

\_\_\_\_\_, 2016

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Re: Notice of Payment Under Protest –  
School Facilities Fees

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To: \_\_\_\_\_ School District:

This letter is to provide you with notice that our company is paying school facilities fees as imposed by the District under protest. We have tendered payment of these fees to the District at the rates demanded by the District staff in order to obtain certificates of compliance for these permits and to proceed with the development of our previously-approved residential project(s). In view of the urgency of obtaining the necessary certificates and permits, we are tendering these payments (and may continue to tender payments) under duress and protest.

We respectfully submit this statement of protest as to any and all such school facilities fees (“fees”) demanded by the District for our project(s), and this should be deemed to be a continuing statement of protest as to all such fees paid or tendered, until this matter is resolved.

The bases of our objections include, without limitation, all objections and questions summarized below.

1. “Level 3” school facility fees are not properly authorized in the District or elsewhere as required by Government Code § 65995.7, and the actions of the State Allocation Board purporting to determine that state funds for new school construction are “not available” were invalid, inconsistent with state law, and not supported by substantial evidence in the record. Those actions are currently the subject of litigation pending in Sacramento County Superior Court and the Third District Court of Appeal (*California Building Industry Association v. State Allocation Board*, Sacramento County Superior Court Case No. 34-2016-80002356 and Third District Court of Appeal Case No. C082812) and we refer to and incorporate all claims and objections to the State Allocation Board’s actions as raised in that litigation or appeal. Further, in light of the passage of Proposition 51 on November 8, 2016, state funds for new school facility construction are available such that the trigger to impose Level 3 fees under Government Code § 65995.7 is not met. The passage of this initiative measure supersedes and rescinds the prior May 25, 2016 determination made by the State Allocation Board that state funds for new school facility construction are not available.

2. The District is not legally eligible or empowered to adopt or impose Level 3 fees in any amount, since the State Allocation Board's notice that state funds for new school facility construction are not available has not been published in the journals of the State Senate and the State Assembly as required by Government Code § 65995.7 as a precondition to the authorization of any public school district to impose Level 3 school fees.

3. The District Board has not properly taken action to authorize the District staff to demand or impose Level 3 fees as a condition of issuing Certificates of Compliance under Education Code § 17620.

4. The District failed to comply with the procedures required by the School Facilities Act of 1998 ("SFA") in acting to adopt new Level 2 or Level 3 fees.

5. The District failed to properly prepare or approve a School Facilities Needs Analysis justifying fees in the amounts demanded as required by Government Code § 65995.6.

6. The District failed to comply with the requirements of the Mitigation Fee Act and the SFA (the "Acts"), and failed to provide substantial evidence to enable the Board to make the findings required by the Acts, resulting in unjustified and invalid fee enactments.

7. The District has failed to show that the disputed "fees" are reasonably related to, and do not exceed the amounts reasonably necessary to provide facilities made necessary by impacts of our project(s) or to mitigate impacts of residential development in general or of our particular development(s). To the extent that the "fees" exceed the reasonable costs of providing facilities actually attributable to development or to this type of development, they constitute unlawful "taxes" within the meaning of Articles XIII(A)-(D) of the California Constitution.

8. Pursuant to Government Code § 66020, we incorporate any other applicable objections or grounds for protest of these fees submitted by any other applicant.

### **Request for Documentation**

This letter also includes our request for copies of any and all documentation (including all fee resolutions and analyses) relied upon by the District to purportedly justify the establishment or imposition of the disputed fees or taxes.

### **Reservation of Rights and Non-Waiver of Rights under State Law**

To the extent that the District may require execution of a certificate or other document by our company in order to obtain issuance of a Certificate of Compliance from the District, we do not consent to any terms, conditions, limitations or purported waivers unless expressly authorized by state legislation under the SFA, and we do not waive any rights.

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Our compliance with District demands is subject to our full reservation of rights to seek other administrative or judicial relief therefrom, and to seek full restitution and refunds as provided by the laws and Constitutions of the State of California and of the United States.

### **Request for Reimbursement and for Administrative Relief**

This letter also constitutes our request for administrative review or appeal from these disputed fees, demands or conditions. In addition, this letter constitutes a claim for relief under Government Code §§ 810-996, as well as our request for reimbursement of fees, including reimbursement as provided by Government Code § 65995.7(b) in the event the District receives State funds as provided by that section.

### **Conclusion**

We respectfully request that you provide us with your response to this protest, and notify us if there is any process for appeal or administrative review available without resort to judicial remedies. This letter reiterates our request for the immediate return of all disputed fees, together with interest as provided by statute. We thank you for your courtesy and attention. Please contact the undersigned if you have any questions or additional information pertaining to this matter.

Very truly yours,