CONDITIONAL DEVELOPMENT PERMIT

100-190 Independence Drive
101-155 Constitution Drive

1. GENERAL INFORMATION:

   1.1 Applicant: Bohannon Development Company

   1.2 Property Owners: Bohannon Development Company, David D. Bohannon Organization, 125 Constitution Associates, LP and Bohannon Trusts Partnership II

   1.3 Nature of Project: General Plan Amendment, Zoning Ordinance Amendment, Rezoning, Development Agreement, Conditional Development Permit, Tentative Parcel Maps, Heritage Tree Removal Permits, Below Market Rate Housing Agreement, and Environmental Review for the construction of an office, research and development (R&D), hotel, and health club development.

   1.4 Property Location: 100 to 190 Independence Drive (Independence Site) and 101 to 155 Constitution Drive (Constitution Site)

   1.5 Assessor's Parcel Numbers: 055-234-240, 055-234-250, 055-234-260, 055-234-270 on the Constitution Site, and 055-235-040, 055-235-050, 055-235-080, 055-235-100, 055-235-110 on the Independence Site

   1.6 Area of Property: 15.95 acres

   1.7 Present Zoning: M-2 (General Industrial)

   1.8 Proposed Zoning: M-3-X (Commercial Business Park - Conditional Development District)

2. DEVELOPMENT STANDARDS (for minimum percentages rounding up shall not be permitted, for maximum percentages rounding down shall not be permitted):

   2.1 Floor Area Ratio (FAR) shall not exceed **137.5 percent** of the project area.

   2.2 Building coverage for the Independence site shall not exceed **49 percent** of the lot area. Building coverage for the Constitution site shall not exceed **36 percent** of the lot area.

   2.3 Minimum open space shall be **38 percent** of the lot area on the Independence site. Minimum open space shall be **40 percent** of the lot area on the Constitution site.

2.4 Building setbacks and heights shall be in accordance with the approved plans, but in no case shall the height from existing average natural grade to the top of roof mounted equipment screening or sunshades exceed 140 feet.

2.5 The on-site circulation and parking spaces shall be installed according to the approved plans. The Independence Site shall have 1,040 spaces, of which 38 shall be in landscape reserve. The Constitution Site shall have 1,649 spaces, of which 147 shall be in landscape reserve. Landscape reserve spaces may be converted to paved spaces after occupancy of the associated building(s) if there is a clear need for the spaces upon review and approval by the Community Development Director or designee.

2.6 All rooftop equipment shall be fully screened and integrated into the design of the building.

3. USES:

3.1 The office component of the project is comprised of three eight-story buildings on the two sites consisting of a total of 694,669 square feet of office space. Permitted uses in the office buildings shall include the following:

3.1.1 Administrative and professional offices, excluding medical/dental offices;

3.1.2 Research and development facilities. Wet lab uses in the office buildings on both sites shall be restricted to 69,470 square feet unless amended by the City Council per Section 6.2 based on the Statement of Overriding Consideration for the potentially significant and unavoidable utility impact on water supply adopted on June 15, 2010;

3.1.3 Light industrial uses;

3.1.4 Amenities and related activities, such as neighborhood-serving convenience retail and community facility space, day care facilities to serve employees and other patrons of uses in the immediate area, food-serving uses to serve employees and business visitors;

3.1.5 Outdoor seating, temporary structures, and events associated with those uses listed above;

3.1.6 Activities involving the use of hazardous materials, such as emergency power generators, incidental to those uses listed above and subject to an approved Hazardous Materials Business Plan and a Menlo Park Fire Protection District permit; and

3.1.7 Cellular telecommunications facilities if fully screened or integrated into the design of the building.

3.2 The hotel component of the project is comprised of a 173,436-square-foot, eleven-story hotel with a 4,285-square-foot restaurant, a 68,964-square-foot, two-story health and fitness center, and related facilities. During the preparation of construction documents, the proposed square footages for the hotel complex may be increased to be a maximum of 37.5 percent FAR for the entire project

area, subject to review and approval by the Planning Division. Permitted uses shall include the following:

3.2.1 Hotel rooms and suites (limit 230);
3.2.2 Café, restaurant and bar where alcohol and/or entertainment are provided;
3.2.3 Conference rooms and banquet facilities;
3.2.4 Health and fitness center, including incidental uses such as drop-off child care and a spa offering massage services;
3.2.5 Incidental retail, personal services, and financial establishments serving the hotel, health and fitness center, and the surrounding businesses;
3.2.6 Outdoor seating, outdoor pools, temporary structures, events, and other similar uses and amenities related to the operation of a quality hotel;
3.2.7 Activities involving the use of hazardous materials, incidental to a hotel, health and fitness center, or related to emergency power generators incidental to those uses listed above and subject to an approved Hazardous Materials Business Plan and a Menlo Park Fire Protection District permit; and
3.2.8 Cellular telecommunications facilities if fully screened or integrated into the design of the building.

3.3 Conditional uses listed in the M-3 zoning district may be conditionally permitted through a use permit process, unless otherwise allowed in Sections 3.1 and 3.2.

4. SIGNS:

4.1 A Master Sign Program shall be established for the project prior to the first signage installation. The maximum allowed sign area for the Independence site shall not exceed 1,400 square feet and 1,500 square feet for the Constitution site; however, an additional 200 square feet per site shall be permitted for project identification/campus (i.e., Menlo Gateway) signage. A sculptural sign shall also be permitted on each site. The size of the sculptural sign(s) shall be reviewed and approved by the Community Development Director or designee prior to establishment of the Master Sign Program. Vehicular directional signage shall not count against the maximum sign areas. The square footage, location and materials specified in the Master Sign Program shall be subject to review and approval by the Planning Division. Revisions to the Master Sign Program shall be endorsed by the property owner(s) and shall be subject to review and approval by the Planning Division.

4.2 All signs must be reviewed and approved through the Sign Permit process with an application and applicable filing fees. All signage must be consistent with the approved Master Sign Program.

5. RECORDATION, TERMINATION, AND EXTENDED CONDITIONS:

5.1 Concurrently with the Development Agreement recordation, the applicant shall record the Conditional Development Permit with the County of San Mateo and the following provisions shall remain in effect for the life of the project: Sections 1 through 6 and conditions 8.42, 8.46, 8.70, 8.73, and 8.77 of Section 8.

5.2 The Conditional Development Permit shall terminate as to any parcel of the project that is not developed in accordance with the Development Agreement.

6. MODIFICATIONS:

6.1 Modifications to the approved project plans may be considered according to the following:

6.1.1 Minor modifications as determined by the Community Development Director to the approved plans may be approved by the Community Development Director or designee, based on the determination that the proposed modification is consistent with other building and design elements of the approved Conditional Development Permit, and will not have an adverse impact on the character and aesthetics of the site. The Planning Commission shall be notified of approved minor modifications, and a member of the Commission may request within 14 days of receipt of the notice that the item(s) be reviewed by the Planning Commission.

6.1.2 Major modifications (such as significant changes to the exterior appearance of the buildings or appearance of the sites) as determined by the Community Development Director to the approved plans that are deemed to be Substantially Consistent Modifications (as defined in the Development Agreement) may be allowed subject to review and recommendation by the Planning Commission to the City Manager. The City Manager's determination shall be in accordance with the terms of the Development Agreement and shall take into account the Planning Commission's recommendation. The Planning Commission's recommendation shall be based on the determination that the proposed modification is compatible with other building and design elements or onsite/offsite improvements of the approved Conditional Development Permit and will not have an adverse impact on safety and/or the character and aesthetics of the site.

6.1.3 Major modifications that may be deemed to be Substantially Consistent Modifications that are not approved by the City Manager may be appealed to the Planning Commission for review and

recommendation to the City Council. City Council shall have final authority to approve such major modifications.

6.2 Revisions to the project which involve relaxation of the development standards identified in Section 2, material changes to the uses identified in Section 3, exceedance of the signage maximum square footages identified in Section 4, or modifications to the conditions of approval identified in Section 8 (other than changes deemed to be Substantially Consistent Modifications pursuant to Paragraph 1.36 in the Development Agreement that can be authorized by the City Manager), constitute Conditional Development Permit amendments that require public hearings by the Planning Commission and City Council. Such revisions may also require modifications to the plans and/or Development Agreement. Any application for amendment shall be made by at least one property owner, in writing, to the Planning Commission. The Planning Commission shall then forward its recommendation to the City Council for revision(s) to the Conditional Development Permit.

7. CONSTRUCTION PERMIT SEQUENCING

7.1. The following outlines the basic sequencing of construction permits related to the structures on the Independence Site to provide context for the conditions of approval in Section 8.

