

ORDINANCE NO. 971

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK APPROVING THE DEVELOPMENT AGREEMENT WITH BOHANNON DEVELOPMENT COMPANY

The City Council of the City Menlo Park does hereby ordain as follows:

SECTION 1. This Ordinance is adopted under the authority of Government Code section 65864 et seq., and pursuant to the provisions of City Resolution No. 4159, which establishes procedures and requirements for the consideration of development agreements within the City.

SECTION 2. This Ordinance incorporates by reference that certain Development Agreement by and between the City of Menlo Park and Bohannon Development Company, ("Developer") attached hereto as Exhibit A ("Development Agreement").

SECTION 3. An Environmental Impact Report ("EIR") prepared pursuant to the California Environmental Quality Act ("CEQA") for the Project on the property located at 100 to 190 Independence Drive and 101 to 155 Constitution Drive, Menlo Park, CA, (the "Property") was certified as complete on June 15, 2010, and the City Council has reviewed and considered that EIR prior to approving this Ordinance.

SECTION 4. The City Council of the City of Menlo Park finds that the following are the relevant facts concerning the Development Agreement:

1. The General Plan land use designation for the Property subject to this Development Agreement is M-3-X Commercial Business Park - Conditional Development District.
2. The Developer proposes a unified development on the Property consisting of multiple parcels on two sites ("Independence Site" and "Constitution Site") containing a total of approximately 15.95 acres.
3. The Developer proposes to construct an office building, hotel, parking structure and on and off site improvements on the Independence Site and two office buildings, two parking structures and on and off site improvements on the Constitution Site, all as more particularly described in the Conditional Development Permit for the project to be constructed on the Property.
4. The Developer requests a Development Agreement to enable phased buildout of the Property and to have assurance that the Project can be completed as approved.
5. The Developer has agreed to the terms and conditions set forth in the Development Agreement, including but not limited to provisions regarding phasing, payment of public benefits, and other conditions of approval that might not be applicable to the Property in absence of this Development Agreement.

SECTION 5. As required by Section 301 of Resolution No. 4159 and based on an analysis of the facts set forth above, the City Council hereby adopts the following as its findings:

1. The Development Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan, as amended by the Project Approvals as described in the Development Agreement.
2. The Development Agreement is compatible with the uses authorized in and the regulations prescribed for the land use district in which the Property is located, as amended by the Project Approvals.
3. The Development Agreement is in conformity with public convenience, general welfare and good land use practices.
4. The Development Agreement will not be detrimental to the health, safety and general welfare of the City or the region surrounding the City.
5. The Development Agreement will not adversely affect the orderly development of property or the preservation of property values within the City.
6. The Development Agreement will promote and encourage the development of the Project by providing a greater degree of certainty with respect thereto.

SECTION 6. If any section of this ordinance, or part hereof, is held by a court of competent jurisdiction in a final judicial action to be void, voidable or enforceable, such section, or part hereof, shall be deemed severable from the remaining sections of this ordinance and shall in no way affect the validity of the remaining sections hereof.

SECTION 7. This Ordinance shall only take effect if Resolution No. 5932 adopted by the City Council on June 15, 2010, entitled "Resolution of the City Council of the City of Menlo Park Amending the General Plan to Add the Commercial Business Park Land Use Designation, to Change the Land Use Designation for Property Located at 100-190 Independence Drive and 101-155 Constitution Drive and Giving Notice that the Resolution Will Be Placed On the Ballot at the Regular Municipal Election to be Held November 2, 2010", is approved by a majority of voters voting on the Resolution at the November 2, 2010 regular municipal election.

SECTION 8. Within fifteen (15) days of its adoption this ordinance shall be posted in three (3) public places within the City of Menlo Park, and the ordinance, or a summary of the ordinance prepared by the City Attorney, shall be published in a local newspaper used to publish official notices for the City of Menlo Park prior to the effective date.

INTRODUCED on the fifteenth day of June, 2010.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said Council on the twenty-second day of June, 2010, by the following votes:

AYES: Boyle, Fergusson, Robinson, Cline

NOES: Cohen

ABSENT: None

ABSTAIN: None

APPROVED:



Richard Cline
Mayor

ATTEST:



Margaret S. Roberts, MMC
City Clerk

This document is recorded for the benefit of the City of Menlo Park and is entitled to be recorded free of charge in accordance with Sections 6103 and 27383 of the Government Code. When recorded, mail to:

City of Menlo Park
Attn: City Clerk
701 Laurel Street
Menlo Park, CA 94025

DEVELOPMENT AGREEMENT

CITY: City of Menlo Park
DEVELOPER: Bohannon Development Company

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EXHIBITS

- A. Site Plan of Property
- B. Legal Description of Property
- C. Project Revenue Benchmarks

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement" or "Development Agreement") is made and entered into as of this ____ day of _____, 2010, by and between the City of Menlo Park, a municipal corporation of the State of California ("City"), and Bohannon Development Company, a California corporation, David D. Bohannon Organization, a California corporation, 125 Constitution Associates, LP, a California limited partnership, and Bohannon Trusts Partnership II, a California limited partnership (collectively "Owner"), pursuant to the authority of California Government Code Sections 65864-65869.5 and City Resolution No. 4159.

RECITALS:

This Agreement is entered into on the basis of the following facts, understandings and intentions of the City and Owner:

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864-65869.5 authorizing the City to enter into development agreements in connection with the development of real property within its jurisdiction by qualified applicants with a requisite legal or equitable interest in the real property which is the subject of such development agreements.

B. As authorized by Government Code Section 65865(c), the City has adopted Resolution No. 4159 establishing the procedures and requirements for the consideration of development agreements within the City.

C. Owner owns those certain parcels of real property commonly known as 100 to 190 Independence Drive and 101 to 155 Constitution Drive, both in the City of Menlo Park, CA as shown on Exhibit A attached hereto and being more particularly described in Exhibit B attached hereto (collectively referred to as the "Property"), and Owner proposes to construct and develop on the Property the Project (as defined in this Agreement) in accordance with the Project Approvals and any other Approvals obtained by Owner (as each such terms are defined in this Agreement).

D. The City examined the environmental effects of the Project in an Environmental Impact Report (the "Menlo Gateway EIR") prepared pursuant to the California Environmental Quality Act ("CEQA"). On June 15, 2010, the City Council of the City reviewed and certified the Menlo Gateway EIR.

E. The City has determined that the Project is a development for which a development agreement is appropriate. A development agreement will eliminate uncertainty in the City's land use planning for, and secure orderly development of, the Project and otherwise achieve the goals and purposes for which Resolution No. 4159 was enacted by City. The Project will generate the public benefits described in this Agreement, along with other fees for the City. Owner will incur substantial costs in order to comply with the conditions of the Approvals (as defined in this Agreement) and otherwise in connection with the development of the Project. In exchange for the public benefits and other benefits to the City and the public, Owner desires to receive vested rights, including, without limitation, legal assurances that the City will grant permits and approvals required for the development, occupancy and use of the Project over the Project's estimated development period in accordance with the Existing City Laws (as defined in this Agreement), subject to the terms and conditions contained in this Agreement. In order to effectuate these purposes, the City and Owner desire to enter into this Agreement.

F. On May 3, 2010, after conducting a duly noticed public hearing pursuant to Resolution No. 4159, the Planning Commission of the City recommended that the City Council approve this Agreement,

based on the following findings and determinations: that this Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan (as defined in this Agreement); is compatible with the uses authorized in and the regulations prescribed for the land use district in which the Property is located, as amended by the Project Approvals; is in conformity with public convenience, general welfare and good land use practices; will not be detrimental to the health, safety and general welfare of the City or the region surrounding the City; will not adversely affect the orderly development of property or the preservation of property values within the City; and will promote and encourage the development of the Project by providing a greater degree of certainty with respect thereto.

G. Thereafter, on May 25, 2010, the City Council held a duly noticed public hearing on this Agreement pursuant to Resolution No. 4159. On June 15, 2010, the City Council made the same findings and determinations as the Planning Commission. On that same date, the City Council made the decision to approve this Agreement by introducing Ordinance No. 971 (the "Enacting Ordinance"). On June 22, 2010, the City Council adopted the Enacting Ordinance. The Enacting Ordinance became effective on _____, 2010.

NOW, THEREFORE, pursuant to the authority contained in Government Code Sections 65864-65869.5 and Resolution No. 4159, and in consideration of the mutual covenants and promises of the City and Owner herein contained, the City and Owner agree as follows:

1. Definitions. Each reference in this Agreement to any of the following terms shall have the meaning set forth below for each such term. Certain other terms shall have the meaning set forth for such term in this Agreement.

1.1 Approvals. Any and all permits or approvals of any kind or character required under the City Laws in order to authorize and entitle Owner to construct and to develop the Project including, but not limited to, building permits, site clearance permits, grading plans and permits, encroachment permits, final subdivision maps, and certificates of occupancy/final inspections.

1.2 City Laws. The ordinances, resolutions, codes, rules, regulations and official policies of the City governing the permitted uses of land, density, design, and improvement applicable to the development of the Property. Specifically, but without limiting the generality of the foregoing, the City Laws shall include the General Plan, the City's Zoning Ordinance and the City's Subdivision Ordinance.

1.3 City Manager. The City Manager of the City or his or her designee as designated in writing from time to time. Owner may rely on the authority of the designee of the City Manager.

1.4 City Wide. Any City Law, Fee or other matter that is generally applicable to one or more kinds or types of development or use of property wherever located in the City. A City Law, Fee or other matter shall not be City Wide if, despite its stated scope, it applies only to the Project or to one or more parcels located within the Property, or if the relevant requirements are stated in such a way that they apply only to the all or a portion of the Project.

1.5 Commencement of Construction. Any demolition, site clearance, grading, trenching, foundation work, and/or other construction associated with a building, with respect to a building component of the Project pursuant to one or more Approvals obtained by Owner; provided, any such work shall be subject to a duly authorized and issued building permit for construction of one or more buildings within the Project. Performance of work pursuant to a demolition permit or grading permit without issuance of a building permit for construction of a building or building shell shall not constitute Commencement of Construction.

1.6 Completion of Construction. The substantial completion of a building component of the Project substantially in accordance with the plans therefore submitted by Owner to the City in connection

with Owner's obtaining the Approvals for such building, as evidenced by the City's sign-off of its final inspection of the construction of such building (other than any tenant spaces).

1.7 Conditions. All Fees, conditions, dedications, reservation requirements, obligations for on- or off-site improvements, services, other monetary or non-monetary requirements, and other conditions of approval imposed, charged by or called for by the City in connection with the development of or construction on real property under the Existing City Laws, whether such conditions constitute public improvements, mitigation measures in connection with environmental review of any project, or impositions made under applicable City Laws.

1.8 Constitution Phase. The phase of the Project consisting of the demolition of existing buildings and improvements currently located at 101 to 155 Constitution Drive and the construction of two commercial office buildings, two parking structures and surface parking and both on and off-site improvements, all as more particularly described in the Conditional Development Permit for the Project. The Constitution Phase may be constructed in one or two phases as described in the Conditional Development Permit.

1.9 Default. As to Owner, the failure of Owner to comply substantially and in good faith with any obligations of Owner under this Agreement; and as to the City, the failure of the City to comply substantially and in good faith with any obligations of City under this Agreement; any such failure by Owner or the City shall be subject to cure as provided in this Agreement.

