

SETTLEMENT AGREEMENT (Station 1300 Project)

This Agreement (“**Agreement**”) is made and entered into as of April 19, 2017 (the “**Effective Date**”) by and between the Menlo Park Fire Protection District (the “**Fire District**”), and the Project sponsor of the Station 1300 development, Real Social Good Investments, LLC, a California limited liability company (“**Developer**”). The Fire District and Developer are collectively referred to as the “**Parties**.”

RECITALS

A. Station 1300 (“**S1300**” or “**Project**”) is a proposed 6.4 net acre development located in Menlo Park at 1300 El Camino Real. The Project includes an approximately 183-unit apartment building with approximately 7,250 square feet of ground floor retail space, and two 3-story office buildings totaling about 200,000 square feet of space with approximately 11,350 square feet of ground floor retail space. On January 24, 2017, the City of Menlo Park adopted approvals in furtherance of the Project, including certification of an Environmental Impact Report (“**EIR**”).

B. The Project is located within the current jurisdictional boundaries of the Fire District, and, therefore, the Fire District will provide essential emergency and fire services to the Project and persons living, working at or visiting the Project.

C. The City prepared an EIR under the California Environmental Quality Act (“**CEQA**”) analyzing the impacts of the Project. The Fire District has alleged that the Project may have impacts to the Fire District due to the increased number of employees and residents within the Fire District area and that the EIR may not comply with CEQA. Developer denies that the District has any valid claims with respect to the EIR or approval of the Project, and denies that the Project will have any financial impact on the Fire District based on the substantial property tax revenues that will accrue to the Fire District as a result of the Project.

D. On February 16, 2016, the Fire District Board of Directors adopted a Fire Services Impact Fee Program under Resolution 1840-2016 (“**District Impact Fee Program**”). The Fire District Impact Fee Program was based on an Emergency Services and Fire Protection Impact Fee Nexus Study dated February 16, 2016 (“**Nexus Study**”).

E. Neither the City of Menlo Park nor any other local jurisdiction has adopted the District Impact Fee Program and, therefore, Developer contends that it has no legal obligation to pay impact fees to the Fire District.

F. Notwithstanding the Parties’ respective positions, and in an effort to avoid any present or future litigation regarding the dispute, Developer and the Fire District have

reached mutually agreeable terms for the resolution of their dispute by providing a guarantee as to the amount of property tax that the Fire District will receive as a result of the Project. Through this Agreement, Developer has satisfied the concerns of the Fire District regarding the Project's possible impacts and the Fire District has agreed to support the Project as proposed.

In consideration of the mutual covenants and conditions hereafter set forth, and other good and valuable consideration the receipt and adequacy of which is hereby acknowledged, the Parties agree to the following:

AGREEMENT

1. **Property Tax Revenue Guarantee.** Developer will provide the Fire District a guarantee of minimum property tax revenue from the Station 1300 Project ("**Guarantee Obligation**") to the Fire District in accordance with the terms of this Agreement.

2. **\$1300 Property Tax Revenue Surplus/Deficit Calculation.** Subject to the provisions in Sections 3, 4 and 5 below, Developer will guarantee an amount of \$309,500 in property tax revenue to the Fire District annually (the "**Guaranteed Amount**"), commencing on July 1st of the first full property tax roll year after a certificate of occupancy has been issued for the final building of the Project (the "**Commencement Date**"). For example, if the final certificate of occupancy is issued on June 1 of a given year, then the Guarantee Obligation will commence for the tax year beginning July 1 of the same year; on the other hand, if the final certificate is issued on, for example, July 15 of a given year, then the Guarantee Obligation will commence with the tax year beginning July 1 of the following year. The Guaranteed Amount will be indexed to the Consumer Price Index for All Urban Consumers (CPI-U), San Francisco Area and will be adjusted annually commencing on July 1, 2018.

3. **Calculation of Property Tax Revenue to the Fire District.** The Project is located in tax rate area TRA 08-004. On a net basis after Net ERAF distributions and rebates, the average net revenue to the Fire District from TRA 08-004 is estimated at 15.327%. For the purpose of simplicity and to minimize any future disagreements on how property tax revenue is apportioned to the Fire District, the Parties agree that the net revenue to the Fire District will be set at 15.327% ("**MPFPD Revenue Percentage**") of the base property tax revenue (1% of assessed value) generated by the entire Project. Therefore, for purposes of this Agreement, property tax revenue from the Project that is allocated to the Fire District will be calculated by taking the sum of the property tax assessed values for all four condominium interests that make up the Project, multiplied by the 1% base rate, and then multiplied by the MPFPD Revenue Percentage to determine the tax revenue allocated to the Fire District ("**Actual Revenue**"); i.e., Actual Revenue = assessed value x 1% base property tax revenue x MPFPD Revenue Percentage. Nothing in this Agreement shall limit Developer's right to challenge or appeal any assessment of the

Project in any year. In addition, nothing in this Agreement shall obligate Developer to develop the Project.