7.1.1. The final parcel map, including all easements and dedications, and the building permit applications for the hotel and parking structure shall be submitted concurrently. The building permit submittal for the office building may be concurrent with or subsequent to the hotel submittal.

7.1.2. The demolition permits applications may be submitted either before or after the building permit submittal.

7.1.3. Prior to recordation of the final parcel map, all existing structures that cross proposed property lines or conflict with proposed easements shall be demolished and final inspections for the demolition permits shall be obtained. Any remaining buildings on each site shall be demolished prior to building permit issuance for each site.

7.1.4. The acceptance of the deed or dedication requires City Council approval prior to final parcel map approval.

7.1.5. The final parcel map needs to be approved and recorded prior to building permit issuance.

7.1.6. Prior to each building permit issuance, the applicable heritage trees shall be removed, however, the heritage trees shall not be removed prior to building permit or encroachment permit submittal, whichever is later.

7.1.7. The issuance of the building permit for the hotel and parking structure needs to occur before or concurrent with the building permit for the office.

7.1.8. The construction of the hotel needs to commence before or concurrent with the construction of the office. Construction of the parking structure may occur at any time.

7.1.9. In order to ensure adequate progress on the hotel construction, the hotel complex (full service hotel and sports club facility) needs to pass sheet rock inspection for 80 percent of the building prior to (1) final inspection of the office building shell and (2) building permit issuance of a tenant improvement for the office building.

7.1.10. Neither the hotel nor the office building shall be occupied, even on a temporary basis, until the parking structure is constructed and passes final inspection.

7.1.11. Full occupancy of the hotel or office building shall not be granted until each respective building passes final building inspection.

7.2. The following outlines the basic sequencing of construction permits related to the structures on the Constitution Site to provide context for the conditions of approval in Section 8.

7.2.1. The final parcel map, including all easements and dedications, and the building permit applications for the Office Building 1 and Parking Structure A shall be submitted concurrently. The building permit applications for the Office Building 2 and Parking Structure B may be prior to, concurrent with or subsequent to the Office Building 1 and Parking Structure A applications.

7.2.2. The demolition permit applications may be submitted either before or after the building permit submittal.

7.2.3. Prior to recordation of the final parcel map, all existing structures that cross proposed property lines or conflict with proposed easements shall be demolished and final inspections for the demolition permits shall be obtained. Any remaining buildings on each site shall be demolished prior to building permit issuance for each site.

7.2.4. The acceptance of the deed or dedication requires City Council approval prior to final parcel map approval.

7.2.5. The final parcel map needs to be approved and recorded prior to building permit issuance.

7.2.6. Prior to each building permit issuance, the applicable heritage trees shall be removed, however, the heritage trees shall not be removed prior to building permit or encroachment permit submittal, whichever is later.

7.2.7. The issuance of building permits needs to occur concurrently for 1) Office Building 1 and Parking Structure A and 2) Office Building 2 and Parking Structure B.

7.2.8. Neither office building shall be occupied, even on a temporary basis, until the corresponding parking structure is constructed and passes final inspection.

7.2.9. Full occupancy of the each office building shall not be granted until each building passes final building inspection.

8. PROJECT SPECIFIC CONDITIONS:

8.1. Development of the project shall be substantially in conformance with the following plans submitted by DES Architects/Engineers, Community Design Architecture, Dahlin Group, and Kimley-Horn dated received by the Planning Division on May 18, 2010, consisting of 102 plan sheets, recommended for approval to the City Council by the Planning Commission on May 3, 2010, and approved by the City Council on June 15, 2010, except as modified by the conditions contained herein and in accordance with section 6 of this document.

8.2. Concurrently with the Development Agreement recordation, the applicant shall execute and record the Below Market Rate (BMR) Housing Agreement. Prior to each building permit issuance, the applicant shall pay the in lieu fee in effect at the time of payment in accordance with the BMR Housing Agreement. Based on the floor areas of the buildings and uses shown on the project plans, the total fee as of the date hereof is approximately $8,543,207.

8.3. Concurrent with the submittal of each final parcel map, the applicant shall submit Covenants, Conditions and Restrictions (CC&R's) or other acceptable mechanism for the approval of the City Engineer and the City Attorney. The CC&R's or other acceptable mechanism shall be approved and recorded concurrently with the final parcel map. The CC&R's or other acceptable mechanism shall include provisions regarding the allocation of features and requirements that are shared between parcels including, but not limited to the following: shared parking, shared access, joint use of common facilities, storm drainage, administration of the Transportation Demand Management (TDM) plan, as discussed in Condition 8.70, and the vehicle trip limit, as discussed in Conditions 8.73 and 8.76.

8.4. Prior to recordation of each final parcel map, the applicant shall install new utilities to the point of service or submit a bond for said improvements, subject

to review and approval of the City Engineer. All electric and communication lines servicing the project shall be placed underground.

8.5. Each approved final parcel map shall be recorded at the County Recorder's Office. The applicant shall provide documentation of the recordation of the final parcel map at the County Recorder's Office to the Engineering and Planning Divisions within 30 days of recordation.

8.6. Concurrent with each demolition permit submittal, the applicant shall submit a heritage tree preservation plan, detailing the location of and methods for all tree protection measures, as described in the arborist report. The project arborist shall submit a letter confirming adequate installation of the tree protection measures. The applicant shall retain an arborist throughout the term of the project (demolition through approval of final building permit inspection for the building shells), and the project arborist shall submit periodic inspection reports to the Building Division. The heritage tree preservation plan shall be subject to review and approval by the Planning Division prior to demolition permit issuance.

8.7. Concurrent with each demolition permit submittal, the applicant shall submit a plan for construction safety fences around the periphery of the construction area and a demolition Erosion and Sedimentation Control Plan. The fences and erosion and sedimentation control measures shall be installed according to the plan prior to commencing construction. The plans shall be reviewed and approved by the Building and Planning Divisions prior to issuance of a demolition permit.

8.8. The applicant shall submit a truck route plan for each stage of construction based on the City's municipal code requirements, permit application and fees for review and approval by the Transportation Division.

8.9. Prior to each demolition permit and/or building permit issuance, the applicant shall comply with the requirements of Chapter 12.48 (Salvaging and Recycling of Construction and Demolition Debris) of the City of Menlo Park Municipal Code, and is subject to review and approval by the Public Works Department.

8.10. Prior to or concurrent with the first building permit submittal for each site, the applicant shall submit a final parcel map for the applicable site for review and approval of the Engineering Division.

8.11. Prior to the recordation of each final parcel map, all existing structures that cross proposed property lines or conflict with proposed easements shall be demolished and obtain final inspections for the demolition permits.

8.12. Prior to building permit submittal, the applicant shall submit substantially complete schematic site plans, floor plans, elevations, and landscape plans to

the Planning Division to schedule a Planning Commission public meeting. The schematic plans shall be of a comparable quality to plans to the approved plans referenced in condition 8.1. The goal of the meeting will be for the Planning Commission to provide input and feedback on the architectural design and proposed colors and materials. If feasible, the applicant shall incorporate the comments into the complete building permit submittal.

8.13. Concurrent with each building permit submittal, the applicant shall submit a plan for any new utility installations or upgrades for review and approval of the Planning, Engineering and Building Divisions prior to each building permit issuance. Landscaping shall properly screen all utility equipment that is installed outside of a building and cannot be placed underground, subject to Menlo Fire, West Bay Sanitary District, PG&E and other agency requirements regarding utility clearances and screening. The plan shall show exact locations of all meters, back flow prevention devices, transformers, junction boxes, relay boxes, and other equipment boxes. The screening shall be compatible and unobtrusive and subject to the review and approval of the Planning Division prior to approval of each final building permit inspection for the building shells.

8.14. Concurrent with each building permit submittal, the applicant shall submit a Grading and Drainage Plan, including an Erosion and Sedimentation Control Plan, for review and approval by the Engineering Division prior to building permit issuance. The Grading and Drainage Plan shall be prepared based on the City's Grading and Drainage Plan Guidelines and Checklist, the City approved Hydrology Report for the project, and the Project Applicant Checklist for the National Pollution Discharge Elimination System (NPDES) Permit Requirements. Where practicable, the project shall utilize on-site infiltration as much as possible as a means of handling roof and site drainage.