1.10 Director. The Director of Community Development for the City.

1.11 Effective Date. The effective date of the Enacting Ordinance pursuant to Government Code Section 36397, as specified in Recital G of this Agreement.

1.12 Enacting Ordinance. Ordinance No. 971, introduced by the City Council on June 15, 2010, and adopted by the City Council on June 22, 2010, approving this Agreement, as described in Recital G above.

1.13 Existing City Laws. The City Laws in effect as of the Effective Date.

1.14 Fees. All exactions, costs, fees, in-lieu fees, payments, charges and other monetary amounts imposed or charged by the City in connection with the development of or construction on real property under Existing City Laws. Fees shall not include Processing Fees.

1.15 General Plan. Collectively, the General Plan for the City adopted by the City Council on November 30 and December 1, 1994, as previously amended and as amended by the Project Approvals, and in effect as of the Effective Date.

1.16 Guarantee Payment. For the year in question, an amount equal to the lesser of (a) the Revenue Shortfall for such year, or (b) \$225,000.

1.17 Hotel. A Marriott Renaissance ClubSport combination full service hotel and sports club facility, or if Owner demonstrates to the reasonable satisfaction of the City that it is not commercially feasible to operate a Marriott Renaissance ClubSport facility, a full-service hotel facility which is (a) of the quality of, and which offers services consistent with the requirements of, an "AAA" (or comparable rating agency or service if that rating is no longer published by AAA) four star rating or higher, as such rating is in effect as of the date of notification to the City that Owner intends to substitute a different hotel type for the Marriott Renaissance ClubSport facility, (b) projected by a hotel consultant reasonably satisfactory to the City to generate TOT and sales tax revenues to the City in the ranges described in Table 7 of the BAE Fiscal Impact Analysis dated July 1, 2009, and (c) affiliated with, licensed by or otherwise operated as a national

hotel brand, such as Marriott Renaissance, Hilton, Westin, or Intercontinental, as such hotel brands are generally operated as of the Effective Date of this Agreement.

1.18 Hotel Opening Date. The date on which Owner shall open the Hotel for business to the general public.

1.19 Independence Phase. The phase of the Project consisting of the demolition of existing buildings and improvements currently located at 100 to 190 Independence Drive and the construction of a Hotel, commercial office building, a parking structure, and both on and off-site improvements, all as more particularly described in the Conditional Development Permit. The Independence Phase may be constructed in one or two phases as more particularly described in the Conditional Development Permit.

1.20 Laws. The laws and Constitution of the State of California, the laws and Constitution of the United States and any state or federal codes, statutes, executive mandates, or court decisions thereunder. The term "Laws" shall exclude City Laws.

1.21 Menlo Gateway EIR. The Environmental Impact Report for the Project certified by the City Council on June 15, 2010, as described in Recital D above.

1.22 Mitigation Measures. The mitigation measures applicable to the Project, developed as part of the Menlo Gateway EIR process and required to be implemented by Owner through the MMRP and the Conditional Development Permit.

1.23 MMRP. The Mitigation Monitoring and Reporting Plan adopted as part of the Project Approvals and applicable to the Project.

1.24 Mortgage. Any mortgage, deed of trust or similar security instrument encumbering the Property, any portion thereof or any interest therein.

1.25 Mortgagee. With respect to any Mortgage, any mortgagee or beneficiary thereunder.

1.26 Party. Each of the City, Owner and their respective successors, assigns and transferees (collectively, "Parties").

1.27 Processing Fee. A fee imposed by the City upon the submission of an application or request for a permit or Approval, which is intended to cover only the estimated cost to the City of processing such application or request and/or issuing such permit or Approval and which is applicable to similar projects on a City Wide basis, including but not limited to building permit plan check and inspection fees, public works, engineering and transportation plan check and inspection fees, and subdivision map application, review and processing fees, review, processing and enforcement of MMRP, and other staff time and attorney's time to review and process applications, permits and/or Approvals; provided such fees are not duplicative of or assessed on the same basis as any Fees.

1.28 Project. The uses of the Property, the site plan for the Property and the Vested Elements, as authorized by or embodied within the Project Approvals for the Independence Phase and the Constitution Phase, and related improvements that Owner contemplates constructing and developing on the Property, improvements that are required by to be constructed by Owner pursuant to the MMRP, the Conditional Development Permit or other Project Approvals (except for the additional capital improvements set forth in Section 5.2 hereof), and the other uses of the Property authorized under the Project Approvals.

1.29 Project Approvals. The following Approvals for the Project granted, issued and/or enacted by the City as of the date of this Agreement, as amended, modified or updated from time to time upon the application of Owner:

- (a) This Development Agreement;
- (b) Certification of the Menlo Gateway EIR and MMRP and other actions in connection with environmental review of the Project;
- (c) the General Plan Amendment;
- (d) the Zoning Ordinance;
- (e) the Ordinance rezoning the Property;
- (f) the Conditional Development Permit; ;
- (g) Tentative Parcel Maps;
- (h) Heritage Tree Removal Permits; and
- (i) the BMR Agreement

1.30 Project Revenue. For any year, the sum of (a) the TOT generated by the Hotel received by the City and attributable to such year (based on the existing TOT rate of 10% only and not based on the additional 1% TOT received by the City pursuant to Section 5.4 and not based on any increase in TOT rate approved by the voters of the City), and (b) the City portion of sales tax revenue generated by the Hotel and the balance of the Project received by the City and attributable to such year.

1.31 Property. As defined in Recital C of this Agreement.

1.32 Resolution No. 4159. City Resolution No. 4159 entitled "Resolution of the City Council of the City of Menlo Park Adopting Regulations Establishing Procedures and Requirements for Development Agreements" adopted by the City Council of the City of Menlo Park on January 9, 1990.

1.33 Revenue Benchmark. For any Revenue Calculation Period, the target Project Revenue listed for the year in which the Guarantee Commencement Date (as such terms are defined in Section 5.1.1) occurs, as more particularly set forth in the table in Exhibit C attached hereto.

1.34 Revenue Shortfall. For any Revenue Calculation Period, the amount, if any, by which (a) the Project Revenue for such Revenue Calculation Period, shall be less than (b) the Revenue Benchmark for such Revenue Calculation Period.

1.35 Substantially Complete Building Permit Application. Owner's completed or substantially completed application for a building permit as reasonably determined by the City's Building Official applied in a manner consistent with City's standard practices in effect at the time of building permit submittal, accompanied by (i) payment of all Processing Fees and other fees required to be submitted with such application and (ii) plans/required submittals for all associated on-site and off-site improvements and parking associated with such building, all as described in the Conditional Development Permit.

1.36 Substantially Consistent Modifications. Any changes to or modifications of any portion of the Project which Owner makes or proposes to make to the Project, provided such changes or modifications are in substantial compliance with and/or substantially consistent with the approved plans and the Project Approvals, as determined by the City Manager. Without limiting the foregoing, minor modifications to the Project which do not affect permitted uses, density or intensity of use, heights or size of buildings, provisions for reservation or dedication of land, restrictions and requirements relating to subsequent

discretionary actions, monetary obligations of Owner, conditions or covenants limiting or restricting the use of the Property, or similar material changes, shall be considered to be Substantially Consistent Modifications.

1.37 TOT. The City's Transient Occupancy Tax in effect as of the Effective Date as set forth in Menlo Park Municipal Code Chapter 3.16.

1.38 Transferred Property. As defined in Section 17.1 of this Agreement.

1.39 Vested Elements. As defined in Section 3.1 of this Agreement.

2. Effective Date; Term.

2.1 Effective Date. This Agreement shall be dated and the rights and obligations of the Parties hereunder shall be effective as of the Effective Date. Not later than ten (10) days after the Effective Date, the City and Owner shall execute and acknowledge this Agreement, and the City shall cause this Agreement to be recorded in the Official Records of the County of San Mateo, State of California as provided for in Government Code Section 65868.5. However, the failure to record this Agreement within the time period provided for in Government Code Section 65868.5 shall not affect its validity or enforceability among the Parties.

2.2 Term. The initial term of this Agreement shall commence on the Effective Date and shall expire on the fifth (5th) anniversary date of the Effective Date ("Initial Term"). Owner shall have the right to extend the term of this Agreement beyond the Initial Term as follows:

2.2.1 If Owner submits to the City a Substantially Complete Building Permit Application for the Hotel and associated parking and on-site and off-site improvements on or before the date of expiration of the Initial Term, the date of expiration of the term of this Agreement shall be extended to the date that is eight (8) years following the Effective Date ("8th Anniversary Date").

2.2.2 If Owner shall not have extended the term of this Agreement to the 8th Anniversary Date pursuant to Section 2.2.1 above, and if Owner pays to the City the amount of Three Hundred Thousand Dollars (\$300,000) on or before the date of expiration of the Initial Term, the date of expiration of the term of this Agreement shall be extended to the date that is seven (7) years following the Effective Date ("7th Anniversary Date"). If Owner then submits to the City a Substantially Complete Building Permit Application for the Hotel and associated parking and on-site and off-site improvements on or before the 7th Anniversary Date, the date of expiration of the term of this Agreement shall be extended to the 8th Anniversary Date.

2.2.3 If the term of this Agreement shall be extended to the 8th Anniversary Date pursuant to Sections 2.2.1 or 2.2.2 above, and if Owner obtains a building permit for the Hotel and associated parking and on-site and off-site improvements, and causes the Commencement of Construction of the Hotel, and associated parking and on-site and off-site improvements on or before the 8th Anniversary Date, the date of expiration of the term of this Agreement shall be extended to the date that is fifteen (15) years following the Effective Date ("15th Anniversary Date").

2.2.4 If the term of this Agreement shall be extended pursuant to Section 2.2.3 above, and if Owner obtains a building permit for the first office building and associated parking and on-site and off-site improvements in the Constitution Phase, and causes the Commencement of Construction of the first office building and associated parking and on-site and off-site improvements in the Constitution Phase, on or before the 15th Anniversary Date, the date of expiration of the term of this Agreement shall be extended to the date that is twenty (20) years following the Effective Date ("20th Anniversary Date").

2.2.5 If the term of this Agreement shall be extended pursuant to Section 2.2.4 above, and if Owner obtains a building permit for the second office building in the Constitution Phase, and causes the Commencement of Construction of the second office building and associated parking and on-site and off-site improvements in the Constitution Phase, on or before the 20th Anniversary Date, and if Owner is diligently prosecuting the construction of the second office building and associated parking and on-site and off-site improvements to completion, the date of expiration of the term of this Agreement shall continue until Owner shall cause Completion of Construction of the second office building in the Constitution Phase to occur.

2.3 Expiration of Term. Except as otherwise provided in this Agreement or any of the Project Approvals, upon the expiration of the term of this Agreement, (a) this Agreement, and the rights and obligations of the Parties under this Agreement, shall terminate; and (b) Owner shall thereafter comply with the provisions of the City Laws then in effect or thereafter enacted and applicable to the Property and/or the Project, except that the expiration of the term of this Agreement shall not affect any rights of Owner that are or would be vested under City Laws in the absence of this Agreement, or any other rights arising from Approvals granted or issued by the City for the construction or development of all or any portion of the Project. Notwithstanding the foregoing language in this Section 2.3, as to any office building in the Project for which there has not been Commencement of Construction as of the expiration of the term and for which the Owner is not diligently prosecuting construction, the Conditional Development Permit shall terminate as to any such office building.