4. Calculation and Payment of Guarantee Payments to the Fire District.

a. For each year following the Commencement Date and throughout the term of this Agreement, Developer shall provide the Fire District with notice of the Actual Revenue for that year based on the above formula and advise the Fire District of this amount and whether there is any deficit or surplus between the Actual Revenue and the Guaranteed Amount. Developer shall provide the Fire District with this notice within thirty (30) days after Developer receives its annual property tax statements for the Project.

b. For each year during which the Guarantee Obligation applies, if the Actual Revenue is less than the Guaranteed Amount, then Developer will pay the Fire District the difference between the Guaranteed Amount and the Actual Revenue (the “**Guarantee Payment**”) on a schedule consistent with when property tax payments are due; i.e., fifty percent (50%) of the Guarantee Payment amount shall be paid on or before December 10th of that year and the remaining amount shall be paid on or before April 10th of the following year.

c. If the Actual Revenue is greater than the Guaranteed Amount, then the amount by which the Actual Revenue for such year exceeds the Guaranteed Amount shall be considered a “**Revenue Surplus**” and the cumulative amount of such Revenue Surplus shall be available in future years to offset the amount of any future Guarantee Payments. In the second and subsequent tax years following the Commencement Date, if the Actual Revenue is less than the Guaranteed Amount, then the amount of the shortfall will first be addressed by applying any accumulated Revenue Surplus. If the Revenue Surplus is sufficient to offset the shortfall, then no Guarantee Payment shall be due for that tax year. If any of the surplus is applied in that year, then the amount of the accumulated surplus shall be reduced by that amount, and any remaining cumulative surplus shall be available to reduce guarantee obligations in future years. For example, if Actual Revenue is \$319,500 in one year, there would be a \$10,000 Revenue Surplus; if in the following year, Actual Revenue is \$302,500 (which would mean a \$7,000 deficit), then (i) the \$7,000 deficit could be offset by the prior year’s surplus, (ii) no Guarantee Payments would be owing for that tax year, and (ii) the accumulated surplus balance would be \$3,000.

d. In the event of a supplemental tax assessment after the Commencement Date, the Developer will notify the Fire District within thirty (30) days that a supplemental tax assessment event has occurred and provide the Fire District with the amount of such supplemental tax assessment and a recalculation of the amount of actual tax revenue allocated to the Fire District based on the supplemental tax assessment for that year (the “**Adjusted Total Revenue**”). For purposes of clarification, the term Adjusted Total Revenue includes both the Actual Revenue and any additional revenue associated with a supplemental tax assessment that would be allocated to the Fire District.

- i. If the Actual Revenue previously calculated for that property tax year already exceeded the Guaranteed Amount such that no Guarantee Payment is required, then the difference between the Actual Revenue and the Adjusted Total Revenue will be treated as additional Revenue Surplus and available to offset the amount of any future Guarantee Payments.
- ii. If the Actual Revenue previously calculated for that property tax year is less than the Guaranteed Amount and a supplemental tax assessment occurs such that the Adjusted Total Revenue is still less than the Guaranteed Amount for that year, then the positive difference between the Actual Revenue and the Adjusted Total Revenue shall either be credited against any unpaid portion of the Guarantee Payment for that year, or, in the event that the full Guarantee Payment has already been paid to the Fire District, shall be refunded by the Fire District to the Developer.
- iii. If the Actual Revenue previously calculated for that property tax year is less than the Guaranteed Amount and a supplemental tax assessment occurs such that the Adjusted Total Revenue is greater than the Guaranteed Amount, then (a) no further Guarantee Payment shall be required for that year, (b) the Fire District shall refund to the Developer any Guarantee Payments paid for that year, and (c) the difference between the Guaranteed Amount and the Adjusted Total Revenue shall be treated as Revenue Surplus. Any refund owed to Developer pursuant to this section shall be payable by the Fire District to Developer no later than the date when Developer is obligated to pay the supplemental tax assessment.

