 17620 et seq. of the Education Code and Sections 65995 et seq. of the Government Code ("School Impact Fees") for all commercial and residential square footage within that portion of the North Forty Property which is in contract by said Developer as of the Effective Date, and to which said Developer ultimately obtains title. The rate for residential development shall remain at the current approved rate of Two Dollars Twenty-Nine Cents ($2.29) per square foot for thirty-six (36) months from the Effective Date. Should the School Impact Fees rate per square foot increase after the 36 months for future residential development in the Project, the School Impact Fees rate per square foot shall not exceed the lesser of the School Impact Fees rate per square foot then in effect or Five Dollars ($5.00) per residential square foot.

iii) *School Impact Fees for the Los Gatos-Saratoga High School District.* The District is the agent for the High School District and collects and distributes School Impact Fees to the High School District. Developers agree to pay School Impact Fees for the High School District at the fee rates in effect at the time building permits are issued for all commercial and residential square footage within the Project.

b) Limitation on Use of Proceeds. The District's expenditure of the Additional Payment shall be limited to acquisition/lease of land and/or for the costs of construction or modernization of school facilities.

c) No Refund or Credit. The Additional Payment and School Impact Fees shall be absolute as to all residential units developed within the Project after the Effective Date. Developer acknowledges that in the event that the District receives funds from the State of California or any other source to house existing or projected students generated from the Project or within the District generally, Developer and/or its successors or assigns shall not be entitled to any refund or credit or reduction in amount of the Additional Payment and School Impact Fees as a result of the receipt of such State or other funds.

4) Election by Developers of Option. No later than One Hundred Eighty (180) days following approval of the North Forty Specific Plan ("Date of Approval") by the Town, Developers shall jointly deliver to District a notice of their selection of either Option A or Option B ("Notice of Election").

a) The Date of Approval shall be defined as that date that is ninety (90) days following the date of the last action by the Town Council taken to approve the North Forty Specific Plan, assuming that no lawsuit, initiative, referendum or moratorium challenging said approval on any grounds has been filed or instituted. If such a lawsuit, initiative, referendum or moratorium is filed or instituted, then the Date of Approval shall be the latest date upon which all such lawsuits or other challenges have been resolved to Developers' satisfaction in their sole and absolute discretion, and no further suits or challenges may be brought.

b) The Parties acknowledge that the implementation of Option A will require a high degree of cooperation between the Parties, and it may not be possible for them to agree on suitable property pursuant to section 2(a) hereof. Accordingly, if Developers initially select Option A, then at any time thereafter, Developers may give a notice to the District that no earlier than thirty (30) days following delivery of the Notice Developers intend to change their selection from Option A to Option B. If within said thirty-day period Developers and District are unable to resolve their differences to the satisfaction of each of the Parties in its or their sole and absolute discretion, then following the expiration of said period, the Parties shall then proceed in all respects as though Developers had selected Option B initially. If Developers do not give such Notice, but are nonetheless unable to secure a suitable School Property prior to issuance of building permits for the first phase of Developers' Project, then Developers' selection shall automatically default to Option B. In such case, Developers shall make all payments under Option B as though it were initially selected.

5) District Support for North Forty Specific Plan. The District understands the myriad of issues that impact Developers and the District agrees the concepts below are those with a nexus to school policy. District agrees to support the North Forty Specific Plan and the Project based upon the following principles linked to school policy and education issues only.

a) The North Forty Specific Plan is an appropriate way for the Town of Los Gatos to achieve its State Regional Housing Needs Allocation (RHNA) requirement, and with this Agreement, to accommodate future impacts to school district enrollment.

b) The District is based on the principle of community or neighborhood schools. The District believes that dividing neighborhoods between school districts does not support this principle.

c) The District recognizes much effort and time has been put into the North Forty Specific Plan process and encourages the Town Council to take action on the plan in an expeditious manner so the District can proceed with its long-term planning process.

6) Developers' Obligations Contingent Upon Development. Nothing in this Agreement obligates Developers to proceed with their Project entitlements, nor to purchase any land or construct any improvements thereon. Developers shall have the sole and absolute discretion to decide whether or not to proceed with their Project, as well as the scope and timing thereof if they do elect to proceed. Developers' obligations to District hereunder, including any and all transfers of real property and/or payments of monies, are expressly contingent upon Developers, or their successors and assigns, electing actually to construct their Project.

7) Covenant Not to Oppose Plan and Project. District hereby represents and warrants that if Developers proceed to develop the Project under the adopted North Forty Specific Plan, then it will not oppose by itself, or through its Board members, employees, agents or proxies, either formally or informally, including in meetings, discussions or communications with community members, Town staff, Planning Commissioners, and/or Council Members, such development of

the Project (including all further entitlements or permits necessary or convenient to such development that may be applied for from Town or any other public agency or entity) or file any legal action related thereto.