3. General Development of the Project.

3.1 Project. Owner shall have the vested right to develop the Project on the Property in accordance with the terms and conditions of this Agreement and the Project Approvals, and any additional Approvals for the Project and/or the Property obtained by Owner, as the same may be amended from time to time upon application by Owner; and City shall have the right to control development of the Property in accordance with the provisions of this Agreement and the Project Approvals. Except as otherwise specified herein, this Agreement, the Project Approvals and the Existing City Laws shall control the overall design, development, construction, use and occupancy of the Project, and all improvements and appurtenances in connection therewith, including, without limitation, the permitted uses on the Property, the density and intensity of uses, the maximum height and size of buildings, the allowable floor area ratios, the number of required parking spaces, the amount of required landscaping, all reservations and dedications of land for public purposes (collectively, the "Vested Elements"), and all Mitigation Measures and Conditions required or imposed in connection with the Project Approvals in order to minimize or eliminate environmental impacts of the Project.

3.2 Project Phasing. To the extent that the Project is developed in phases, the Parties acknowledge that presently Owner cannot predict the timing or sequence of any such Project phasing. Such decisions depend upon numerous factors which are not within the control of Owner, such as market orientation and demand, interest rates, competition and other similar factors. Because the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Cal. 3d 465, that the failure of the Parties therein to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over the Parties' agreement, it is the Parties' intent to cure that deficiency by acknowledging and providing that Owner shall have the right to develop the Project in phases in such order and at such times as Owner deems appropriate within the exercise of its reasonable business judgment and the provisions of this Agreement; provided that:

3.2.1 Owner shall cause the Commencement of Construction of the Hotel to occur (a) prior to the Commencement of Construction of the office building included in the Independence Phase or either of the office buildings included in the Constitution Phase, or (b) concurrently with the Commencement of Construction of the office building to be constructed in the Independence Phase or either of the office buildings included in the Constitution Phase.

3.2.2 Upon Commencement of Construction of the Hotel, Owner shall use diligent, good faith efforts to complete and cause the Hotel to open for operation.

3.2.3 The Hotel building shall pass sheet rock inspection for 80% of the Hotel building as determined by the City's Building Official prior to (a) final inspection of any office building shell in any phase of the Project and (b) building permit issuance for any tenant improvements for an office building in any phase of the Project.

3.2.4 As provided in Section 2.2 of this Agreement, Owner shall only be entitled to extensions of the Initial Term of this Agreement if Owner constructs and develops portions of the Project, and/or takes certain actions with respect to such construction and development, on or before the dates specified therefor in Section 2.2 of this Agreement.

3.2.5 As long as this Agreement is in effect, Owner shall have the obligation to comply with all of the conditions of approval as set forth herein and in all Project Approvals.

Notwithstanding the foregoing or anything to the contrary contained in this Agreement, by entering into this Agreement, Owner shall not be obligated to construct or develop the Project or any portion of the Project.

3.3 Subsequent Projects. The City agrees that the City shall not approve other projects that place a burden on the City's infrastructure without considering the prior approval of the Project. The City further agrees that as long as Owner constructs and develops the Project during the term of this Agreement, Owner's right to construct and develop all portions of the Project shall not be diminished despite the impact of future development in the City on public facilities, including, without limitation, City streets, water systems, sewer systems, utilities, traffic signals, sidewalks, curbs, gutters, parks and other City owned public facilities that may benefit the Project and other properties in the City.

3.4 Other Governmental Permits. Owner or City (whichever is appropriate) shall apply for such other permits and approvals from governmental or quasi-governmental agencies other than the City having jurisdiction over the Project (such as public utility districts or the California Department of Transportation) as may be required for the development of, or provision of services to, the Project. The City shall promptly and diligently cooperate, at no cost to the City, with Owner in its endeavors to obtain such permits and approvals and, from time to time at the request of Owner, shall proceed with due diligence and in good faith to negotiate and/or enter into binding agreements with any such entity in order to assure the availability of such permits and approvals or services. All such applications, approvals, agreements, and permits shall be obtained at Owner's cost and expense, including payment of City staff time in accordance with standard practices, and Owner shall indemnify City for any liabilities imposed on City arising out of or resulting from such applications, permits, agreements, and/or approvals. Such indemnification shall survive the termination or expiration of this Agreement. To the extent allowed by law, Owner shall be a party or third party beneficiary to any such agreement between City and such agencies and shall be entitled to enforce the rights of Owner or the City thereunder or the duties and obligations of the parties thereto.

3.5 Additional Fees. Except as set forth in this Agreement and the Project Approvals, the City shall not impose any further or additional Fees (including, without limitation, (a) any fees, taxes or assessments (i) not in existence as of the Effective Date or (ii) not applicable to the Project in accordance with the Existing City Laws, the Project Approvals and this Agreement), whether through the exercise of the police power, the taxing power, or any other means, other than those set forth in the Project Approvals, the Existing City Laws and this Agreement. In addition, except as set forth in this Agreement, the base or methodology for calculating all such Fees applicable to the construction and development of the Project shall remain the same for such Fees as in effect as of the Effective Date. Notwithstanding the foregoing, the following provisions shall apply:

3.5.1 If the City forms an assessment district including the Property, and the assessment district is City Wide and is not duplicative of or intended to fund any matter that is covered by any

Fee payable by Owner, the Property may be legally assessed through such assessment district based on the benefit to the Property (or the methodology applicable to similarly situated properties), which assessment shall be consistent with the assessments of other properties in the district similarly situated. In no event, however, shall Owner's obligation to pay such assessment result in a cessation or postponement of construction of the Project or affect in any way Owner's development rights for the Project.

3.5.2 The City may charge Processing Fees to Owner for land use approvals, building permits, encroachment permits, subdivision maps, and other similar permits and approvals which are in force and effect on a City Wide basis at the time Owner submits an application for those permits.

3.5.3 If the City exercises its taxing power in a manner which will not change any of the Conditions applicable to the Project and so long as any new taxes or increased taxes are uniformly applied on a City Wide basis, the Property may be so taxed, which tax shall be consistent with the taxation of other properties in the City similarly situated.

3.5.4 If, as of the Effective Date, the Existing City Laws under which the Fees applicable to the Project have been imposed provide for automatic increases in Fees based upon the consumer price index or other method, then Owner and the Project shall be subject to any such increases in such Fees resulting solely from the application of any such index or method in effect on the Effective Date.

3.5.5 If state or federal laws are adopted which impose fees on new or existing projects, such fees shall be applicable to the Project.

3.5.6 If the City in coordination with the Menlo Park Fire Protection District adopts a Citywide fire impact fee to be imposed on new construction to fund needed Fire District capital equipment and/or capital facilities, such impact fee shall be applicable to any buildings within the Project constructed after the effective date of such impact fee. Owner reserves the right to reasonably object to or challenge the amount or methodology for calculating the amount of the impact fee.

3.6 Effect of Agreement. This Agreement, the Project Approvals and all plans and specifications upon which such Project Approvals are based, including but not limited to the Conditional Development Permit, shall constitute a part of the Enacting Ordinance, as if incorporated by reference therein in full.

3.7 Review and Processing of Approvals. Not less than six months prior to submittal of a Substantially Complete Building Permit Application for the construction of any building in any phase of the Project, Owner and its representatives shall meet with the City's Building Official and a designated member of the Planning Staff to discuss the required submittals for a building permit and other Approvals necessary to achieve a Substantially Complete Building Permit Application, including review of the terms and provisions of the Conditional Development Permit and its requirements. The City shall accept, review and expeditiously process Owner's applications and requests for Approvals in connection with the Project in good faith and in a manner which complies with and is consistent with the Project Approvals and this Agreement. The City shall approve any application or request for an Approval which complies and is consistent with the Project Approvals and this Agreement. Owner shall provide the City with the Processing Fees, applications, documents, plans, materials and other information necessary for the City to carry out its review and processing obligations. Owner shall submit all applications and requests for Approvals in the manner required under applicable City Laws in effect as of the time of such submittal. The Parties shall cooperate with each other and shall use diligent, good faith efforts to cause the expeditious review, processing and issuance of the approvals and permits for the construction and development of the Project in accordance with the Project Approvals and this Agreement.

4. Specific Criteria Applicable to Development of the Project.

4.1 Applicable Laws and Standards. Notwithstanding any change in any Existing City Law, including, but not limited to any change by means of ordinance, resolution, initiative, referendum, policy or moratorium, and except as otherwise expressly provided in this Agreement, the laws and policies applicable to the Property are and shall be as set forth in Existing City Laws (regardless of future changes in Existing City Laws by the City), this Agreement and the Project Approvals. Owner holds vested rights to construct, develop and cause to be occupied the Project on the Property in accordance with the Vested Elements, provided that City may apply and enforce the California Building Code as amended and adopted by the City (including the Mechanical Code, Electrical Code and Plumbing Code) and California Fire Code as amended and adopted by the City and/or the Menlo Park Fire Protection District, as such codes may be in effect at the time Owner applies for building permits for any aspect of the Project. Without limiting the generality of the foregoing, except as otherwise expressly provided in this Agreement, during the term of this Agreement, the City shall not, without the prior written consent of Owner: (a) apply to the Project any new or amended ordinance, resolution, rule, regulation, requirement or official policy that is inconsistent with any Existing City Laws or Project Approvals, that would have the effect of delaying, preventing, adversely affecting or imposing any new or additional Condition with respect to the development of the Project in accordance with such Existing City Laws or Project Approvals; or (b) apply to the Project or any portion thereof any new or amended ordinance, resolution, rule, regulation, requirement or official policy that requires additional discretionary review or approval for the proposed development, use and/or occupancy of the Project.

4.2 Application of New City Laws. Nothing herein shall prevent City from applying to the Property new City Laws that are not inconsistent or in conflict with the Existing City Laws or the intent, purposes or any of the terms, standards or conditions of this Agreement, and which do not affect the Vested Elements, impose any further or additional Fees or impose any other Conditions on the Project, including, without limitation, those requiring additional traffic improvements/requirements or additional off-site improvements, that are inconsistent with this Agreement or the intent of this Agreement. Any action or proceeding of the City that has any of the following effects on the Project shall be considered in conflict with this Agreement and the Existing City Laws:

4.2.1 limiting or reducing the uses or the mix of uses permitted on the Property;

4.2.2 limiting or reducing the density or intensity of uses on the Property, or the maximum height, the allowable floor area ratios on the Property, increasing the amount of required landscaping or reservations and dedications of land for public purposes on the Property, or increasing the number of required, or decreasing the permitted number of, parking spaces on site;

4.2.3 limiting the timing or phasing of the Project in any manner;

4.2.4 limiting the locations of structures, grading or other improvements on the Property in a manner that is inconsistent with or more restrictive than the limitations included in the Project Approvals or this Agreement; or

4.2.5 applying to the Project or the Property any law, regulation, or rule restricting or affecting a use or activity otherwise allowed by this Agreement.

The above list of actions is not intended to be comprehensive, but is illustrative of the types of actions that would conflict with this Agreement and the Existing City Laws.