e. In the event that the Fire District disputes Developer's notice of Actual Revenue and calculation of any Guarantee Payment or Revenue Surplus, the Fire District shall advise Developer within ten (10) days of receiving Developer's notice if it objects to the calculation. Any dispute shall be resolved through the dispute resolution procedures set forth in Section 7 of this Agreement. If no objection is received, then the Fire District shall be deemed to have accepted Developer's notice and calculation for that given tax year.

f. **Guarantee Payment Cap.** The maximum amount of all Guarantee Payments made pursuant to this Agreement is capped at \$230,849 (i.e., under no circumstances will Developer be required to pay more than \$230,849 to the Fire District).

5. **Casualty.** If the Project's assessed value is reduced as a result of a casualty, then the Guaranteed Amount shall be reduced by the same amount as such reduction and shall thereafter increase at the same time and in the same amount as any subsequent

increases in the assessed value of the Project (but not to exceed an amount equal to what the Guaranteed Amount would have been had no such reduction occurred).

6. **Term.** If the City of Menlo Park approves the District Impact Fee Program or any similar impact fee that benefits the Fire District and applies that fee against the Project, then this Agreement shall immediately terminate and be of no further force and effect upon the Project's full payment of said impact fees. If no such impact fee is approved or assessed against the Project, then this Agreement, and any obligations and rights thereunder, will terminate on the earlier of the following: (1) the end of the 10th full tax year after the Commencement Date; or (2) when the total of any guarantee payments made by Developer to the Fire District pursuant to Section 4 of this Agreement exceeds \$230,849. However in no event shall the term be longer than 20 years after the Effective Date of this Agreement. Notwithstanding anything to the contrary in this Agreement, in the event that the Project site is no longer included within the service boundaries of the Fire District, then this Agreement shall immediately terminate and be of no further force and effect, provided that Developer shall make any Guarantee Payment which has accrued prior to the removal of the Project from the Fire District's service boundaries (the amount of which shall be subject to proration based on the number of days in that tax year during which the Project Site remained within the service boundaries of the Fire District). Developer shall not be entitled to any refund of payments made prior to the date of the termination of the Agreement due to jurisdictional changes. This Agreement will also terminate upon a taking of all or substantially all of the Project under eminent domain or condemnation.

7. **Fire District Support of the Project.** The Fire District agrees that through this Agreement, Developer has addressed all of the possible impacts of the Project on the Fire District. Therefore, the Fire District supports the Project as approved, and agrees not to challenge any current or future approval of the Project, including but not limited to the EIR and any Development Agreement (whether by litigation or otherwise), and further agrees not to challenge any future discretionary approval for the Project that may be required, such as any modifications to the Project, provided such modifications do not materially increase the scope of potential impacts on the Fire District. Nothing in the foregoing shall affect the requirement that the plans for the Project comply with the District Fire Prevention Code, California Fire Code and other adopted fire and life safety regulations applicable to the Project and the Fire District's right to enforce compliance with said regulations.

8. **Dispute Resolution; Enforcement.** The Parties covenant and agree that, if either party determines the other is in violation of one or more terms of this Agreement or if there is a dispute with respect to the calculation of Actual Revenue or the amount of any Guarantee Payment or Revenue Surplus, they shall provide notice to the other in writing of what actions or inactions they deem to be in violation. Within thirty (30) days of receipt of such notice, the party receiving the notice shall respond to the notice in writing. If the Parties still dispute compliance with this Agreement, within an additional sixty (60) days, the Parties shall meet and confer in a good faith attempt to resolve their dispute. If the

Parties cannot informally resolve the dispute, then one of the following two processes will apply depending on the nature of the dispute. If a dispute arises between the parties regarding the calculation of annual property tax revenues from the Developer to the District, or the calculation of the Guaranteed Amount, Actual Revenue, Guarantee Payment amount, Revenue Surplus, or the amount of any other deficit, credit, surplus or refund arising under this Agreement, the Fire District and Developer shall jointly agree upon and equally share costs for an independent firm to perform the calculation, and further agree to be bound by the independent firm's calculation. For all other disputes, the Parties will enter into binding arbitration, conducted by an arbitrator agreed to by the Parties. Either party may request that the presiding Judge of the San Mateo County Superior Court select an arbitrator if the parties cannot reach agreement. The arbitration shall be binding and not subject to appeal. The arbitration shall be conducted in accordance with the arbitration rules and procedures of JAMS/ENDISPUTE or other conventional rules agreed to by the parties. The arbitrator shall be empowered to determine a prevailing party and award payment of reasonable attorneys' fees and costs to that party. To the extent there are multiple issues with a different prevailing party for one or more issues, the arbitrator may take those facts into account in terms of an award for fees and costs.