8.15. Concurrent with the first building permit submittal for each site, a detailed on-site landscape plan, including the size, species, and location, and an irrigation plan shall be submitted for review and approval by the Planning, Engineering, and Transportation Divisions, prior to building permit issuance. The landscape plan shall include all onsite landscaping, adequate sight distance visibility, screening for outside utilities with labels for the utility boxes sizes and heights, and documentation confirming compliance with the Water Efficient Landscaping Ordinance (Municipal Code Chapter 12.44). The landscape plans shall include a detailed planting plan for the bioswale, an off-site heritage tree replacement and street tree planting plan, and a calculation demonstrating that the hardscape portions of the project will have 50 percent canopy coverage at maturity. Furthermore, the landscape plan shall include an appropriate mix of native species to complement the nearby Don Edwards San Francisco Bay National Wildlife Refuge and shall be prepared in coordination with the off-site landscaping plans required in Section 5.3 of the Development Agreement.

8.16. Concurrent with each building permit submittal, the applicant shall revise the grading plans associated with the buildings being permitted to show the bioswale flow line elevations, slopes, cross-sections, and details. Additionally, the revised plans shall include complete legends for storm drain elements and pavement types, and labels for all landscape areas. The revised plans shall be subject to review and approval by the Engineering Division prior to each building permit issuance.

8.17. Concurrent with each building permit submittal, the applicant shall provide a plan that details that all on-site stationary noise sources shall comply with the standards listed in Section 08.06.030 of the City's Noise Ordinance. This plan shall be subject to review and approval by the Planning and Building Divisions prior to each building permit issuance.

8.18. Concurrent with each building permit submittal, the applicant shall submit detailed plans, already approved by the applicable solid waste disposal services provider (Recology as of January 1, 2011), for the provision of onsite recycling and garbage receptacles throughout the project site, including outside trash cans and parking structure trash receptacles, for review and approval of the Planning Division and the Public Works Department prior to each building permit issuance.

8.19. Concurrent with the first building permit submittal for each site, the applicant shall provide revised site plans (including potential changes to driveway locations/circulation and a new pedestrian connection to Chrysler Drive), floor plans, elevations, cross-sections, and landscape plans for the parking structures that reflect the alternative parking plan with landscape reserve parking that was presented to the Planning Commission on April 19, 2010. The plans shall also reflect any modifications resulting from the process described in 8.12. In addition, an updated hydrology analysis that reflects the changes to the site shall be submitted with the plans. The plans shall indicate that at least 95 percent of the parking on the Independence site shall be shared and not signed or dedicated for a certain tenant at the site. The elevations shall include the use of high quality materials comparable to the rest of the buildings and shall incorporate landscape screening on the landscape plan where appropriate. In addition, an overflow-parking plan for special events at the hotel shall be provided including any analysis as required by the City. The plans shall be subject to review and approval by the Planning, Building, Engineering and Transportation Divisions prior to each building permit issuance.

8.20. Concurrent with the hotel building permit submittal, the applicant shall provide revised plans that reflect the hotel design presented to the Planning Commission on May 3, 2010. The plans shall also reflect any modifications resulting from the process described in 8.12. The elevations shall include the use of high quality materials. The plans shall be subject to review and

approval by the Planning and Building Divisions prior to building permit issuance.

8.21. Concurrent with the first building permit submittal for each site, the applicant shall provide signage and striping plans for the affected public right-of-way. The plans shall state that all signs shall be replaced with new signs, and not reused. Additionally, the plans shall include the installation of bike route signs on Constitution Drive between Independence Drive and Chilco Street. The plans shall be designed to the applicable standards at the time of building permit submittal and shall be subject to review and approval by the Transportation Division prior to building permit issuance for each site.

8.22. Concurrent with the first building permit submittal for each site, the applicant shall provide an on-street parking plan for the roadways adjacent to the site for review and approval by the Public Works Department and the Menlo Park Fire Protection District prior to building permit issuance. Any changes to existing on-street parking restrictions require review and approval of the Transportation Commission and the City Council prior to building permit issuance for each site.

8.23. Concurrent with building permit submittals for the shells of each structure, the applicant shall submit documentation demonstrating that the structure has been designed in a manner such that the applicable phase of the project (i.e., Independence Site and Constitution Site), approximates the net water consumption increase as shown on the table below, subject to review and approval of the Building, Planning and Engineering Divisions prior to issuance of each building permit. In no case shall the total net increase for the site exceed 77,000 gallons per day. When calculating net new water consumption, 24,632 gallons per day shall be used for the pre-project existing uses.

Target Campus Daily Water Consumption by Project Phase

	Water (Gallons/Day)
Hotel/Health Club/Garage C	58,733
Independence Office and Retail	9,522
Constitution Office 1/Garage A	21,678
Constitution Office 2/Garage B	11,699
Total	101,632
Pre-Development	***(24,632)***
Net Increase	***77,000***

8.24. Concurrent with building permit submittals for the shell of each structure, the applicant shall submit documentation using approved computer modeling programs with the applicable version of the California Energy Code that is in effect at the time of submittal demonstrating that the structure has been designed in a manner such that the applicable phase of the project (i.e., Independence Site and Constitution Site), approximates the kilowatt hours for

electricity and therms for natural gas consumption per year as shown on the table below subject to review and approval of the Building and Planning Divisions prior to issuance of each building permit. The total kilowatt hours for the site shall not exceed 8,254,343 and the therms for the site shall not exceed 170,295, unless the applicant can provide documentation demonstrating that the studied carbon dioxide emissions are not exceeded.

Target Campus Annual Energy Consumption by Project Phase

	Electricity (kWh/yr)	**Natural Gas (Therms)**	**Total Energy (kBtu/yr)**
Hotel/Health Club/Garage C	2,008,744	89,122	15,766,034
Independence Office and Retail	1,811,600	21,545	8,335,679
Constitution Office 1/Garage A	2,203,595	29,814	10,500,067
Constitution Office 2/Garage B	2,230,404	29,814	10,591,539
Total	***8,254,343***	***170,295***	***45,193,318***

8.25. Concurrent with the building permit submittal for the hotel, the applicant shall submit documentation to demonstrate that the buildings have been designed to achieve LEED Silver Certification based on the 2009 registration date (LEED NC v2.2), subject to review and approval of the Building and Planning Divisions prior to issuance of each building permit. Upon completion of the hotel building, the applicant shall make a diligent good faith effort to pursue certification in accordance with the terms of Section 5.6 of the Development Agreement. Notwithstanding the foregoing, Owner shall use diligent good faith efforts to comply with LEED standards for the applicable certifications for each building in effect as of the date of building permit application for such building.

8.26. Concurrent with the building permit submittal for each office building, the applicant shall submit documentation to demonstrate that the buildings have been designed to achieve LEED Gold Certification based on the 2009 registration date (LEED NC v2.2), subject to review and approval of the Building and Planning Divisions prior to issuance of each building permit. Upon completion of the each office building, the applicant shall make a diligent good faith effort to pursue certification in accordance with the terms of Section 5.6 of the Development Agreement. Notwithstanding the foregoing, Owner shall use diligent good faith efforts to comply with LEED standards for the applicable certifications for each building in effect as of the date of building permit application for such building.

8.27. Concurrent with the building permit submittal for each parking structure, the applicant shall demonstrate that the parking structure has been designed to allow for electrical conduit to be run throughout each garage so as to

accommodate future electric vehicle capacity, subject to review and approval by the Building Division prior to building permit issuance.

8.28. Concurrent with the building permit submittal for each structure, the applicant shall demonstrate that the building has been designed to structurally accommodate future photovoltaic capacity. The applicant shall design the hotel in particular to accommodate a solar thermal system. The plans shall be reviewed and approved by the Building Division prior to building permit issuance.

8.29. Concurrent with the first building permit submittal for each site, the applicant shall show the location on the plans of an ATM and postal service/overnight delivery drop to the extent practicable or feasible on both the Independence Site and the Constitution Site, subject to review and approval by the Planning Division prior to building permit issuance. The facilities may be located either inside or outside of the respective buildings.

8.30. Concurrent with the building permit submittal for the Independence office building, the applicant shall submit improvement plans for the connecting sidewalks between the hotel and the intersection of Chrysler Drive and Constitution Drive, including accessible ramps at Chrysler Drive and Constitution Drive and a connection to the existing sidewalk, subject to review and approval of the Planning, Engineering and Transportation Divisions prior to building permit issuance for the Independence office building. Subject to the determination of the Public Works Director, the applicant shall use good faith efforts to diligently pursue a public access easement on the 150 Constitution Drive property in order to potentially preserve up to three redwood trees (tree #2, 3, and 4). The applicant shall remove the applicable heritage trees prior to encroachment permit issuance; however, the heritage trees, with the exception of tree #5 (Monterey pine), shall not be removed prior to encroachment permit submittal. The sidewalks shall be constructed prior to final inspection of the shell of the Independence office building.