4.3 Timing. Without limiting the foregoing, no moratorium or other limitation affecting the development of the Project, including, without limitation, building permits, occupancy permits or other land use entitlements, or the rate, timing or sequencing thereof shall apply to the Project; provided, that if the City and County of San Francisco imposes a moratorium on additional water allocations on its suburban water purchasers and no allocation has been made to this Project, the City shall have no obligation to issue applicable permits or to make final inspections for the Project, until such moratorium is lifted. When San Francisco allocates water to the Project, or a portion of the Project, the City shall no longer be relieved of

its obligation to issue applicable occupancy permits for such portion of the Project for which an allocation was received.

4.4 Subsequent Environmental Review. The Parties acknowledge and agree that the Menlo Gateway EIR contains a thorough environmental analysis of the Project and the Project alternatives, and specifies the feasible Mitigation Measures available to eliminate or reduce to an acceptable level the environmental impacts of the Project. The Parties further acknowledge and agree that the Menlo Gateway EIR provides an adequate environmental analysis for the City's decisions to authorize Owner to proceed with the Project as embodied in the Project Approvals and this Agreement and subsequent development of the Project during the term of this Agreement. The Mitigation Measures imposed are appropriate for the implementation of proper planning goals and objectives and the formulation of Project conditions of approval. In view of the foregoing, the City agrees that the City will not require another or additional environmental impact report or environmental review for any subsequent Approvals implementing the Project. Owner shall defend, indemnify and hold the City harmless from or in connection with any litigation seeking to compel the City to perform additional environmental review of any subsequent Approvals.

4.5 Easements; Improvements. The City shall cooperate with Owner in connection with any arrangements for abandoning existing utility or other easements and facilities and the relocation thereof or creation of any new easements within the Property necessary or appropriate in connection with the development of the Project. If any such easement is owned by the City or an agency of the City, the City or such agency shall, at the request of Owner, take such action and execute such documents as may be reasonably necessary in order to abandon and relocate such easement as necessary or appropriate in connection with the development of the Project in accordance with the Project Approvals. All on-site and off-site improvements required to be constructed by Owner pursuant to this Project Approvals including those set forth in the Project Approvals shall be constructed by Owner congruent with each phase of the Project, as may be reasonably determined by the City Manager or his or her designee.

5. Public Benefits, Conditions.

5.1 Guarantee Payments. Owner shall be obligated to make to the City the Guarantee Payments to the extent required under, and on the terms and conditions contained in, this Section 5.1.

5.1.1 Owner's obligation to make Guarantee Payments, if any, shall apply to a twenty (20) year period ("Guarantee Payment Period"), commencing as of the first day of the first full calendar quarter following the earlier of (a) the third anniversary date of the Hotel Opening Date, or (b) the fourth anniversary of the date the City allows occupancy of the office building on the Independence Site, ("Guarantee Commencement Date"), unless the Guarantee Payment Period shall be earlier terminated in accordance with this Agreement. The Guarantee Payments shall be calculated with respect to each year during the Guarantee Payment Period ("Revenue Calculation Period"), the first such year commencing as of the Guarantee Commencement Date.

5.1.2 Within one hundred twenty (120) days following the end of the calendar quarter after the end of each Revenue Calculation Period during the Guarantee Payment Period (or such later time as determined by the City based on receipt of the City's sales tax report for the final calendar quarter of the Revenue Calculation Period), the City Manager or his or her designee on behalf of the City, shall calculate the Project Revenue for such Revenue Calculation Period and shall determine whether a Revenue Shortfall exists for such year and the amount of any resulting Guarantee Payment payable by Owner to the City, and shall deliver to Owner written notice thereof, together with such supporting detail and documentation as Owner shall reasonably require (but excluding any documentation that City is prohibited by State law from disclosing to Owner). Except as otherwise provided in this Section 5.1, within thirty (30) days following the date of Owner's receipt of such written notice of the Guarantee Payment from the City Manager or his or her designee, Owner shall pay such Guarantee Payment to the City. Notwithstanding the foregoing, if Owner shall disagree with the City's determination of any Guarantee Payment, Owner shall give to the City written notice thereof within such thirty (30) day period. The Parties shall thereafter meet and confer in person or by

telephone and shall attempt in good faith to resolve any disagreement between the Parties concerning such Guarantee Payment within thirty (30) days following the end of such thirty-day period. If the Parties are unable to resolve any such disagreement between the Parties within such thirty-day period, the parties shall mediate such disagreement through JAMS/Endispute or other mutually acceptable mediation service. If the parties cannot resolve the disagreement through mediation, the dispute or disagreement shall be resolved through binding arbitration with JAMS/Endispute or other mutually acceptable binding arbitration service.

5.1.3 In the event following any Revenue Calculation Period (a) the City receives additional Project Revenue attributable to a prior Revenue Calculation Period and Owner has already made a Guarantee Payment based on a Revenue Shortfall for such Revenue Calculation Period, or (b) the City is required to refund any Project Revenue to the Hotel operator based on overpayment of TOT for a prior Revenue Calculation Period, or (c) the City is notified by the Hotel operator or the State Board of Equalization that there was an overpayment of Project Revenue (TOT or sales tax) for a prior Revenue Calculation Period and that a credit or offset has been taken in a subsequent Revenue Calculation Period; then in any such circumstance, the City shall recalculate Project Revenue for the applicable Revenue Calculation Period taking into account such additional revenue, refund and/or credit/offset promptly after receipt of information that a recalculation is required. To the extent there has been an overpayment by Owner of a Guarantee Payment, City shall promptly refund to the Owner the overpayment. To the extent there has been an underpayment by Owner of a Guarantee Payment, Owner shall pay to City the amount underpaid within forty five (45) days after Owner receives the notice of recalculation from the City.

5.1.4 Owner shall have the right to request that City audit/inspect the records of the Hotel operator to ensure the City is receiving the proper amount of TOT from the Hotel operations but not more frequently than once every three years. Any such audit or inspection performed at Owner's request shall be performed at Owner's cost and expense.

5.1.5 Owner's obligation to make any Guarantee Payments to the City shall terminate if (a) the term of this Agreement expires or this Agreement is earlier terminated; or (b) Owner delivers to the City written notice that Owner has relinquished Owner's all rights to construct the office buildings included in the Constitution Phase; in either case prior to the Commencement of Construction of any office buildings included in the Constitution Phase ("Guarantee Payment Termination"). Any such termination of Owner's obligation to make Guarantee Payments shall be effective with respect to the Revenue Calculation Period in which the event described in the foregoing clause (a) or clause (b) shall occur and with respect to all subsequent calendar years in the Guarantee Payment Period.

5.1.6 In the event Owner commences construction of the Constitution Phase, the obligation to make Guarantee Payments shall survive the termination or expiration of this Agreement and shall continue for the full term of the Guarantee Payment Period. The Guarantee Payments shall be the obligation of the Owner and the owners of any and all parcels within the Project.

5.1.7 If Owner fails to make to the City any Guarantee Payment required to be made by Owner within the time period for payment provided for in Section 5.1.2 of this Agreement, any such late payment shall be subject to a late payment penalty of five percent (5%) of the late payment, and if not received within an additional thirty (30) days shall be subject to interest at the prime rate of interest as reported in the Wall Street Journal plus 3%. In addition, such failure by Owner shall be subject to the provisions of Section 7 of this Agreement.

5.2 Capital Improvements. Owner shall make capital improvements to certain areas of the City in the amount of up to One Million Two Hundred Fifty Thousand Dollars (\$1,250,000) in accordance with the provisions of this Section 5.2.

5.2.1 The capital improvements to be paid for and caused to be constructed by Owner, and the areas of the City to which such capital improvements are to be made, shall be determined by the City Council through a City public outreach process; provided, however, that such capital improvements

shall be allocated between the Belle Haven neighborhood (not less than \$750,000) and Bedwell Bayfront Park or other city-wide recreational improvements (approximately \$500,000), at the reasonable discretion of the City Council; further provided, that not less than \$350,000 shall be used for projects within Bedwell Bayfront Park and no funds expended at Bedwell Bayfront Park shall be used for development of active recreational uses such as golf activities or sports fields. The City shall commence such public outreach process upon Owner's submission of an application for a building permit for the first office building in the Independence Phase, and the City shall complete such public outreach process and identify for Owner in writing the specific capital improvements to be made by Owner within six months of receipt of such building permit application.

5.2.2 Provided that the City shall complete its public outreach process and identify the specific capital improvements to be made by Owner as provided in Section 5.2.1 above, Owner shall pay for and cause the construction of such capital improvements to be completed prior to the date of the City's final building inspection of the first office building in the Independence Phase. If the City delays its identification of specific capital improvements beyond six months, or if permits or approvals are required from outside agencies and such permits or approvals delay issuance of permits or completion of construction, then Owner shall have such additional time to complete such capital improvements as may be reasonably necessary resulting from such delays beyond Owner's reasonable control. Notwithstanding anything to the contrary contained in this Section 5.2, in no event shall Owner be obligated to pay or incur costs of constructing such capital improvements in excess of One Million Two Hundred Fifty Thousand Dollars (\$1,250,000); provided, however, that such \$1,250,000 maximum amount shall be adjusted by the increase in the Consumer Price Index for All Items for All Urban Consumers for the SF-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 City's determination as to which capital improvements shall be constructed by Owner. The amount of Owner's financial obligation set forth in this Section 5.2 shall be calculated as of the date Owner commences construction of such improvements.

5.2.3 Owner shall coordinate design of the capital improvements with the City and shall provide detailed plans and specifications for construction of the improvements to the City for final review and approval of the City Manager or designee.

5.2.4 Owner's cost of constructing the improvements in determining the \$1,250,000 limit shall include only the actual costs of design, construction and permits. The cost of design shall not exceed 15% of the actual construction costs. Other indirect costs such as overhead, management fees, or similar costs shall not count towards the \$1,250,000 limit. Owner shall provide to City copies of paid invoices for actual costs incurred.

5.2.5 Owner's obligation to make capital improvements pursuant to this Section 5.2 shall terminate in the event of a Guarantee Payment Termination and effective as of the effective date of such Guarantee Payment Termination.

5.3 Off-Site Landscaping Improvements. Owner shall pay for and cause to be constructed off-site landscaping improvements, which may include pedestrian/bicycle pathways, hardscape, and other architectural and landscape features in addition to plantings, in certain areas surrounding the Property in an amount not to exceed Five Hundred Thousand Dollars (\$500,000) in accordance with the provisions in this section 5.3. The purpose of the off-site landscaping improvements is to improve the aesthetic, architectural, circulatory, and biological/habitat/species connections with the surrounding area, taking into account the signature location of the Property, the context of the Property relative to the adjacent Bedwell Bayfront Park and wildlife refuge and future land uses in the Haven Avenue area, and the site's potential to serve as a "gateway" to the City.

5.3.1 The landscaping improvements to be paid for and constructed by Owner shall be determined by the City and Owner through a public planning process managed by Owner; provided, however, that such landscaping improvements shall be limited to the southeast quadrant of the Marsh/101

interchange's CalTrans right-of-way area, Marsh Road from the 101 interchange to the Marsh/Bayfront Expressway intersection, the Marsh/Bayfront Expressway intersection, the entrance to Bedwell Bayfront Park and along the north side of Bayfront Expressway directly across from the Project, and the Chrysler/Bayfront Expressway intersection. Owner shall commence such public planning process within six (6) months of the effective date of Project approval and shall use diligent good faith efforts to complete such planning process within one year of starting the process.