9. Notice. Unless otherwise provided herein or until the Parties otherwise agree in writing, all communications and notice between the Parties regarding this Agreement shall be through the following addresses:

<p>For Fire District:</p> <p>Menlo Park Fire Protection District 170 Middlefield Road</p> <p>District</p> <p>Menlo Park, CA 95448 Attn: Fire Chief</p>	<p>With a Copy to:</p> <p>District Counsel Menlo Park Fire Protection</p> <p>Meyers Nave 555 12th Street, Suite 1500 Oakland, CA 94607</p>
<p>For Real Social Good Investments, LLC.</p> <p>Real Social Good Investments, LLC c/o Greenheart Land Company 621 High Street Palo Alto, CA 94301 Attn: Robert Burke</p>	<p>With a copy to:</p> <p>Arent Fox, LLP 55 2nd Street, 21st Floor San Francisco, CA 94105 Attn: Timothy Tosta</p>

And with a copy to:

Morrison & Foerster LLP
755 Page Mill Road
Palo Alto, CA 94306
Attn: Philip J. Levine

10. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties. It is expressly understood and agreed that this Agreement may not be altered, amended, modified or otherwise changed in any respect whatsoever except by a writing duly executed by authorized representatives of the Parties hereto. The Parties hereby agree and acknowledge that they will make no claim at any time or place that this Agreement has been orally altered or modified or otherwise changed by oral communication of any kind or character. This Agreement shall supersede all previous agreements whether written or oral, that may have been reached between the Parties in connection with this matter and provides the sole remedy from any party to any other party regarding this matter.

11. **Advice of Attorneys.** This Agreement is entered into by each Party freely and voluntarily. Each of the parties has had the benefit of advice of counsel of their choice in the negotiating, drafting and executing of this Agreement, and the language in all parts of this Agreement is the product of the efforts of all counsel. Accordingly, neither the entire Agreement nor any provision in it shall be deemed to have been proposed or drafted by a party or construed against any Party.

12. **Governing Law/Construction of Agreement.** This Agreement shall be governed, interpreted, construed and enforced in accordance with the laws of the State of California applicable to agreements executed and wholly performed within said State, without regard to principles of conflicts of laws. Should any provision of this Agreement be held invalid or illegal, such illegality shall not invalidate the whole of this Agreement, but rather, this Agreement shall be construed as if it did not contain the illegal part, and the rights and obligations of the Parties shall be construed and enforced accordingly.

13. **Authority of Representation.** Each Party respectively represents and warrants to each other Party that the undersigned representative for such Party has full and complete authority to execute this Agreement and bind said party to the terms hereof.

14. **Counterparts.** This Agreement may be executed in counterparts with each counterpart being interpreted as an original, and all of which, taken together shall constitute one and the same instrument.

15. **No Third Party Beneficiaries.** This Agreement is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Agreement for any cause whatsoever.

16. **Assignment by Developer.** Developer may assign its rights and obligations under this Agreement to a future owner of the Project and be released from its obligations if that future owner agrees in writing to assume all the obligations of Developer under this Agreement and the Fire District approves the form of the assignment and assumption agreement which approval shall not be unreasonably withheld.

17. **Estoppel.** Either party, at any time and from time to time within ten (10) business days after receipt of written notice from the other party, shall execute, acknowledge and deliver to the requesting party a certificate stating to the responding party's knowledge where applicable: (a) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications); (b) whether or not there are then existing any defaults on the part of the requesting party in the performance of its obligations, and (c) whether any Guaranteed Amounts have been paid under this Agreement and, if so, the aggregate amount of such payments and the tax years to which such payments applied.

SO AGREED:

Dated: 4-19-2017

MENLO PARK FIRE PROTECTION
DISTRICT

By: Harold Schapelhouman
Harold Schapelhouman, Fire Chief

Dated: 4/19/2017

REAL SOCIAL GOOD
INVESTMENTS, LLC

By: Scott Hassan
DocuSigned by:
5E05B37981FB4C6...