8.31. Concurrent with the building permit submittal for the first Constitution office building, the applicant shall submit improvement plans for the connecting sidewalks between the Independence office building and the intersection of Independence Drive and Constitution Drive subject to review and approval of the Planning, Engineering and Transportation Divisions prior to the building permit issuance for the first Constitution office building. The improvement plans shall include proof of dedication for right-of-way along the property frontage of 111 Independence Drive to accommodate the sidewalk or shall include evidence of diligent and good faith efforts to acquire such right-of-way. The applicant shall pay the reasonable cost for the City to acquire right-of-way, if necessary, including but not limited to any necessary condemnation proceedings, which the City shall pursue with diligent and good faith efforts. The applicant shall remove the applicable heritage trees prior to encroachment permit issuance; however, the heritage trees shall not be

removed prior to encroachment permit submittal. The sidewalks shall be constructed prior to final inspection of the shell of the first Constitution office building.

8.32. Concurrent with the building permit submittal for the first building on the Constitution Site, the applicant shall provide the proposed joint trench package for placing the distribution electric and communication lines underground subject to review and approval of the Building, Planning and Engineering Divisions. The joint trench package shall be reviewed by the City prior to submitting the application to PG&E.

8.33. Concurrent with the building permit submittal for the first building on the Constitution Site, the applicant shall submit improvement plans to place the overhead electric and communication distribution lines (not transmission lines) underground that cross Chrysler Drive between the Constitution Site and 161 Constitution Drive subject to review and approval of the Engineering Division prior to building permit issuance for the first Constitution office building.

8.34. Concurrent with the building permit submittal for the hotel and parking structure on the Independence Site, the applicant shall submit modified plans for the proposed covered walkway between the parking structure and hotel/health club so that it does not cross the proposed property line or record a deed restriction that requires the covered walkway to be demolished prior to close of escrow if one or both of the parcels is sold to a new property owner subject to review and approval of the Planning Division, Building Division, and the City Attorney's office prior to building permit issuance for the hotel and/or parking structure.

8.35. Concurrent with each building permit submittal the applicant shall submit plans for streetlight installations, for the portions of the streets that are associated with that site (Independence or Constitution), consistent with City standard details, subject to review and approval of the Engineering Division prior to issuance of each building permit.

8.36. Prior to issuance of each building permit, the applicant shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the project.

8.37. Prior to issuance of each building permit, the applicant shall pay the applicable Building Construction Street Impact Fee in effect at the time of payment. Based on a total estimated construction value of $363,000,000 in 2010, the applicable fee as of the date hereof would be approximately $2,105,400.

8.38. Prior to issuance of each building permit, the applicant shall pay the applicable School Impact Fee for the commercial components of the project in effect at the time of payment.

8.39. Prior to issuance of each building permit, the applicant shall comply with all West Bay Sanitary District regulations that are directly applicable to the project.

8.40. Prior to issuance of each building permit, the applicant shall comply with all Menlo Park Fire Protection District regulations governing site improvements, Fire Code compliance, and access verification that are directly applicable to the project. In addition, the City Manager shall have the discretion to require applicant to pay up to $25,000 to the City upon not less than thirty (30) days prior written notice following the effective date of the Development Agreement to cover any City contribution toward the cost of a fire impact fee study to be performed by the Fire District, should the City Manager determine that such funds should be used for that purpose. Prior to issuance of a building permit for the Independence site, the applicant shall coordinate with the City and Fire District to provide up to $100,000 (less the amount, if any, previously paid to the City for a portion of the cost of a fire impact fee study) either for (a) the installation of traffic signal priority systems on Middlefield and Marsh Roads between 300 Middlefield Road and the Project site (this requirement is in addition to such traffic signal priority systems on Marsh Road as may be required to meet Fire Code compliance) if the fee is not adopted, or (b) an advance against any fire impact fee imposed on the project. The maximum amount to be paid by the applicant shall be adjusted by the increase in the Consumer Price Index for All Items for All Urban Consumers for the San Francisco-Oakland-San Jose Metropolitan Area [1982-84 = 100] ("CPI") between the CPI published for 2010 and the CPI published most recently prior to the date of the payment of such sum(s) to the City and/or Fire District.

8.41. Prior to issuance of each building permit, the applicant shall comply with all regulations of PG&E and communication providers (i.e., AT&T and Comcast) that are directly applicable to the project.

8.42. Prior to issuance of each building permit, the applicant shall enter into an Operations and Maintenance Agreement with the City. The Operations and Maintenance Agreement shall establish a self-perpetuating drainage system maintenance program (to be managed by the property owner or property management) that includes annual inspections of any infiltration features and stormwater detention devices (if any), and drainage inlets, flow through planters, and other BMPs. Any accumulation of sediment or other debris shall be promptly removed. Funding for long-term maintenance of all BMPs must be specified in the Operations and Maintenance Agreement. The maintenance agreement shall be subject to review and approval of the Public Works Department and shall be recorded prior to approval of final building permit inspection for the shells. An annual report documenting the inspection

and any remedial action conducted shall be submitted to the Public Works Department for review. This condition shall be in effect for the life of the project.

8.43. Prior to approval of final building permit inspection for each building shell, landscape shall be installed on the applicable parcel per the approved landscape plan, subject to review and approval by the Planning Division.

8.44. Prior to building permit issuance for the Independence Site, the applicant shall submit all necessary improvement plans and documents required by Caltrans for work associated with projects under Caltrans' jurisdiction, including, but not limited to, the sound wall, landscaping, and associated improvements. The plans shall be subject to review and approval of the Public Works Department prior to submittal to Caltrans. The applicant shall install the improvements and enter into a long-term maintenance agreement with the City for these improvements prior to final inspection of the first building on the Independence Site.

8.45. Prior to building permit issuance for the Constitution Site, the applicant shall submit all necessary improvement plans and documents required by Caltrans for work associated with projects under Caltrans' jurisdiction, including, but not limited to, the bike/pedestrian path (from the Constitution Drive and Independence Drive intersection to the Marsh Road and Bayfront Expressway intersection). The plans shall be subject to review and approval of the Public Works Department prior to submittal to Caltrans. The applicant shall install the improvements and enter into a long-term maintenance agreement with the City for these improvements prior to final inspection of the first building on the Constitution Site.

8.46. Prior to each building permit final, the applicant shall provide the City with documentation confirming that the subject building has been enrolled in PG&E's ClimateSmart program to fully offset the GHG emissions associated with electrical and natural gas energy consumption and emissions from the Project's water consumption (distribution and treatment). In the event such ClimateSmart program is discontinued or is determined to be financially burdensome, the applicant may propose substitution of a comparable GHG offset program, subject to the City Manager's reasonable approval. All buildings within the Project shall be enrolled in the same GHG offset program, with the exception of water consumption. Property owner(s) may reduce the total number of metric tons to be offset through installation of renewables (e.g. photovoltaic panels) within the Project and/or through the use of publicly-supplied reclaimed water. The tonnage of GHG emissions annually reduced through such renewables shall be calculated by Property Owner(s) in consultation with the City. Property owner(s) shall provide City with an annual report and documentation demonstrating compliance with this condition. The City shall provide this report and documentation to the City's Environmental

Quality Commission or shall otherwise make available for public review. This condition shall be in effect for the life of the project.

8.47. Concurrent with the building permit submittal for each site, the applicant shall incorporate lighting design specifications to meet minimum safety and security standards. The comprehensive site lighting plans shall be subject to review and approval by the Planning Division prior to building permit issuance of the first building on that site. The following measures shall be included in all lighting plans:

- Luminaries shall be designed with cutoff-type fixtures or features that cast low-angle illumination to minimize incidental spillover of light onto adjacent private properties. Fixtures that shine light upward or horizontally shall not spill any light onto adjacent private properties.
- Luminaries shall provide accurate color rendering and natural light qualities. Low-pressure sodium and high-pressure sodium fixtures that are not color-corrected shall not be used, except as part of an approved sign or landscape plan.
- Luminary mountings shall be downcast and pole heights minimized to reduce potential for back scatter into the nighttime sky and incidental spillover light onto adjacent properties and undeveloped open space. Light poles shall be no higher than 20 feet. Luminary mountings shall be treated with non-glare finishes. (MM-AE2.1)

8.48 Concurrent with each demolition permit submittal, the applicant shall prepare a dust control plan. The plan shall be reviewed and approved by the Building Division prior to demolition permit issuance. To reduce particulate matter emissions during project demolition, excavation and construction phases, the project contractor(s) shall comply with the dust control strategies developed by the BAAQMD. The applicant shall include in all construction contracts the following requirements, or measures shown to be equally effective. These requirements shall be implemented during the demolition, grading, and construction phases.