5.3.2 Provided that the Owner and City shall complete its public planning process and identify specific landscaping improvements to be made by Owner as provided in Section 5.3.1 above, Owner shall pay for and cause the construction of such landscaping improvements to be completed in two phases: 1) prior to the date of the City's final building inspection of the first office building in the Independence Phase landscaping improvements shall be completed for the entrance of Bedwell Bayfront Park and within the Highway 101 right of way along the western periphery of the Independence Site; and 2) prior to the date of the City's final building inspection of the first office building in the Constitution Phase, landscaping improvements shall be completed for the southeast quadrant of the Marsh/101 interchange right-of-way area, the project side of Marsh Road from the 101 interchange to the Marsh/Bayfront Expressway intersection, the Marsh/Bayfront Expressway intersection, along the Bay Trail across from the Project, and the Chrysler/Bayfront Expressway intersection.

5.3.3 If permits or approvals are required from outside agencies and such permits or approvals delay issuance of permits or completion of construction, then Owner shall have such additional time to complete such capital improvements as may be reasonably necessary resulting from such delays beyond Owner's reasonable control. Owner shall work diligently and in good faith with the City to obtain the necessary permits or approvals from outside agencies; however, if such permits or approvals from outside agencies are rejected for reasons beyond Owner's reasonable control, then Owner shall not be obligated to complete that particular landscaping improvement and the parties shall work together to determine alternate or substitute improvements. Notwithstanding anything to the contrary contained in this Section 5.3, in no event shall Owner be obligated to pay or incur costs of constructing such landscaping improvements in excess of Five Hundred Thousand Dollars (\$500,000); provided, however, that such \$500,000 maximum amount shall be adjusted by the increase in the Consumer Price Index for All Items for All Urban Consumers for the SF-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 Owner's completion of the public planning process and submittal of construction documents by Owner. The amount of Owner's financial obligation set forth in this Section 5.3 shall be calculated as of the date Owner commences construction of each phase of such improvements.

5.3.4 Owner shall coordinate the planning and design of the off-site landscaping improvements with the City and shall provide detailed plans and specifications for construction of the improvements to the City for final review and approval of the City Manager or designee.

5.3.5 Owner's cost of constructing the off-site landscaping improvements in determining the \$500,000 limit shall include only the actual costs of design, construction and permits. The cost of planning, design and construction documents shall not exceed 20% of the actual construction costs. Other indirect costs such as overhead, management fees, or similar costs shall not count towards the \$500,000 limit. Owner shall provide to City copies of paid invoices for actual costs incurred.

5.3.6 Owner's obligation to make off-site landscaping improvements pursuant to this Section 5.3 shall terminate in the event of a Guarantee Payment Termination and effective as of the effective date of such Guarantee Payment Termination.

5.3.7 Upon completion of the off-site landscaping improvements, Owner shall be responsible for maintaining the landscaping improvements contiguous to the Property and not separated from the Property by any street, roadway or freeway on-ramp. City shall be responsible for maintaining the

landscaping improvements that are not contiguous to the Property and that are separated from the Property by any street, roadway or freeway on-ramp.

5.4 TOT Amount. As of the date of this Agreement, the City imposes the TOT on applicable hotel room rents and other receipts at the rate of ten percent (10%). Owner hereby agrees that, during the term of this Agreement and for so long as the Hotel is operating, the 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 City Wide increase in the rate of the TOT, Owner’s obligation to collect and pay the 1% increase in TOT provided for in this Section 5.4 shall continue in effect following the City’s adoption of a City Wide increase in the rate of the TOT. Owner’s obligation to collect and pay the additional 1% TOT pursuant to this Section 5.4 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 survive the expiration of this Agreement and 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. The provisions of this Section 5.4 shall be included in the Conditional Development Permit.

5.5 Priority Hiring Program. Owner shall create a priority-hiring program that will use JobTrain, or a comparable program selected by Owner if JobTrain is not able to operate such program, as the first source for referral of qualified applicants for entry-level job openings related to both the Hotel and office uses, as well as construction positions. This program shall offer first priority job postings to Menlo Park residents and graduates of applicable JobTrain training programs. Owner and JobTrain shall coordinate and provide periodic reports to the City as to the program’s progress.

5.6 LEED Certifications. Owner shall use diligent, good faith efforts to cause (a) the Hotel to qualify for the “LEED Silver Certification”, in accordance with the standards for such certification promulgated by the U.S. Green Building Council as of the registration of the Project with the Building Council in 2009 (LEED NC v2.2), and (b) the office buildings included in the Project to qualify for the “LEED Gold Certification”, in accordance with the standards for such certification promulgated by the U.S. Green Building Council as of the registration of the Project with the Building Council in 2009 (LEED NC v2.2). Such diligent, good faith efforts shall include demonstrating to the City’s Building Official that the buildings have been designed to comply with such LEED standards. Owner shall submit each application for such LEED certification following Owner’s Completion of Construction of the Hotel or the applicable office building and shall use diligent, good faith efforts to obtain such LEED certifications, providing City with evidence of such applications and efforts to achieve such certifications. 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.

5.7 Vehicle Trip Reduction. Owner shall cause to be implemented with respect to the Project such mitigation measures as shall be necessary in order to cause Net New Vehicle Trips (as defined in Final EIR) for the Project to be reduced from 11,113 Net New Vehicle Trips to 9,242 Net New Vehicle Trips (“Trip Reduction”). Such Trip Reduction shall be phased in if the Project is developed in phases and shall be modified if either the Hotel is replaced with a different hotel product and/or the land use entitlements for one or both of the office buildings on the Constitution expire or are terminated. Reference is made to the FEIR, the MMRP and the Conditional Development Permit for specific details of the vehicle trip reduction measures and enforcement provisions which are incorporated herein by this reference. The terms and provisions of this Section 5.7 shall survive the expiration of the Development Agreement.

5.8 GHG Emissions Reductions. Owner shall cause the GHG emissions associated with electrical and natural gas energy consumption for any and all buildings included in the Project, as well as calculated energy emissions from the Project's water consumption (distribution and treatment), to be fully offset. The offsets for the electrical and natural gas consumption shall be accomplished through participation in PG&E's ClimateSmart program, either by Owner or by Owner's tenants (provided however, Owner shall be responsible for compliance with this condition, including participation in the offset program and all reporting). In the event such ClimateSmart program is discontinued or becomes financially burdensome on the Project, Owner may propose substitution of a comparable GHG offset program selected by Owner, subject to the City Manager's reasonable approval for the Project. The offsets for the Project's water consumption shall be accomplished through Owner contracting with PG&E in its ClimateSmart program or a comparable GHG offset program selected by Owner, subject to the City Manager's reasonable approval. A comparable program is one that utilizes independently verified GHG reduction projects, with all projects certified using accepted protocols, such as those of the Climate Action Registry. Owner may reduce the total number of metric tons to be offset through installation of renewables (e.g. photovoltaic) within the Project, and GHG emissions associated with potable water use may be partially offset by the use of publicly supplied reclaimed water. All parcels/buildings within the Project shall be enrolled in the same GHG offset program. The terms provisions of this Section 5.8 shall survive the expiration or termination of the Development Agreement and shall be incorporated into the Conditional Development Permit. Owner shall provide City with an annual report and documentation demonstrating compliance with this Section 5.8, which report and documentation shall be provided by the City to the City's Environmental Quality Commission or otherwise be made available for public review.

5.9 Parking Structures. Owner shall engage in a design development process with City staff to improve the aesthetics of the parking structures on Constitution and the parking structure on Independence. This design review process shall extend only to the overall exterior design of the structures, while the size, location, configuration, height, massing, circulation and number of parking spaces shall remain in substantial compliance with the approved plans and the Project Approvals. Owner agrees to implement any modifications to improve the aesthetics of the structures resulting from such design review process, provided the cost of such modifications for each parking structure shall not exceed 10% of the original construction cost for the exterior finish, including design features and architectural elements, for such parking structure.

5.10 Utility Undergrounding. Owner agrees to work collaboratively with and support City efforts to underground existing electric transmission lines located on the Constitution Site. The City intends to pursue future land use planning studies in the Haven Avenue area, which may include utility undergrounding. If the Constitution Site is included as part of a future undergrounding plan prior to Owner's submittal for a building permit for the Constitution Site, the Owner agrees to work with the City to explore ways of enhancing the site layout for the proposed Project as long as there is no loss of square footage, no delay of Project construction and no significant increase in the estimated cost of construction. Owner agrees to support the undergrounding of utility lines from its Property as long as costs for undergrounding are borne by others. Nothing in this Agreement creates any obligation for the City to provide funding for utility undergrounding.

5.11 School District Boundaries. In the event the City, one or more property owners, or the Ravenswood School District initiates an effort to reorganize school district boundaries so that the Project site is transferred from the Redwood City Elementary School District to the Ravenswood School District, Owner agrees to cooperate with any such future effort by City or others, but Owner shall not be required to initiate or fund such an effort.

5.12 Construction Sales Taxes. For all construction work performed as part of the Project, Owner agrees to make diligent good faith efforts to include a provision in all construction contracts with all qualifying contractors, subcontractors and material suppliers, requiring such contractors, subcontractors and material suppliers holding reseller's permits to obtain a sub-permit from the California State Board of Equalization to book and record construction materials purchases/sales as sales originating within the City of

Menlo Park. Upon the request of the City Manager, Owner shall make available copies of such contracts or other documentation demonstrating compliance with these requirements.

5.13 Housing Sites. Owner shall actively participate in a citizen advisory committee to assist the City in identifying future housing sites within the City when the City updates the Housing Element of the General Plan if the City decides to create such a committee. Such participation shall include utilizing its contacts within the commercial brokerage community to assist the City's efforts as well as such other expertise as may be reasonable in assisting the City to locate and identify land that may be available for housing sites.

5.14 Fire Impact Fee Study/Fire Impact Fee/Traffic Signal Priority System. The City Manager shall have the discretion to require Owner to pay up to \$25,000 to the City upon not less than thirty (30) days prior written notice following the Effective Date 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, Owner shall coordinate with the City and the 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), or (b) an advance against any fire impact fee imposed on the Project. Any sums paid to the City or the District for the fire impact fee study and/or the installation of traffic signal priority systems paid pursuant to the terms of this Section 5.14 shall be credited against any fire impact fee imposed on the Project. The maximum amount to be paid by Owner shall be adjusted by the increase in the Consumer Price Index for All Items for All Urban Consumers for the SF-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.

6. Indemnity. Owner shall indemnify, defend and hold harmless City, and its elective and appointive boards, commissions, officers, agents, and employees (collectively, "Indemnified Parties") from any and all claims, causes of action, damages, costs or expenses (including reasonable attorneys' fees) arising out of or in connection with, or caused on account of, the development of the Project, any Approval with respect thereto, or claims for injury or death to persons, or damage to property, as a result of the operations of Owner or its employees, agents, contractors or representatives with respect to the Project (collectively, "Claims"); provided, however, that Owner shall have no liability under this Section 6 for Claims arising from the gross negligence or willful misconduct of any Indemnified Party, or for Claims arising from, or alleged to arise from, the repair or maintenance by the City of any improvements that have been offered for dedication by Owner and accepted by the City.

