

BELOW MARKET RATE HOUSING IN LIEU FEE AGREEMENT

This Below Market Rate Housing In Lieu Fee Agreement (“Agreement”) is made as of this 2/3/2021, by and between the City of Menlo Park, a California municipality (“City”) and 250 MIDDLEFIELD ASSOCIATES, LLC (“Applicant”), with respect to the following:

RECITALS

- A. Applicant owns a building, located at that certain real property in the City of Menlo Park, County of San Mateo, State of California, consisting of approximately 2 acres, more particularly described as Assessor’s Parcel Number: 062-271-010 (“Property”), and commonly known as 250 Middlefield Road, Menlo Park.
- B. The Property currently contains one building. The gross floor area of the existing building is approximately 22,623 square feet.
- C. Applicant proposes to add approximately 3,525 square feet of gross floor area for office use by adding to the first floor of the existing building. Applicant has applied to the City for use permit and architectural control to increase the square footage within the building (“Project”).
- D. Applicant is required to comply with Chapter 16.96 of City’s Municipal Code (“BMR Ordinance”) and with the Below Market Rate Housing Program Guidelines (“Guidelines”) adopted by the City Council to implement the BMR Ordinance. In order to process its application, the BMR Ordinance requires Applicant to submit a Below Market Rate Housing Agreement. This Agreement is intended to satisfy that requirement. Approval of a Below Market Rate Housing Agreement is a condition precedent to the approval of the applications and the issuance of a building permit for the Project.
- E. Residential use of the Property is not allowed by the applicable zoning regulations. Applicant does not own any sites in the City that are available and feasible for construction of sufficient below market rate residential housing units to satisfy the requirements of the BMR Ordinance. Based on these facts, the City has found that development of such units off-site in accordance with the requirements of the BMR Ordinance and Guidelines is not feasible.
- F. Applicant, therefore, is required to pay an in lieu fee as provided for in this Agreement. Applicant is willing to pay the in lieu fee on the terms set forth in this Agreement, which the City has found are consistent with the BMR Ordinance and Guidelines.

NOW, THEREFORE, the parties agree as follows:

1. If Applicant elects to proceed with the Project, Applicant shall pay the in lieu fee as provided for in the BMR Ordinance and Guidelines. Notwithstanding the proceeding, nothing in this Agreement shall obligate Applicant to proceed with the Project. The applicable in lieu fee is that which is in effect on the date the payment is made. The in lieu fee will be calculated as set forth in the table below; however, the applicable fee for the Project will be based upon the amount of square footage within Group A (offices) and Group B (other commercial) at the time of payment. The estimated in lieu fee is provided below.

| Table 1: BMR requirements and applicant proposal | | | |
|--|---------------------|-------------|--------------------|
| | Fee per square foot | Square feet | Component fees |
| Existing Building - Office | \$18.69 | 22,623 | (\$422,823.87) |
| Existing Building - Non-Office | \$10.14 | 0 | \$0.00 |
| Proposed Building - Office | \$18.69 | 26,148 | \$488,706.12 |
| Proposed Building - Non-Office | \$10.14 | 0 | \$0.00 |
| Net New | | 3,525 | |
| BMR In-Lieu Fee Option | | | \$65,882.25 |

2. If the Applicant elects to proceed with the Project, the Applicant shall pay the in lieu fee before the City issues a building permit for the Project. The in lieu fee may be paid at any time after approval of this Agreement by the Planning Commission. If for any reason, a building permit is not issued within a reasonable time after Applicant's payment of the in lieu fee, upon request by Applicant, City shall promptly refund the in lieu fee, without interest, in which case the building permit shall not be issued until payment of the in lieu fee is again made at the rate applicable at the time of payment.
3. This Agreement shall be binding on and inure to the benefit of the parties hereto and their successors and assigns. Each party may assign this Agreement, subject to the reasonable consent of the other party, and the assignment must be in writing.
4. If any legal action is commenced to interpret or enforce this Agreement or to collect damages as a result of any breach of this Agreement, the prevailing party shall be entitled to recover all reasonable attorney's fees and costs incurred in such action from the other party.

5. This Agreement shall be governed by and construed in accordance with the laws of the State of California and the venue for any action shall be the County of San Mateo.
6. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by all of the parties hereto.
7. This Agreement supersedes any prior agreements, negotiations, and communications, oral or written, and contains the entire agreement between the parties as to the subject matter hereof.
8. Any and all obligations or responsibilities of Applicant under this Agreement shall terminate upon the payment of the required fee.
9. To the extent there is any conflict between the terms and provisions of the Guidelines and the terms and provisions of this Agreement, the terms and provisions of this Agreement shall prevail.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

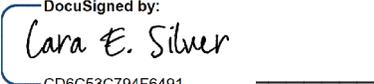
CITY OF MENLO PARK

250 MIDDLEFIELD ASSOCIATES,
LLC

DocuSigned by:
Starla Jerome-Robinson
By: 
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Starla Jerome-Robinson
City Manager

DocuSigned by:
Charlie King
By: 
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Charlie King
Vice-President

Approved as to form:

DocuSigned by:
Cara E. Silver
By: 
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Cara Silver
Interim City Attorney