- All trucks hauling soil, sand, and other loose construction and demolition debris from the site shall be covered, or all such trucks shall maintain at least two feet of freeboard.
- All exposed or disturbed soil surfaces in active construction areas shall be watered at least twice daily.
- All unpaved parking areas and staging areas shall be paved, watered three times daily, or treated with (non-toxic) soil stabilizers.
- All paved parking areas and staging areas shall be swept daily (with water sweepers).
- Mud and dirt carried onto paved streets from the construction areas shall be cleaned daily.
- Exposed stockpiles (i.e., dirt, sand, etc.) shall be enclosed, covered, watered twice daily or non-toxic soil binders applied.
- Traffic speeds shall be limited on unpaved roads to 15 mph.

- Sandbags or other erosion control measures shall be used to prevent silt runoff to public roadways.
- In graded areas in which construction activities will not occur for a period of more than 30 days, a temporary vegetative cover shall be planted within 5 days of completion of grading.
- Wheel washers shall be installed for all exiting trucks, or truck tires and tracks of all trucks and equipment leaving the site shall be washed.
- Wind breaks at the windward side(s) of construction areas shall be installed.
- Excavation and grading activity shall be suspended when winds (instantaneous gusts) exceed 25 miles per hour over a 30-minute period or more.
- To the extent possible, the area subject to excavation, grading, and other dust-generating construction activity shall be limited to only one activity. (MM-AQ2.1)

8.49 Concurrent with each demolition permit submittal, the applicant shall prepare an emissions reduction plan. The plan shall be reviewed and approved by the Building Division prior to demolition permit issuance. The applicant shall include in all construction contracts the following requirements, or measures shown to be equally effective, to reduce the emissions generated by heavy-duty diesel-powered construction equipment operating in the project area by the following means:

- All construction equipment shall be maintained in proper working condition in accordance with manufacturer's specifications.
- Diesel-powered construction equipment shall comply with the BAAQMD requirements or meet Tier 3 or Tier 4 EPA/ARB standards.
- Diesel-powered motors shall be equipped with a catalyzed diesel particulate filter or an equivalent measure.
- To the extent feasible, the existing electricity infrastructure surrounding the construction sites shall be used rather than electrical generators powered by internal combustion engines. (MM-AQ2.2)

8.50 To facilitate compliance with State and federal law (Fish and Game Code and the MBTA) and prevent impacts to nesting birds, the applicant shall avoid the removal of trees, shrubs, or weedy vegetation February 1 through August 31 during the bird nesting period. If no vegetation or tree removal is proposed during the nesting period, no surveys are required. If it is not feasible to avoid the nesting period, a survey for nesting birds shall be conducted by a qualified wildlife biologist no earlier than seven days prior to the removal of trees, shrubs, weedy vegetation, buildings, or other construction activity.

- Survey results shall be valid for the tree removals for 21 days following the survey. If the trees are not removed within the 21-day period, then a new survey shall be conducted. The area surveyed shall include all construction areas as well as areas within 150 feet outside the boundaries of the areas to be cleared or as otherwise determined by the biologist.

- In the event that an active nest for a protected species of bird is discovered in the areas to be cleared, or in other habitats within 150 feet of construction boundaries, clearing and construction shall be postponed for at least two weeks or until the biologist has determined that the young have fledged (left the nest), the nest is vacated, and there is no evidence of second nesting attempts. (MM-BR1.1)

8.51 Prior to building demolition or tree removal activities on each site, the applicant shall retain a qualified biologist to conduct a focused survey for bats and potential roosting sites within buildings to be demolished or trees to be removed. The surveys can be conducted by visual identification and can assume presence of pallid bats or the bats can be identified to a species-level with the use of an "Anabat" unit. If no roosting sites or bats are found, a letter report confirming absence shall be sent to the California Department of Fish and Game and no further mitigation is required. If roosting sites or bats are found, then the following monitoring and exclusion measures shall be conducted. The letter or surveys and supplemental documents shall be provided to the Planning Division prior to demolition permit issuance.

- If bats are found roosting outside of nursery season (May 1st through October 1st), then they shall be evicted as described under (B) below. If bats are found roosting during the nursery season, then they shall be monitored to determine if the roost site is a maternal roost. This could occur by either visual inspection of the roost bat pups, if possible, or monitoring the roost after the adults leave for the night to listen for bat pups. If the roost is determined to not be a maternal roost, then the bats shall be evicted as described under (b). Because bat pups cannot leave the roost until they are mature enough, eviction of a maternal roost cannot occur during the nursery season. A 250-foot (or as determined in consultation with the Department of Fish and Game) buffer zone shall be established around the roosting site within which no construction shall occur.
- Eviction of bats shall be conducted using bat exclusion techniques, developed by Bat Conservation International (BCI) and in consultation with the Department of Fish and Game that allow the bats to exit the roosting site but prevent re-entry to the site. This would include, but not be limited to, the installation of one way exclusion devices. The devices shall remain in place for seven days and then the exclusion points and any other potential entrances shall be sealed. This work shall be completed by a BCI recommended exclusion professional. The exclusion of bats shall be timed and carried concurrently with any scheduled bird exclusion activities. (MM-BR2.1 and MM-BR2.2)

8.52 Prior to demolition, excavation, grading, or other construction-related activities on each site, the applicant shall hire a qualified professional archaeologist (i.e., one who meets the Secretary of the Interior's professional qualifications for archaeology or one under the supervision of such a professional) to monitor, to the extent determined necessary by the archaeologist, project-

related earth-disturbing activities (e.g. grading, excavation, trenching). In the event that any prehistoric or historic-period subsurface archaeological features or deposits, including locally darkened soil ("midden"), that could conceal cultural deposits, animal bone, obsidian, and/or mortar are discovered during demolition/ construction-related earth-moving activities, all ground-disturbing activity within 100 feet of the discovery shall be halted immediately, and the Planning and Building Divisions shall be notified within 24 hours. City staff shall consult with the project archeologist to assess the significance of the find. Impacts on any significant resources shall be mitigated to a less-than-significant level through data recovery or other methods determined adequate by the City and that are consistent with the Secretary of the Interior's Standards for Archaeological Documentation. If Native American archaeological, ethnographic or spiritual resources are discovered, all identification and treatment of the resources shall be conducted by a qualified archaeologist and Native American representatives who are approved by the local Native American community as scholars of the cultural traditions. In the event that no such Native American is available, persons who represent tribal governments and/or organizations in the locale in which resources could be affected shall be consulted. When historic archaeological sites or historic architectural features are involved, all identification and treatment is to be carried out by historical archaeologists or architectural historians who meet the Secretary of the Interior's professional qualifications for archaeology and/or architectural history. (MM-CR1.1)

8.53 If human remains are discovered during any construction activities, all ground-disturbing activity within 50 feet of the remains shall be halted immediately, and the County Coroner shall be notified immediately, according to Section 5097.98 of the State Public Resources Code and Section 7050.5 of California's Health and Safety Code. Additionally, the Building Division shall be notified. If the remains are determined by the County Coroner to be Native American, the Native American Heritage Commission shall be notified within 24 hours, and the guidelines of the NAHC shall be adhered to in the treatment and disposition of the remains. The applicant shall also retain a professional archaeologist with Native American burial experience to conduct a field investigation of the specific site and consult with the Most Likely Descendant, if any, identified by the NAHC. As necessary, the archaeologist may provide professional assistance to the Most Likely Descendant, including the excavation and removal of the human remains. The Planning Division shall be responsible for approval of recommended mitigation as it deems appropriate, taking account of the provisions of state law, as set forth in CEQA Guidelines Section 15064.5(e) and Public Resources Code Section 5097.98. The applicant shall implement approved mitigation, to be verified by the Planning Division, before the resumption of ground-disturbing activities within 50 feet of where the remains were discovered. (MM-CR2.1)

8.54 Concurrent with the first building permit submittal for each site, the applicant shall submit a FEMA CLOMR-F application to the Public Works Department

for review and approval. In accordance with the National Flood Insurance Program (NFIP) (Code of Federal Regulations (CFR) 44 Part 65), Section 65.6 (Revision of base flood elevation determinations), the applicant shall prepare supporting data, including relevant hydraulic and hydrologic analyses, delineation of floodplain boundaries and all other information required by FEMA to review and evaluate the request for a CLOMR-F. The analyses shall clearly show revised and new floodplain boundaries, for the project area and adjacent areas not affected by the revision. Upon receiving City approval, the applicant shall submit the CLOMR-F application to FEMA. Prior to issuance of any grading or building permit on each site, the applicant shall obtain a CLOMR-F from FEMA. The applicant shall submit an elevation certificate prior to final signoff of the foundation inspection for each structure. (MM-HY7.1)