7. Periodic Review for Compliance.

7.1 Annual Review. The City shall, at least every twelve (12) months during the term of this Agreement, review the extent of Owner's good faith compliance with the terms of this Agreement pursuant to Government Code § 65865.1 and Resolution No. 4159. Notice of such annual review shall be provided by the Director to Owner not less than thirty (30) days prior to the date of the hearing by the Planning Commission on Owner's good faith compliance with this Agreement and shall to the extent required by law include the statement that any review may result in amendment or termination of this Agreement. A finding by City of good faith compliance by Owner with the terms of Agreement shall conclusively determine the issue up to and including the date of such review.

7.2 Non-Compliance. If the City Council makes a finding that Owner has not complied in good faith with the terms and conditions of this Agreement, the City shall provide written notice to Owner describing (a) such failure and that such failure constitutes a Default, (b) the actions, if any, required by Owner to cure such Default, and (c) the time period within which such Default must be cured. If the Default can be cured, Owner shall have at a minimum thirty (30) days after the date of such notice to cure such

Default, or in the event that such Default cannot be cured within such thirty (30) day period, if Owner shall commence within such thirty (30) day time period the actions necessary to cure such Default and shall be diligently proceeding to complete such actions necessary to cure such Default, Owner shall have such additional time period as may be required by Owner within which to cure such Default. If the Default is not cured as provided above, as determined by City during periodic or special review, the City Council may modify or terminate this Agreement as provided in Sections 7.4 and 7.5 of this Agreement.

7.3 Failure to Cure Default. If Owner fails to cure a Default within the time periods set forth above, the City Council may modify or terminate this Agreement as provided below.

7.4 Proceeding Upon Modification or Termination. If, upon a finding under Section 7.2 of this Agreement and the expiration of the cure period specified in such Section 7.2, the City determines to proceed with modification or termination of this Agreement, the City shall give written notice to Owner of its intention so to do. The notice shall be given at least thirty (30) days before the scheduled hearing and shall contain:

7.4.1 The time and place of the hearing;

7.4.2 A statement as to whether or not the City proposes to terminate or to modify the Agreement; and

7.4.3 Such other information as is reasonably necessary to inform Owner of the nature of the proceeding.

7.5 Hearings on Modification or Termination. At the time and place set for the hearing on modification or termination, Owner shall be given an opportunity to be heard, and Owner shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. If the City Council finds, based upon substantial evidence, that Owner has not complied in good faith with the terms or conditions of this Agreement, the City Council may terminate this Agreement or modify this Agreement and impose such conditions as are reasonably necessary to protect the interests of the City. The decision of the City Council shall be final, subject to judicial review pursuant to Section 1094.5 of the California Code of Civil Procedure.

7.6 Effect on Transferees. If Owner has transferred title to a portion of the Property to another party so that portions of the Property are held by different Parties, the annual review of performance under this Agreement shall be conducted separately with respect to each such Party to the extent the issues subject to review relate to only a portion of the Property owned by such Party, and the Planning Commission and/or the City Council shall make its determinations and take its action as authorized and required separately with respect to each such Party, but only to the extent the issues subject to review relate only to the portion of the Property owned by such Party. If the issues subject to review apply to all portions of the Project and/or to all Parties owning portions of the Property, the City may conduct one annual review applicable to all Parties and the entirety of the Property. If the City Council terminates or modifies this Agreement based upon any such annual review and the determination that a Party has not complied in good faith with the terms and conditions of this Agreement, such action shall be taken only as to the Party for whom such determination is made (if made with respect to only one Party) and the portion of the Property to which such Party holds title (if made with respect to only a portion of the Property); this Agreement shall not be terminated or modified as to the other Party and the portion of the Property to which the other Party holds title, unless the issues subject to review apply to all portions of the Project and/or to all Parties owning portions of the Property.

8. Permitted Delays; Subsequent Laws.

8.1 Extension of Times of Performance. In addition to any specific provisions of this Agreement, performance by either Party of its obligations under this Agreement shall not be deemed to be in

Default, and the time for performance of such obligation shall be extended, where delays or failures to perform are due to war, insurrection, strikes, lockouts, riots, floods, earthquakes, fire, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, restrictions imposed by governmental or quasi-governmental entities other than the City, unusually severe weather, acts of the other Party, acts or the failure to act of any public or governmental agency or entity (except that acts or the failure to act of the City shall not excuse the City's performance), or any other causes beyond the reasonable control, or without the fault, of the Party claiming an extension of time to perform. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause of the delay. If a delay occurs, the Party asserting the delay shall use reasonable efforts to notify promptly the other Party of the delay. If, however, notice by the Party claiming such extension is sent to the other Party more than thirty (30) days after the commencement of the cause of the delay, the period shall commence to run as of only thirty (30) days prior to the giving of such notice. The time period for performance under this Agreement may also be extended in writing by the joint agreement of the City and Owner. Litigation attacking the validity of this Agreement, or any permit, ordinance, entitlement or other action of a governmental agency necessary for the development of the Property pursuant to this Agreement, shall also be deemed to create an excusable delay under this Section 8.1, but only to the extent such litigation causes a delay and the Party asserting the delay complies with the notice and other provisions regarding delay set forth hereinabove. In no event shall the term of this Agreement be extended by any such delay without the mutual written agreement of the City and Owner.

8.2 Additional Extensions. Without limiting any of the provisions of Section 8.1 of this Agreement, if Owner is using diligent efforts to (a) obtain any Approval required for Owner's construction and development of the Project, or any portion thereof, including without limitation, any building permit or other Approval required by Owner in order to satisfy any condition to extend the term of this Agreement under Section 2.2 of this Agreement, or (b) perform any other obligation of Owner under this Agreement, the City Manager or his/her designee shall have the right to extend the date by which Owner is required to have taken action based upon such Approval, and/or the period of time within which Owner is to have performed such obligation, for a reasonable period of time not to exceed one hundred eighty (180) days. If the City Manager or his/her designee shall grant any such extension that affects a condition to extension of the term of this Agreement under Section 2.2 of this Agreement, the date or dates by which a condition is to be satisfied as set forth in such Section 2.2 shall be appropriately extended.

8.3 Superseded by Subsequent Laws. If any Law made or enacted after the date of this Agreement prevents or precludes compliance with one or more provisions of this Agreement, then the provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with such new Law. Immediately after enactment of any such new Law, the Parties shall meet and confer reasonably and in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. If such modification or suspension is infeasible in Owner's reasonable business judgment, then Owner shall have the right to terminate this Agreement by written notice to the City. Owner shall also have the right to challenge the new Law preventing compliance with the terms of this Agreement, and in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect.

9. Termination.

9.1 City's Right to Terminate. The City shall have the right to terminate this Agreement only under the following circumstance:

9.1.1 The City Council has determined that Owner is not in good faith compliance with the terms of this Agreement, and this Default remains uncured, all as set forth in Section 7 of this Agreement.

9.2 Owner's Right to Terminate. Owner shall have the right to terminate this Agreement only under the following circumstances:

9.2.1 Owner has determined that the City is in Default, has given the City notice of such Default and the City has not cured such Default within thirty (30) days following receipt of such notice , or if the Default cannot reasonably be cured within such thirty (30) day period, the City has not commenced to cure such Default within thirty (30) days following receipt of such notice and is not diligently proceeding to cure such Default.

9.2.2 Owner is unable to complete the Project because of supersedure by a subsequent Law or court action, as set forth in Sections 8.3 and 14 of this Agreement.

9.2.3 Owner determines, in its business judgment, that it is not practical, reasonable or economically advantageous to pursue development of the Property, giving due consideration to, without limitation, the financial risks inherent in the development and financing of real property.

9.3 Mutual Agreement. This Agreement may be terminated upon the mutual written agreement of the Parties.

9.4 Effect of Termination.

9.4.1 If this Agreement is terminated by the City pursuant to Section 9.1 of this Agreement, such termination shall not affect any condition or obligation due to the City from Owner and arising prior to the date of termination, and such termination shall result in the expiration or termination of the Project Approvals, including but not limited to the Conditional Development Permit, and this Development Agreement, but specifically excluding provisions of this Agreement that survive termination or expiration of the Agreement. Notwithstanding the foregoing, the Project Approvals shall not terminate as to any portions of the Project for which Commencement of Construction shall have occurred, prior to the effective date of such termination; and in such case any City entitlement or approval with respect to the portion of the Property that has been granted prior to the effective date of such termination shall remain in effect with respect only to portions of the Project for which Commencement of Construction shall have occurred.

9.4.2 (a) If this Agreement is terminated for any of the following reasons prior to Commencement of Construction of any portions of the Project, Owner shall have no obligations to the City arising or accruing from and after the effective date of such termination with respect to portions of the Project for which Commencement of Construction has not occurred (including, without limitation, no obligation to pay to the City any Guarantee Payments with respect to the period of time from and after the effective date of such termination), and this Development Agreement and the Project Approvals shall terminate as to such portions of the Project for which Commencement of Construction has not occurred, but specifically excluding provisions of this Agreement that survive termination or expiration of the Agreement:

(1) City's failure to cure any Default of the City under this Agreement as set forth in Section 9.2.1 of this Agreement;

(2) Owner's termination because of supersedure by a subsequent Law, as set forth in Section 9.2.2 of this Agreement; or

(3) Owner's decision not to pursue development of the Property, as set forth in Section 9.2.3 of this Agreement.

(b) If this Agreement is terminated for the following reason, Owner shall have no obligations to the City arising and accruing from and after the effective date of such termination as to portions of the Project for which Commencement of Construction has not occurred and for which Project Approvals are forfeited, and this Development Agreement and the Project Approvals shall terminate as to such portions of the Project for which Commencement of Construction has not occurred, but specifically excluding provisions of this Agreement that survive termination or expiration of the Agreement.

(1) Owner's failure to cure a Default of Owner, as set forth in Section 9.1.1 of this Agreement.

9.5 Recordation of Termination. In the event of a termination, the City and Owner agree to cooperate with each other in executing and acknowledging a Memorandum of Termination to record in the Official Records of San Mateo County within thirty (30) days following the effective date of such termination.

10. Remedies. Either Party may, in addition to any other rights or remedies provided for in this Agreement or otherwise available at law or equity, institute a legal action to cure, correct or remedy any Default by the other Party; enforce any covenant or agreement of a Party under this Agreement; enjoin any threatened or attempted violation of this Agreement; or enforce by specific performance the obligations and rights of the Parties under this Agreement.

11. Waiver; Remedies Cumulative. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future. No waiver by a Party of a Default shall be effective or binding upon such Party unless made in writing by such Party, and no such waiver shall be implied from any omission by a Party to take any action with respect to such Default. No express written waiver of any Default shall affect any other Default, or cover any other period of time, other than any Default and/or period of time specified in such express waiver. All of the remedies permitted or available to a Party under this Agreement, or at law or in equity, shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

12. Attorneys' Fees. If either Party brings an action or proceeding (including, without limitation, any cross-complaint, counterclaim, or third-party claim) against the other Party by reason of a Default, or otherwise to enforce rights or obligations arising out of this Agreement, the prevailing Party in such action or proceeding shall be entitled to recover from the other Party its costs and expenses of such action or proceeding, including reasonable attorneys' fees and costs, and costs of such action or proceeding, which shall be payable whether or not such action or proceeding is prosecuted to judgment. "Prevailing Party" within the meaning of this Section 12 shall include, without limitation, a Party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of the covenants allegedly breached, or consideration substantially equal to the relief sought in the action.