8) Term of Agreement. This Agreement shall be of no further force effect from and after the date that is ten (10) years following the Effective Date, but may be extended by mutual agreement of the Parties. If there is a Memorandum of Agreement or any other documents referencing this Agreement of record at that time, the Parties shall, upon request, execute and allow recordation of quitclaims or other suitable documents to evidence the expiration of this Agreement. This obligation shall survive the termination of this Agreement.

9) General Provisions.

a) Understanding of Agreement. The parties hereto each affirm and acknowledge that they have read this Agreement and have had the opportunity to have it fully explained by counsel of choice, that they fully understand and appreciate the words and terms used in this Agreement, as well as the effect of those words and terms, and further understand that this is a final compromise, release, and settlement of the matters released herein. Each party, or its attorney, has carefully and fully reviewed this Agreement and has revised, or has had the opportunity to revise, this Agreement. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be utilized in the interpretation of this Agreement.

b) Execution of Documents. The parties to this Agreement agree to execute any and all documents reasonably necessary to effectuate the terms, conditions, purposes, and aims of this Agreement.

c) Legal Action. If legal action is brought to enforce or interpret this Agreement or any provision hereof, the prevailing party shall be entitled to recover its actual costs and attorney's fees.

d) Miscellaneous. This Agreement may be signed in counterparts. Each executed duplicate hereof shall be considered as an original. Facsimile or signatures on electronically transmitted documents in PDF form and copies of signatures shall have the same force and effect as original signatures. The captions and titles herein are for convenience only and shall not be used to interpret this Agreement.

e) Notice of Breach. No party shall be deemed to be in breach of this Agreement unless the party alleging breach shall have given written notice of the breach to said party, and said party shall have failed to correct or cure the breach within a period of fifteen (15) days following receipt of said notice.

f) Notices. Any notice or other communication required or permitted to be given under this Agreement ("Notices") shall be in writing and shall be (i) personally delivered; (ii) delivered by a reputable overnight courier; (iii) delivered by certified mail, return receipt requested and deposited in the U.S. Mail, postage prepaid; or (iv) delivered by telecopy.

Telecopy notices shall be deemed received upon transmission during regular business hours, (i.e. Monday through Friday between 9:00 a.m. and 5:00 p.m., Saturday, Sunday and legally recognized holidays excepted) or otherwise on the next business day, and provided that a copy of such notice is forwarded by United States Mail or reputable overnight courier no later than the first business day following the day that the facsimile transmission occurs. Non-telecopy notices shall be deemed received at the earlier of actual receipt or (i) one (1) business day after deposit with a reputable overnight courier as evidenced by a receipt of deposit; or (ii) three (3) business days following deposit in the U.S. Mail, as evidenced by a return receipt. Notices shall be directed to the parties at their respective addresses shown below, or such other address as either party may, from time to time, specify in writing to the other in the manner described above:

To District:
Los Gatos Union School District
17010 Roberts Road
Los Gatos, CA 95032
Fax: (408) 395-6481
Attn: Dr. Diana G. Abbati, Superintendent

To Developers:
Grosvenor USA Ltd.
1 California St., Suite 2500
San Francisco, CA 94111
Attn: Steve O'Connell, Sr. Vice President
Fax: (202) 785-2632

And to:
SummerHill Homes LLC
3000 Executive Parkway, Suite 450
San Ramon, CA 94583
Attn: Wendi Baker, Vice President of Development
Fax: (925) 884-8924

g) Integrated Agreement. This Agreement, together with the exhibits attached hereto, shall be deemed the complete and total agreement of the parties concerning the subject matter hereof, which supersedes memoranda or correspondence, if any, and any previous drafts or oral understandings, if any, made by the parties concerning the subject matter hereof. Nothing herein shall preclude the parties from executing such other documents as are necessary to perfect this Agreement.

h) No Third-Party Beneficiaries. This Agreement is intended exclusively for the benefit of the Parties hereto, and no third parties are entitled to any rights hereunder or to claim to be beneficiaries hereof.

i) Authority to Execute. Upon acceptance of this Agreement by the Board of Trustees of District, execution by signature of any member of the Board of Trustees, or the

Superintendent, of the District shall be deemed to have authority to bind the District to the terms hereof.

j) Amendments to be in Writing. This Agreement may not be altered, amended, modified or changed in any respect or particular whatsoever except by writing duly executed by all the parties to this Agreement.

k) Recordation. As acknowledged herein, Developers currently have a contractual relationship with the owners of certain portions of the North Forty Property, and are therefore not the current owners of record of said Property. Prior to either Developer's closing escrow on the purchase of any portion of the North Forty Property, neither this Agreement, nor any memorandum, shall be recorded in the official records of Santa Clara County. Until such time as a Developer acquires fee simple title to any portion of the North Forty Property, this Agreement shall be binding on each of the Developers and each of their respective assigns who are assigned the contract rights to purchase their respective portions of the Project, and in the event of any such assignment, this Agreement shall be assigned by the Developer in question to Developer's affiliated entity who is being assigned such contract rights. During said time, if Developers obtain entitlements from Town for their Project and subsequently sell or transfer all or a portion of such entitlements to unrelated and unaffiliated developers, then Developers agree to transfer such entitlements, or portions thereof, subject to the provisions of this Agreement.