8.55 Concurrent with the first building permit submittal for the Independence site, and again with the first building permit submittal for the Constitution site, the applicant shall submit a Phase II Environmental Site Assessment (ESA) prepared by an appropriately registered professional for review and approval by the Planning Division prior to building permit issuance. The Phase II shall include a risk analysis for future occupants of the buildings. However, if the Phase II for the Independence Phase indicates that the source of contamination is either on-site or upstream (i.e., the US 101 side of the site), then the applicant does not need to submit a Phase II for the Constitution Phase. (MM-HM2.1)

8.56 Prior to, or at a minimum concurrent with the first building permit submittal for each site, the applicant shall retain a qualified professional to prepare a work plan to implement recommendations in the Phase II Environmental Site Assessment. The applicant shall submit the Soil and Groundwater Management Plan (work plan) to the San Mateo County Health System (SMCHS). The work plan shall address soil, soil vapor, and/or groundwater, as appropriate. The work plan shall include specific soil removal and disposal measures, as appropriate, soil vapor management, and groundwater management, including dewatering and disposal. If a soil vapor and/or groundwater monitoring network is established through the work plan, the City shall ensure project design and construction will not adversely affect the long-term use of any monitoring network through damage of wells and related facilities, and will not adversely affect contaminant transport in groundwater as a result of soil disturbance or dewatering. Prior to issuance of a grading or building permit, the Planning Division shall ensure the work plan has been approved by SMCHS and implemented. (MM-HM2.2)

8.57 If the Phase II Environmental Site Assessment identifies potential risk to future building occupants, the applicant shall retain a qualified professional to prepare a soil vapor study and risk management plan for review and approval of the Regional Water Quality Control Board (RWQCB). The plan shall use institutional controls and soil vapor system design. The applicant shall

incorporate applicable interior, exterior, and subgrade project features into the project plans, subject to review and approval of the Planning Division. Prior to issuance of building permits, the City shall ensure subgrade features (e.g., sub-slab venting, vapor barriers) have been installed. (MM-HM2.3)

8.58 Concurrent with the first building permit submittal for each site, the applicant shall prepare and the project contractor shall implement a site-specific health and safety plan, subject to review and approval of the Planning Division prior to grading or excavation permit issuance. The site-specific health and safety plans shall follow California and federal Occupational Safety and Health Administration (Cal/OSHA and OSHA, respectively) standards under California Code of Regulations (CCR), Title 8, Section 5192, and 29 Code of Federal Regulations (CFR) 1910.120, respectively, and any other applicable health and safety laws, regulations and/or standards. Health and safety plans shall include, among other things, a description of health and safety training requirements for onsite construction personnel, a description of the level of personal protective equipment to be used, and any other applicable precautions to be undertaken to minimize direct contact with contaminated soil or groundwater. (MM-HM2.4)

8.59 Concurrent with the first building permit submittal, the applicant shall submit plans that describe actions to be taken in the event unexpected debris, hazardous materials, or soil or groundwater contamination not previously identified is discovered. The plan shall be subject to review and approval by the Building and Planning Divisions prior to issuance of a grading permit. (MM-HM2.5)

8.60 Concurrent with each building permit submittal, the applicant shall provide notification to property owners and occupants within 500 feet of the construction site informing them of the estimated start date and duration of vibration-generating construction activities, such as would occur during site preparation, grading, and pile driving, if required. This notification shall include information warning about potential for impacts related to vibration-sensitive equipment. The applicant shall identify a phone number for the property owners and occupants to call if they have vibration-sensitive equipment on their site. A copy of the notification and any responses shall be provided to the Planning Division prior to building permit issuance. (MM-NO2.1)

8.61 Prior to issuance of each building permit, if vibration-sensitive equipment is identified within 500 feet of the construction site, the applicant shall implement the following measures during construction of all project components:

- To the extent feasible, construction activities that could generate high vibration levels at any identified vibration-sensitive locations shall be scheduled during times that would have the least impact on nearby land uses. This could include restricting construction activities in the areas of

potential impact to the early and late hours of the work day, such as from 8:00 am to 10:00 am or 4:00 pm to 6:00 pm Monday to Friday.

- Stationary sources, such as construction staging areas and temporary generators, shall be located as far from nearby vibration-sensitive receptors as possible.
- Trucks shall be prohibited from idling along streets serving the construction site where vibration-sensitive equipment is located. (MM-NO2.2)

8.62 Concurrent with each demolition permit and building permit submittal, a Construction Noise Plan shall be submitted for review and approval by the Planning and Building Divisions prior to demolition permit issuance. The applicant shall implement the following measures during the demolition and construction of the proposed project:

- To the extent feasible, the noisiest construction activities shall be scheduled during times that would have the least impact on nearby residential land uses. This would include restricting typical demolition and exterior construction activities to the hours of 8:00 am to 6:00 pm Monday to Friday.
- Equipment and trucks used for project construction shall use the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically attenuating shields or shrouds) wherever feasible.
- Impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used where feasible, and this could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever feasible.
- Construction contractors, to the maximum extent feasible, shall be required to use "quiet" gasoline-powered compressors or other electric-powered compressors, and use electric rather than gasoline or diesel powered forklifts for small lifting.
- Stationary noise sources, such as temporary generators, shall be located as far from nearby receptors as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or other measures to the extent feasible.
- Install temporary plywood noise barriers eight feet in height around the construction site to minimize construction noise to 90 dBA as measured at the applicable property lines of the adjacent uses, unless an acoustical engineer submits documentation that confirms that the barriers are not necessary to achieve the attenuation levels.

- Trucks shall be prohibited from idling along streets serving the construction site. (MM-NO4.1)

8.63 Prior to building permit issuance of the first building permit for foundation of the Independence Phase, the applicant shall pay a fee of $125,000 to the City of Menlo Park as a contribution toward adaptive signal timing improvements based on impacts to the intersections of Willow Road/Newbridge Street. If Caltrans does not approve the use of adaptive signal timing at this intersection within five years from the payment of the fee, the City of Menlo Park may use the money for other transportation improvements in the City. (MM-TR1.1)

8.64 Concurrent with the building permit submittal for the first building of the Independence Phase, the applicant shall submit complete plans to construct an eastbound right turn lane with a right turn overlap phase from Willow Road to Bayfront Expressway. The resulting intersection design would have a total of three eastbound right turn lanes. Complete plans shall include all necessary requirements to construct the improvements in the public right-of-way, including but not limited to, grading and drainage improvements, utility relocations, signal relocations/modifications, tree protection requirements, striping modifications further west on Willow Road, and a detailed cost estimate. The plans shall be subject to review and approval of the Public Works Department prior to submittal to Caltrans. Upon obtaining approval from the Caltrans, the applicant shall construct the improvements prior to occupancy of the first building on the Independence Site. If Caltrans approval has not been obtained, but the applicant demonstrates that it has worked diligently to pursue Caltrans approval to the satisfaction of the Public Works Director prior to occupancy of the first building, the applicant shall submit to the City a performance bond for 100 percent of the estimated costs plus a 30 percent contingency. The applicant shall continue to pursue approval and construction for a period of 5 years from the date of occupancy of the first building. If the applicant continues to work diligently to the satisfaction of the Public Works Director, but has not yet obtained approval to construct the improvement, then the applicant shall be relieved of responsibility to construct the improvement and the bond shall be released by the City of Menlo Park. Construction of this improvement shall count as a future credit toward payment of the Transportation Impact Fee (TIF) for pursuant to the TIF Ordinance. (MM-TR1.1)

8.65 Concurrent with the building permit submittal for the first building of the Constitution Phase, the applicant shall submit complete plans to construct an additional eastbound left turn lane from Chilco Street to Bayfront Expressway. Complete plans shall include all necessary requirements to construct the improvements in the public right-of-way, including but not limited to, grading and drainage improvements, utility relocations, signal relocations/modifications, tree protection requirements, median and striping modifications further west on Chilco Street, and a detailed cost estimate. The

plans shall be subject to review and approval of the Public Works Department prior to submittal to Caltrans. Upon obtaining approval from the City of Menlo Park and Caltrans, the applicant shall construct the improvements prior to occupancy of the first building on the Constitution Site. If Caltrans approval has not been obtained, but the applicant demonstrates that it has worked diligently to pursue Caltrans approval to the satisfaction of the Public Works Director prior to occupancy of the first building, the applicant shall submit to the City a performance bond for 100 percent of the estimated costs plus a 30 percent contingency. The applicant shall continue to pursue approval and construction for a period of five years from the date of occupancy of the first building. If the applicant continues to work diligently to the satisfaction of the Public Works Director, but has not yet obtained approval to construct the improvement, then the applicant shall be relieved of responsibility to construct the improvement. The bond shall be released by the City upon payment to the City in an amount equal to the cost of the improvement, based on an updated cost estimate at that time, plus a 30% contingency. The City of Menlo Park may use the money to either construct the improvement or for other transportation improvements located east of US 101. (MM-TR1.1)