13. Limitations on Actions. The City and Owner hereby renounce the existence of any third party beneficiary of this Agreement and agree that nothing contained herein shall be construed as giving any other person or entity third party beneficiary status. If any action or proceeding is instituted by any third party challenging the validity of any provisions of this Agreement, or any action or decision taken or made hereunder, the Parties shall cooperate in defending such action or proceeding.

14. Effect of Court Action. If any court action or proceeding is brought by any third party to challenge the Project Approvals, this Agreement, or any other permit or Approval required from the City or any other governmental entity for development or construction of the Project, or any portion thereof, and without regard to whether or not Owner is a party to or real party in interest in such action or proceeding, then (a) Owner shall have the right to terminate this Agreement upon thirty (30) days notice in writing to City, given at any time during the pendency of such action or proceeding, or within ninety (90) days after the final determination therein (including any appeals), irrespective of the nature of such final determination, and (b) any such action or proceeding shall constitute a permitted delay under Section 8 of this Agreement. Owner shall pay the City's cost and expense, including attorneys fees and staff time incurred by the City in defending any such action or participating in the defense of such action and shall indemnify the City from any award of attorneys fees awarded to a party challenging this Agreement, the Project Approvals, or any other permit or Approval. The defense and indemnity provisions of this Section 14 shall survive Owner's election to terminate this Agreement.

15. Estoppel Certificate. Either Party may, at any time, and from time to time, deliver written notice to the other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party, (a) this Agreement is in full force and effect and a binding obligation of the Parties, (b) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments, (c) the requesting Party is not in Default in the performance of its obligations under this Agreement, or if the requesting Party is in Default, the nature and amount of any such Defaults, (d) the requesting Party has been found to be in compliance with this Agreement, and the date of the last determination of such compliance, and (e) as to such other matters concerning this Agreement as the requesting Party shall reasonably request. A Party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof. The City Manager shall have the right to execute any certificate requested by Owner hereunder. The City acknowledges that a certificate may be relied upon by transferees and Mortgagees or Owner.

16. Mortgagee Protection; Certain Rights of Cure.

16.1 Mortgagee Protection. This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof, after the date of recordation of this Agreement in the San Mateo County, California Official Records, including the lien of any Mortgage. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage, and subject to Section 16.2 of this Agreement, all of the terms and conditions contained in this Agreement shall be binding upon and effective against any person (including any Mortgagee) who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise, and the benefits hereof will inure to the benefit of such party.

16.2 Mortgagee Not Obligated. Notwithstanding the provisions of Section 16.1 above, no Mortgagee or other purchaser in foreclosure or grantee under a deed in lieu of foreclosure, and no transferee of such Mortgagee, purchaser or grantee shall (a) have any obligation or duty under this Agreement to construct, or to complete the construction of, improvements, to guarantee such construction or completion or to perform any other monetary or nonmonetary obligations of Owner under this Agreement, and (b) be liable for any Default of Owner under this Agreement; provided, however, that a Mortgagee or any such purchaser, grantee or transferee shall not be entitled to use the Property for any uses, and/or to cause to be constructed on the Property any improvements, other than those uses and improvements provided for or authorized by this Agreement or the Project Approvals and subject to compliance with the terms and provisions of this Agreement.

16.3 Notice of Default to Mortgagee; Right to Mortgagee to Cure. If the City receives notice from a Mortgagee requesting a copy of any notice of Default given Owner hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Owner, any notice of a Default or determination of noncompliance given to Owner. Each Mortgagee shall have the right (but not the obligation) for a period of ninety (90) days after the receipt of such notice from City to cure or remedy, or to commence to cure or remedy, the Default claimed or the areas of noncompliance set forth in the City's notice. If the Default or such noncompliance is of a nature which can only be remedied or cured by such Mortgagee upon obtaining possession of the Property, or any portion thereof, such Mortgagee may seek to obtain possession with diligence and continuity through a receiver, by foreclosure or otherwise, and may thereafter remedy or cure the Default or noncompliance within ninety (90) days after obtaining possession of the Property or such portion thereof. If any such Default or noncompliance cannot, with reasonable diligence, be remedied or cured within such ninety (90) day period, then such Mortgagee shall have such additional time as may be reasonably necessary to remedy or cure such Default or noncompliance if such Mortgagee commences a cure during such ninety (90) day period, and thereafter diligently pursues such cure to completion.

17. Assignment, Transfer, Financing.

17.1 Owner's Right to Assign. Subject to the terms of this Agreement, Owner shall have the right to transfer, sell and/or assign Owner's rights and obligations under this Agreement in conjunction with the transfer, sale or assignment of all or any portion of the Property. Prior to the date on which Owner shall cause Completion of Construction of the Hotel, any such transfer, sale and/or assignment by Owner shall be subject to the City's prior written consent, which consent shall not be unreasonably withheld or delayed. The City may limit its consent to a transfer, sale or assignment to an experienced developer of projects of similar size, type and mix of uses comparable to the Project, or the portion thereof so transferred, sold and/or assigned, with appropriate and sufficient financial resources to complete the Project, or the portion of thereof so transferred, sold and/or assigned ("Qualified Transferee"), subject to approval by the City Manager as set forth in Section 17.2 below. Any failure by Owner to obtain any required consent of the City to a transfer, sale and/or assignment of Owner's rights and obligations under this Agreement shall constitute a Default and shall be subject to cure by Owner in accordance with the provisions of Section 7 of this Agreement. Following Owner's Completion of Construction of the Hotel, Owner shall have the right to transfer, sell and/or assign Owner's rights and obligations under this Agreement to any person or entity acquiring title to or an interest in the Property or any portion thereof ("Transferred Property"), without the City's consent. If the Transferred Property shall consist of a less than the entire Property, or less than Owner's entire title to or interest in the Property, Owner shall have the right to transfer, sell and/or assign to the transferee only those of Owner's rights and obligations under this Agreement that are allocable or attributable to the Transferred Property, subject to approval by the City as set forth in Section 17.2 below. Any transferee of a Transferred Property shall assume in writing the obligations of Owner under this Agreement and the Project Approvals relating to the Transferred Property and arising or accruing from and after the effective date of such transfer, sale or assignment.

17.2 Procedure. The City shall administer the provisions of Section 17.1 through the City Manager, as provided in this Section 17.2.

17.2.1 If the City's consent to a transfer, sale or assignment of Owner's rights and obligations under this Agreement is required under Section 17.1 above, Owner shall notify the City Manager in writing of Owner's request for the City's consent to an assignment, sale or transfer, together with a statement that if the City Manager does not notify Owner in writing within thirty (30) days following receipt of Owner's request that the City desires to consider and act upon the request, the request will be deemed approved. If, within such thirty (30) day period, the City Manager does not so notify the Owner in writing, Owner's request for consent shall be deemed to have been approved, and no further action of the City shall be necessary. If, within such thirty (30) day period, the City Manager notifies Owner that the request will be considered and acted upon by the City Manager, Owner shall furnish such additional information as the City Manager may reasonably request, and the City Manager shall proceed to consider and act upon Owner's request for the City's consent to the proposed assignment, sale or transfer within the later of forty five (45) days following such notification by City to Owner, or the receipt of such additional information from Owner, if additional information is requested. The City Manager shall have the right to request additional information to consider the Owner's request during such 45 day review period. Owner shall promptly provide any additional information reasonably requested by the City Manager. Owner shall pay for all City costs of considering Owner's request and all information submitted for consideration, including but not limited to the costs of consultants retained to consider and advise the City Manager on such request. In the event the City Manager fails to act within the forty-five (45) day period, Owner may give the City notice that such request shall be deemed approved for failure to act on the request if City Manager does not act within ten (10) days. If the City Manager fails to act within ten (10) days of receipt of Owner's notice, the original request shall be deemed approved. If the City Manager disapproves the Owner's request for consent, the City Manager shall provide written notice of disapproval and shall specify the reasons for such disapproval. Owner shall have the right to appeal such disapproval to the City Council.

17.2.2 Notwithstanding the provisions of Section 17.2.1 above, if the Transferred Property shall consist of less than the entire Property, or less than Owner's entire title to or interest in the

Property, and if Owner shall desire to transfer, sell and/or assign to the transferee only those of Owner's rights and obligations under this Agreement that are allocable or attributable to the Transferred Property, then regardless of whether the City's consent to the assignment, sale or transfer of the Transferred Property is otherwise required under Section 17.1 of this Agreement, Owner shall obtain the City's consent to Owner's allocation of Owner's rights and obligations under this Agreement to the Transferred Property, which consent shall not be unreasonably withheld or delayed. The City may limit its consent to the proposed allocation of Owner's rights and obligations based on such factors as the whether such transferee is a Qualified Transferee, whether the proposed allocation is fair and reasonable, whether the obligations to be assigned are segregable between the portions of the Property, whether such allocation is consistent with the terms, provisions and intent of the Development Agreement and the Project Approvals, whether the City is adequately protected or secured in the event of a Default, and any other reasonable factors relating to such allocation of rights and obligations. Owner shall include in its request for the City's consent to a transfer, sale or assignment of the Transferred Property, if such consent is required, or Owner shall separately submit to the City Manager, if such consent is not required, a proposed allocation of the rights and obligations under this Agreement between the Transferred Property and portions of the Project to be retained by Owner. The City Manager shall have thirty (30) days within which to consider and act upon Owner's request. If, within such thirty (30) day period, the City Manager notifies Owner that the request will be considered and acted upon by the City Manager, Owner shall furnish such additional information as the City Manager may reasonably request, and the City Manager shall proceed to consider and act upon Owner's request for the City's consent to the proposed assignment, sale or transfer, and/or to the proposed allocation of Owner's rights and obligations under this Agreement between the Transferred Property and the portions of the Project retained by Owner, within forty five (45) days following such notification by the City to Owner, or the receipt of such additional information by City, if additional information is requested. The City Manager shall have the right to request additional information to consider the Owner's request during such 45 day review period. Owner shall promptly provide any additional information reasonably requested by the City Manager. The City Manager shall clearly indicate in any approval of the proposed assignment, sale or transfer, and/or the proposed allocation of Owner's rights and obligations under this Agreement between the Transferred Property and the portions of the Project retained by Owner, the approved allocation of Owner's rights and obligations under this Agreement between the Transferred Property and the portions of the Project retained by Owner. Owner shall pay for all City costs of considering Owner's request and all information submitted for consideration, including but not limited to the costs of consultants retained to consider and advise the City Manager on such request. In the event the City Manager fails to act within the forty-five (45) day period, thereafter Owner may give the City notice that such request and/or proposed allocation of Owner's rights and obligations shall be deemed approved for failure to act on the request and/or proposal if City Manager does not act within ten (10) days. If the City Manager fails to act within ten (10) days of receipt of Owner's notice, the original request and/or proposal shall be deemed approved. If the City Manager disapproves the Owner's request and/or proposed allocation of Owner's rights and obligations, the City Manager shall provide written notice of disapproval and shall specify the reasons for such disapproval. Owner shall have the right to appeal such disapproval to the City Council.

17.3 Financing. Notwithstanding Section 17.1 of this Agreement, Mortgages, sales and lease-backs and/or other forms of conveyance required for any reasonable method of financing requiring a security arrangement with respect to the development of the Property are permitted without the consent of the City, provided that Owner retains the legal or equitable interest in the Property and remains fully responsible hereunder. Further, no foreclosure, conveyance in lieu of foreclosure or other conveyance or transfer in satisfaction of indebtedness made in connection with any such financing shall require any further consent of the City, regardless of when such conveyance is made, and no such transferee will be required to assume any obligations of Owner under this Agreement.