If one or both of the Developers acquire title to the North Forty Property, or any portion thereof, then this Agreement shall be duly recorded against such acquired property through a Memorandum of Agreement, and the covenants and agreements contain herein shall not only be binding against the purchasing Developer, but shall also run with the land and shall bind and inure to the benefit of the successors and assigns of the Parties. In addition, Developers agree for the benefit of District that any property owned by Developers within the North Forty Project area, shall be held, transferred, and encumbered subject to the provisions of this Agreement which are for the use and benefit of it and of each and every person or entity who now or in the future develops the Project; until all of the property therein has been developed.

l) Transfer Rights. Nothing in this Agreement shall in any way limit the ability of Developers to transfer, sell, assign, encumber or in any way convey (collectively a "Transfer") any interest in the North Forty Property or Project, whether property interests, contractual interests or entitlements, without the consent of District, provided the Developer in question gives written notice of the Transfer to District, and the transferee ("Transferee") assumes the obligations of the Developer in question under this Agreement. Upon the Transferee's written assumption of the obligations under this Agreement and the closing of the Transfer, the transferring Developer shall be released from all obligations under this Agreement, and District shall look solely to the Transferee for performance of the obligations hereunder pertaining to the transferred property or entitlement, and the Transferee shall have all rights and benefits set forth in this Agreement.

m) Mortgagee Protection. No breach of this Agreement shall defeat or render invalid the lien of any deed of trust or mortgage recorded against the Project. No lender taking title to the Project through foreclosure or deed in-lieu shall be liable for any defaults or monetary obligations of any Developer of the Project arising prior to acquisition of possession of such portions of the Project by such lender.

n) Release of Obligations Upon Satisfaction Thereof. Upon request, District shall promptly execute in recordable form, and deliver to the requesting Developer for recordation, documents evidencing satisfaction of the obligations hereunder with respect to all or any portion of the North Forty Property (including individual residential units as appropriate) developed by a Developer as to which all appropriate fees have been paid hereunder. Without limiting the generality of the foregoing, this obligation shall apply to each residential unit for which School Impact Fees and, if applicable an Additional Payment, has been made.

IN WITNESS WHEREOF, the Parties hereto by their signatures execute this Agreement pursuant to the terms and conditions above.

LOS GATOS UNIFIED SCHOOL DISTRICT,
a California public school district

By:

Name: _____

Title: _____

GROSVENOR USA ~~LTD.~~ LIMITED

By:

Name: REKHA PATEL

Title: ...CE FINANCIAL OFFICER

By:

Name: Betsy James

Title: Secretary

SUMMERHILL HOMES LLC
a California limited liability company

By:

Name: Katia Kamangar

Title: Executive Vice President

By:

Name: Jason R. Biggs

Title: Assistant Secretary

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Exhibit A

North 40 Specific Plan

Property Ownership

Sources: Santa Clara County Assessor's Office / Town of Los Gatos
Date: January 26, 201

Yuki Family Ownership

Grosvenor Ownership

Other Ownership:

1. Mbk Ent., Inc.
2. Ezell, Marianne I.
3. Fales, William N.
4. Hirschman, William F.
5. Dodson, Elizabeth K.
6. Kothary, Piyush B.
7. Kothary, Piyush B.
8. Kothary, Piyush B.
9. Lazaar Ent., LLC
10. Ew Real Estate, LLC
11. Polaris Navigation
12. L.G. Blvd. Holdings, LLC
13. Kothary, Piyush B.
14. Bernal, Matthew J.
15. John & Allison Diep, LLC
16. Gin, Iris
17. L.G. Med. Office Ctr., LLC
18. Spinazze, R. A. & G.
19. Dagostino, James F.
20. Connell, Patricia D.
21. Ventura, Dewey J.
22. Mattes, William P.
23. Mattes, Hans W.
24. Mattes, Hans W.
25. Moisenco, D. L. & S. J.
26. Swenson, C. B.
27. Swenson, C. B.
28. Los Gatos Gateway, LLC

ATTACHMENT # 7

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