8.66 Concurrent with the building permit submittal for the first building of the Independence Phase, the applicant shall submit complete plans to construct an additional eastbound left turn lane from Chrysler Drive to Bayfront Expressway. Complete plans shall include all necessary requirements to construct the improvements in the public right-of-way, including but not limited to, grading and drainage improvements, utility relocations, signal relocations/modifications, tree protection requirements, striping modifications further west on Chrysler Drive, and a detailed cost estimate. The plans shall include right-of-way dedication to the back of sidewalk. The plans shall be subject to review and approval of the Public Works Department prior to submittal to Caltrans. Upon obtaining approval from the City of Menlo Park and Caltrans, the applicant shall construct the improvements prior to occupancy of the first building on the Independence Site. If Caltrans approval has not been obtained, but the applicant demonstrates that it has worked diligently to pursue Caltrans approval to the satisfaction of the Public Works Director prior to occupancy of the first building, the applicant shall submit to the City a performance bond for 100 percent of the estimated costs plus a 30 percent contingency. The applicant shall continue to pursue approval and construction for a period of 5 years from the date of occupancy of the first building. If the applicant continues to work diligently to the satisfaction of the Public Works Director, but has not yet obtained approval to construct the improvement, then the applicant shall be relieved of responsibility to construct the improvement and the bond shall be released by the City of Menlo Park, unless the applicant seeks building permits for any building on the Constitution phase. If the applicant seeks issuance of a building permit for any building in the Constitution phase prior to Caltrans approval to construct the improvements, then a traffic study is required and the applicant shall request that the City perform a traffic study with funds provided by the

applicant. The objective of the study is to determine if the existing infrastructure is sufficient to accommodate the projected traffic from the Constitution site, or if other improvements or methods can be implemented to mitigate the traffic impact. The study shall be subject to review and approval by the Public Works Department. In the event the traffic study concludes other improvements or methods can mitigate the traffic impact, such methods and/or improvements shall be implemented prior to final building permit sign off for any building on the Constitution site, and the applicant shall be relieved of the requirement to construct the additional eastbound left turn lane from Chrysler Drive to Bayfront Expressway. Construction of the eastbound left turn lane from Chrysler Drive to Bayfront Expressway improvement as defined in MM-TR1.1 shall count as a future credit toward payment of the Transportation Impact Fee (TIF) pursuant to the TIF Ordinance. (MM-TR1.1)

8.67 Concurrent with the building permit submittal for the first building on the Independence Site, the applicant shall submit plans for pedestrian improvements at the intersection of Bayfront Expressway and Haven Avenue. The improvements may include, but not be limited to items such as enhancements to the three existing crosswalks at the intersection, curb ramp replacement and/or installation at the intersection, and the installation of curb, gutter and sidewalk along the frontage of property located at 3760 Haven Avenue and adjacent to the intersection, in order to complete a missing link in the sidewalk network. If additional right-of-way is required to construct this improvement, then the applicant would be responsible for dedicating the right-of-way or purchasing the necessary land from a separate property owner. Complete plans shall include all necessary requirements to construct the improvements in the public right-of-way and a detailed cost estimate. The plans shall be subject to review and approval of the Public Works Department prior to submittal to Caltrans. Upon obtaining approval from the Caltrans, the applicant shall construct the improvements prior to occupancy of the first building on the Independence site. If the applicant has not obtained Caltrans approval but can demonstrate that it has worked diligently to pursue Caltrans approval to the satisfaction of the Public Works Director prior to occupancy of the first building, the applicant shall submit to the City a performance bond for 100 percent of the estimated costs plus a 30 percent contingency not to exceed $125,000 (2010 dollars). The applicant shall continue to pursue approval and construction for a period of 5 years from the date of occupancy of the first building. If the applicant continues to work diligently to the satisfaction of the Public Works Director, but has not yet obtained approval to construct the improvement, then the applicant shall be relieved of responsibility to construct the improvement and the City of Menlo Park may use the money to either construct the improvement or for other traffic improvements in the City, such as adaptive signal timing. (MM-TR1.1)

8.68 Concurrent with the building permit submittal for the first building on the Independence Site, the applicant shall submit complete plans to install a traffic signal at the intersection of Constitution Drive and Chrysler Drive, plus

modifications to the lane geometry subject to review and approval of the Public Works Department. The lane geometry modifications shall include restriping the southbound approach to include a dedicated left-turn lane and a shared through/right-turn lane, and restriping the eastbound approach from one shared left-through/right lane to include two approach lanes (one shared through-left and one shared through/right). This measure could require widening the current curb to curb distance, modifying parking restrictions, (which would require Transportation Commission and Council approval) and possibly obtaining additional right-of way. Complete plans shall include all necessary requirements to construct the improvements, including but not limited to, grading and drainage improvements, utility relocations, tree protection requirements, driveway apron modifications for the adjacent properties, striping modifications, and a detailed cost estimate. The plans shall be subject to review and approval of the Public Works Department. Upon obtaining approval from the City of Menlo Park, the applicant shall construct the improvements prior to occupancy of the first building on the Independence Site. (MM-TR1.1)

8.69 Prior to issuance of each building permit, the applicant shall pay the applicable Transportation Impact Fee (TIF), based on the type and size of the proposed land uses *minus* the existing land uses to be replaced, to be used for various traffic improvement projects throughout the City as defined in the City's TIF Ordinance. Based on preliminary estimates in 2010, the fee for each phase would be as follows: Independence (Hotel and Office): $1,416,409; Constitution (Office): $1,397,051. The fee is adjusted per the City's TIF Ordinance based on the construction cost index in the Engineering News Record. Pursuant to the TIF Ordinance, the fee is eligible for a future credit for the construction of improvements associated with mitigations at the following intersections:

- Marsh Road/Bohannon Drive(Florence Street);
- Bayfront Expressway/Willow Road; and
- Bayfront Expressway/Chrysler Drive. (MM-TR1.1)

8.70 Upon occupancy of the first building of the proposed project, the applicant shall start phasing the implementation, as determined by the Transportation Manager, of a Transportation Demand Management (TDM) program consistent with the TDM plan in the EIR. Any modifications to the specifics or phasing of the TDM measures shall be subject to review and approval of the Public Works Department. If the Transportation Manager deems the modification to be substantial, then the modified TDM measures shall be submitted to the City/County Association of Governments (C/CAG) of San Mateo County for review and approval. The applicant shall submit annual reports describing the specific items that are being implemented and the success of the respective items in terms of reducing trips to the project. The TDM plan shall include a payment to the City, based on the City's estimated cost, to run two shuttles from the site to Caltrain or another agreed upon transit hub (a minimum of three shuttle runs during both the AM and PM peak

times). The shuttle may stop at other stops between the site and Caltrain as designated by the City. One shuttle would provide access to the Menlo Park Caltrain Station and one would provide access to the Redwood City Caltrain Station. A modification of the access points would need to be agreed to by both parties. If the City, at its full discretion, does not choose to provide the shuttle service, the applicant shall provide the service at its full cost including, but not limited to, expenses such as coordination with the City, private shuttle providers, and businesses occupying the project, maintenance of signs and stops, and the production of timetables and dissemination of information. This condition shall be in effect for the life of the project. (MM-TR1.1)

8.71 Concurrent with the building permit submittal for the first building of the Independence Phase, the applicant shall submit complete plans to construct a westbound right turn lane from Marsh Road to Florence Street subject to review and approval of the Public Works Department. The right turn lane shall be designed with a length of approximately 350 feet. Complete plans shall include all necessary requirements to construct the improvements in the public right-of-way, including, but not limited to, grading and drainage improvements, utility relocations, signal relocations/modifications, tree protection requirements, driveway apron modifications for the adjacent single-family residences, striping modifications further east on Marsh Road, and a detailed cost estimate. Upon obtaining approval from the City of Menlo Park, the applicant shall construct the improvements prior to occupancy of the first building on the Independence Site. Subject to the determination of the Public Works Director, the applicant shall use good faith efforts to diligently pursue preservation of the black walnut street tree located in front of 1009 Marsh Road and the black walnut street tree located in front of 1033 and 1037 Marsh Road. If one or both trees cannot be preserved, the applicant shall remove the applicable heritage trees prior to encroachment permit issuance; however, the heritage trees shall not be removed prior to encroachment permit submittal. The applicant shall submit a planting plan for replacement trees at a ratio of two new trees for each tree removed. Each tree shall have a minimum size of 24-inch box and shall be placed approximately 25 feet on center. The species should be appropriate under the existing overhead power lines. The planting plan shall be subject to review and approval of the City Arborist. Construction of this improvement shall count as a future credit toward payment of the Transportation Impact Fee (TIF) pursuant to the TIF Ordinance. (MM-TR1CM.1)

8.72 Prior to building permit issuance of the first building permit of the Constitution Phase, the applicant shall pay a fee of $125,000 as a contribution toward adaptive signal timing improvements based on impacts to the intersection of Bayfront Expressway and University Avenue. If Caltrans does not approve the use of adaptive signal timing at this intersection within five years from the payment of the fee, the City of Menlo Park may use the money for other transportation improvements in the City. (MM-TR1CM.1)

8.73 Upon completion of project build out in 2018 or later, total net new daily trips shall not exceed 9,242 trips (when calculating net new trips, a credit of 2,019 trips per day shall be used for the pre-project existing uses at the site). Upon submittal of the first building permit for the project, the Transportation Manager shall determine a trip limit for each phase of the project based on the most recent ITE Standards and consistent with the methodology used in the EIR, in consultation with the applicant.

If the proposed Hotel as defined in Section 1.17 of the Development Agreement is replaced with a different hotel product, resulting in reduced square footage of the Hotel and/or sports club, the vehicle trip limitation shall be adjusted downward commensurate with the reduction in uses. The new vehicle trip limitation shall be determined by the City's Transportation Manager in consultation with Owner and/or its representatives based on the most recent ITE Standards and consistent with the methodology used in the EIR. The trip limit for each phase of the project shall also be adjusted accordingly by the Transportation Manager. The determination of the Transportation Manager may be appealed by the Owner to the City Manager, whose decision shall be final. The adjusted trip limitation, if implemented, shall become the basis for assessing penalties as described below.

Additionally, if land-use entitlements for one or both office buildings on the Constitution site expire or are terminated by Owner, the vehicle trip limitation shall be adjusted downward commensurate with the reduction in approved square footage of uses. The new vehicle trip limitation shall be determined by the City's Transportation Manager in consultation with Owner and/or its representatives based on the most recent ITE Standards and consistent with the methodology used in the EIR. The determination of the Transportation Manager may be appealed by the Owner to the City Manager, whose decision shall be final. The adjusted trip limitation, if implemented, shall become the basis for assessing penalties as described below.

Following occupation of the hotel, the Transportation Division shall perform annual traffic counts for the phases that have been completed with funds provided by the applicant. Daily traffic counts shall be taken at driveways of the project site and shall be the average of at least three weekday counts (Tuesday, Wednesday or Thursday) taken over a three week period between mid-February and late May (before the end of school year) or between Labor Day and Thanksgiving Day. . Counts should avoid days immediately before or after holidays or long weekends, and should not be performed on days of inclement weather conditions. Based upon the traffic counts, if the allowable number of net new trips is exceeded, the applicant shall prepare a plan of additional transportation demand management measures necessary to bring the number of trips into compliance with the trip limit within 90 days of being notified by the City and shall implement said plan within 180 days from said notification. If a second, consecutive annual traffic count shows that actual trips exceed the trip limitation, the property owner(s) shall pay a penalty per

excess daily trip each year that this occurs in accordance with the following schedule:

- Up to 500 trips above 9,242 = $100 per trip
- 500 to 1,500 trips above 9,242 = $150 per trip
- 1,500 trips or more above 9,242 = $200 per trip

The base per trip fines shall be adjusted annually starting at base year 2010 per the Consumer Price Index for All Urban All Items Consumers in the San Francisco- Oakland-San Jose Metropolitan Area [1982-84=100]. Revenues from the payment of penalties under this provision are due to the City within 30 days of issuance of the invoice and the City shall use the money for programs designed to reduce trips or traffic congestion within the City of Menlo Park. Additional monetary penalties shall apply for each consecutive year the trip limit is exceeded. If a subsequent annual trip count is below the annual limit, no annual penalty shall apply until at least two consecutive annual counts exceed the trip limit. This condition shall be in effect for the life of the project. (MM-TR1CM.1)

8.74 Prior to building permit issuance for the first building of the Independence Phase, the project owner shall provide the City with funds or make other satisfactory arrangements with the City to ensure the availability of funds for the Town of Atherton for qualifying traffic mitigations at the intersection of Marsh Road and Middlefield Road. Qualifying mitigations measures include: the addition of a southbound left turn lane from Middlefield Road on to Marsh Road, or similar traffic mitigations that reduce delay at the intersection to less than significant levels as defined by the project EIR, or other improvements that substantially improve the level of service as determined by the City of Menlo Park. The amount of funds shall be a fair share contribution equal to 25.4% of the current estimated project costs of $694,500 plus escalation costs ($176,400 plus escalation). Escalation shall be calculated based on the Engineering News Record Construction Cost Index for the San Francisco Bay Area in 2010 and increase to the midpoint of construction of the roadway improvements. Funds will be payable to the Town of Atherton upon substantial completion of construction of the intersection improvements. Funds will remain available to the Town of Atherton for a seven year period, starting from when the funds first become available (issuance of building permits for the Independence Phase of the project), after which funds will be returned to the applicant. (MM-TR1CM.1)

8.75 Concurrent with the first building permit submittal for each site, the applicant shall include in the landscape plans details for the design and installation of an irrigation system with hook ups to allow for connections to a municipal reclaimed water system, in the event that such a system becomes available in the future. The plans shall be subject to review and approval by the Planning Division (MM-UT1.1)

8.76 If the project is completed in 2017, greenhouse gas emissions shall be kept below 4.6 tonnes CO2e/service population annually during 2017. To ensure this level of emissions efficiency, total net new trips to the project site shall not exceed 9,013 trips per day if the project is completed prior to 2018. When calculating net new trips a credit of 2,019 trips per day shall be used for the pre-project existing uses at the site.

- After project build out occurs in 2017, the Transportation Division shall perform a traffic count with funds provided by the applicant. Counts shall be taken at driveways of the project site. Daily traffic counts shall be the average of at least three weekday counts (Tuesday, Wednesday or Thursday) taken over a three week period. Counts shall be performed between mid-February and late May (before the end of the school year) or between Labor Day and Thanksgiving Day. Counts shall avoid days immediately before or after holidays or long weekends and shall not be performed on days of inclement weather conditions.
- Based upon the traffic counts, if the allowable number of net new trips is exceeded, the applicant shall implement a plan of additional transportation demand management measures necessary to bring the number of trips into compliance with the trip cap within 30 days of being notified by the City. The plan shall include at a minimum a $3.50 per person, per day transit pass subsidy (i.e., C/CAG base transit subsidy plus $2.50).
- Because the 9,013 net trip cap is only required as mitigation if the project is completed in 2017, and would not be required for 2018 or thereafter, any TDM measures, including the additional transit subsidy, that are necessary to meet the 9,013 vehicle trip cap in 2017 *may* be discontinued on the later of (1) January 1, 2018 or (2) six months after the subsidy is first implemented. (MM-CC1.1)

8.77 Following occupation of the hotel, the transit occupancy tax (TOT) applicable to the Hotel shall be assessed at one percent (1.0%) above the Citywide TOT rate in effect from time to time (e.g. if the Citywide TOT rate is 10%, the rate applicable to the Hotel shall be 11%; if the Citywide TOT rate is 11%, the applicable TOT rate for the Hotel shall be 12%; and if the Citywide TOT rate is 12%, the applicable TOT rate for the Hotel shall be 13%; etc.). The City shall use the additional one percent (1%) in TOT revenue each year for vehicle trip reduction, TDM and/or greenhouse gas ("GHG") emission reductions in the vicinity of the project and/or elsewhere in the City; provided, however, the City Council by a 4/5 vote of the Council may allocate such revenue for other purposes for any fiscal year if it makes findings that such revenue is required for such other purposes. In the event the City adopts a Citywide increase in the rate of the TOT, Owner's obligation to collect and pay the 1% increase in TOT shall remain in effect following the City's adoption of a Citywide increase in the rate of the TOT. Owner's obligation to collect and pay the additional 1% TOT pursuant to Section 5.4 of the Development Agreement shall terminate in the event of a Guarantee Payment Termination and effective as of the effective date of such Guarantee Payment Termination. Except as provided in the preceding sentence, the obligations

set forth herein to pay the additional 1% TOT shall continue so long as the Hotel is operating on the Property and shall be binding on any and all owners and operators of the Hotel.

Recommended by the Menlo Park Planning Commission on May 3, 2010

Arlinda Heineck

Arlinda Heineck, Community Development Director

Approved by the Menlo Park City Council on June 15, 2010

Margaret S. Roberts

Margaret S. Roberts, MMC
City Clerk