17.4 Permitted Transfers. Notwithstanding Section 17.1 of this Agreement, no provision of this Agreement shall prevent, restrict or limit in any manner Owner's right to sell, transfer or assign the Property, or any portion thereof or any interest therein, to any other person or entity, and the provisions of Section 17.1 of this Agreement shall apply only to Owner's right to sell, transfer and/or assign its rights and obligations under this Agreement. In addition, notwithstanding Section 17.1 of this Agreement, Owner has the

right at any time to transfer, sell and/or assign any of its rights and obligations under this Agreement to a Permitted Transferee (as defined in this Agreement). For the purposes of this Agreement, the term "Permitted Transferee" shall mean any of the following persons or entities: (a) any corporation, general partnership, limited partnership, limited liability company or other entity controlling, controlled by or under common control with Owner; (b) any person or entity acquiring all, or substantially all, of the assets of Owner; (c) any person or entity resulting from a merger, consolidation or reorganization of Owner; or (d) any Mortgagee or other transferee described in Section 16.2 of this Agreement. Notwithstanding the provisions of this Section 17.4, in the case of a transfer, sale or assignment to a Permitted Transferee described in the foregoing clauses (a), (b) and/or (c), Owner shall not be released from liability under this Agreement except as otherwise provided in Section 17.5 of this Agreement. For the purposes of this Agreement, the term "control" means the possession, directly or indirectly, of the power to cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract, by family relationship or otherwise.

17.5 Release Upon Transfer of Property.

17.5.1 Except as otherwise provided in Section 17.5.2 below, upon Owner's sale, transfer and/or assignment of Owner's rights and obligations under this Agreement in accordance with this Section 17, Owner shall be released from Owner's obligations pursuant to this Agreement with respect to the Transferred Property which arise or accrue subsequent to the effective date of the transfer, sale and/or assignment. If a Default under this Agreement shall occur with respect to Owner, such Default shall not constitute a Default with respect to the owner of any Transferred Property, and shall not entitle the City to terminate or modify this Agreement as to the Transferred Property; and if a Default under this Agreement shall occur with respect to the owner of a Transferred Property, such Default shall not constitute a Default with respect to Owner or with respect to the portion of the Property owned by Owner, and shall not entitle the City to terminate or modify this Agreement as to the portion of the Property owned by Owner.

17.5.2 Notwithstanding the provisions of Section 17.5.1 above, if a Transferred Property shall consist of less than the entire Property, or less than Owner's entire title to or interest in the Property, and if Owner shall allocate a portion of Owner's rights and obligations under this Agreement to the Transferred Property pursuant to Section 17.2.2 of this Agreement, Owner shall not be released from Owner's obligations pursuant to this Agreement with respect to the Transferred Property which arise or accrue subsequent to the effective date of the transfer, sale and/or assignment unless the City agrees to such release in connection with the procedure provided for in Section 17.2.2 of this Agreement. In addition, notwithstanding the provisions of Section 17.5.1 above, if the transfer, sale and/or assignment is to a Permitted Transferee (other than a Permitted Transferee described in Section 17.4(d)), Owner shall not be released from Owner's obligations under this Agreement unless such Permitted Transferee as a Qualified Transferee and the allocation of rights and obligations, if any, have been approved in accordance with the procedure set forth in Section 17.2 above. In addition, in no event shall the Owner be released from Owner's obligations under Section 5.1 of this Agreement unless the City shall agree to such release in writing.

17.5.3 Owner shall have the right to propose to the City alternative or substitute security for any of Owner's monetary obligations under this Agreement, including Owner's obligations to make Guarantee Payments pursuant to Section 5.1 of this Agreement, and including Owner's monetary obligations with respect to Trip Reductions under Section 5.7 of this Agreement. Such alternative or substitute security may consist of, without limitation, a letter of credit, a cash deposit and/or real property or personal property collateral acceptable to City. If the City shall determine to accept any such alternative or substitute security, the monetary obligations of Owner for which such alternative or substitute security shall have been provided shall no longer constitute a covenant running with the land or otherwise be binding upon any owner of any portion of the Property, and shall instead be the personal obligation of Owner but with the City's recourse with respect to such monetary obligation limited to the alternative or substitute security. Owner shall pay for all City costs of considering Owner's request for City's acceptance of such alternative or substitute security, including but not limited to cost of consultants retained to consider and advise the City Manager or City Council on such request.

18. Covenants Run With the Land. All of the provisions, agreements, rights, powers, standards, terms, covenants, and obligations contained in this Agreement shall constitute covenants that shall run with the land comprising the Property, and the burdens and benefits of this Agreement shall be binding upon, and shall inure to the benefit of, each of the Parties and their respective heirs, successors, assignees, devisees, administrators, representatives and lessees, except as otherwise expressly provided in this Agreement.

19. Amendment.

19.1 Amendment or Cancellation. Except as otherwise provided in this Agreement, this Agreement may be cancelled, modified or amended only by mutual consent of the Parties in writing, and then only in the manner provided for in Government Code Section 65868 and Article 7 of Resolution No. 4159. Any amendment to this Agreement which does not relate to the term of this Agreement, the Vested Elements or the Conditions relating to the Project shall require the giving of notice pursuant to Government Code Section 65867, as specified by Section 65868 thereof, but shall not require a public hearing before the Parties may make such amendment.

19.2 Recordation. Any amendment, termination or cancellation of this Agreement shall be recorded by the City Clerk not later than ten (10) days after the effective date thereof or of the action effecting such amendment, termination or cancellation; provided, however, a failure of the City Clerk to record such amendment, termination or cancellation shall not affect the validity of such matter.

19.3 Amendment Exemptions. The following actions shall not require an amendment to this Agreement:

19.3.1 The subdivision of the Property, and/or the recordation of a lot line adjustment, parcel map or subdivision map that subdivides the Property into two or more legal parcels. Owner shall have the right to subdivide the Property in accordance with the laws regarding subdivision in effect in the City at the time Owner applies for any subdivision, provided any subdivision is consistent with the Project Approvals.

19.3.2 Further architectural review of specific aspects of the Project, provided any such architectural modifications are substantially consistent with the Project Approvals.

19.3.3 Any change or modification that Owner proposes to make to the Project or to this Agreement that constitutes a Substantially Consistent Modification. The City Manager shall have the right to determine and approve any Substantially Consistent Modification.

20. Notices.

20.1 Procedure. Any notice to either Party shall be in writing and given by delivering the notice in person or by sending the notice by registered or certified mail, or express mail, return receipt requested, with postage prepaid, or by overnight courier to the Party's mailing address. The respective mailing addresses of the Parties are, until changed as hereinafter provided, the following:

City: City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025
Attention: City Manager

With a

copy to: City Attorney
City of Menlo Park
1100 Alma Street, Suite 210
Menlo Park, CA 94025

Owner: Bohannon Development Company
60 31st Avenue
San Mateo, CA 94403
Attention: President

With a
copy to: Luce, Forward, Hamilton & Scripps LLP
121 Spear Street, Suite 200
San Francisco, CA 94105
Attention: Timothy A. Tosta, Esq.

Either Party may change its mailing address at any time by giving to the other Party ten (10) days notice of such change in the manner provided for in this section. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

21. Miscellaneous.

21.1 Negation of Partnership. The Parties specifically acknowledge that the Project is a private development, that neither Party is acting as the agent of the other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in the businesses of Owner, the affairs of the City, or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise.

21.2 Consents. Unless otherwise provided herein, whenever approval, consent or satisfaction (herein collectively referred to as an "approval") is required of a Party pursuant to this Agreement, such approval shall not be unreasonably withheld or delayed. If a Party shall not approve, the reasons therefore shall be stated in reasonable detail in writing. The approval by a Party to or of any act or request by the other Party shall not be deemed to waive or render unnecessary approval to or of any similar or subsequent acts or requests.

21.3 Project Approvals Independent. All Approvals which may be granted pursuant to this Agreement, and all Approvals or other land use approvals which have been or may be issued or granted by the City with respect to the Property, constitute independent actions and approvals by the City. If any provisions of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, or if the City terminates this Agreement for any reason, such invalidity, unenforceability or termination of this Agreement or any part hereof shall not affect the validity or effectiveness of any Approvals or other land use approvals; provided, however as to portions of the Project for which Commencement of Construction has not occurred, all such Approvals shall terminate upon termination or expiration of this Agreement. In such cases where this Development

21.4 Not A Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of the Property, or of the Project, or portion thereof, to the general public, for the general public, or for any public use or purpose whatsoever. Owner shall have the right to prevent or prohibit the use of the Property or the Project, or any portion thereof, including common areas and buildings and improvements located thereon, by any person for any purposes inimical to the operation of a private, integrated Project as contemplated by this Agreement, except as dedications may otherwise be specifically provided in the Project Approvals.

21.5 Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other person or circumstance and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

21.6 Exhibits. The Exhibits referred to herein are deemed incorporated into this Agreement in their entirety.

21.7 Entire Agreement. This written Agreement contains all the representations and the entire agreement between the Parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement.

21.8 Construction of Agreement. The provisions of this Agreement shall be construed as a whole according to their common meaning and not strictly for or against any Party in order to achieve the objectives and purpose of the Parties. The captions preceding the text of each Article, Section, Subsection and the Table of Contents are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders, or vice versa. All references to "person" shall include, without limitation, any and all corporations, partnerships, limited liability company or other legal entities.

21.9 Further Assurances; Covenant to Sign Documents. Each Party covenants, on behalf of itself and its successors, heirs and assigns, to take all actions and do all things, and to execute, with acknowledgment or affidavit if required, any and all documents and writings that may be necessary or proper to achieve the purposes and objectives of this Agreement.

21.10 Governing Law. This Agreement, and the rights and obligations of the Parties, shall be governed by and interpreted in accordance with the laws of the State of California.

21.11 Construction. This Agreement has been reviewed and revised by legal counsel for both Owner and City, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

21.12 Time. Time is of the essence of this Agreement and of each and every term and condition hereof. In particular, City agrees to act in a timely fashion in accepting, processing, checking and approving all maps, documents, plans, permit applications and any other matters requiring City's review or approval relating to the Project or Property.

21.13 Cooperation in Sale, Financing. The City shall cooperate reasonably and in good faith with Owner in Owner's attempts to obtain financing for the Property and/or for the construction of any portion of the Project, and/or to transfer, sell and/or assign the Property or any portion thereof to another party. Any such cooperation shall be at no cost or expense to the City. The City's cooperation with Owner shall include, without limitation, the City's agreement to execute and deliver to Owner such modifications or

amendments to this Agreement as may be reasonably requested by Owner, a prospective Mortgagee or a prospective transferee in order to allocate the rights and obligations of Owner under this Agreement between or among portions of the Property; provided, however, that no such modifications or amendments of this Agreement shall adversely affect the City's rights or interests under this Agreement.

21.14 Exercise of City Manager Discretion. Wherever this Agreement permits the City Manager to exercise his/her discretion with respect to any of the terms and provisions herein, including but not limited to approval of modifications that are Substantially Consistent Modifications, approval of extensions of time to perform, and approval of a sale or transfer, as otherwise permitted in this Agreement, the City Manager shall advise the City Council of such exercise of discretion and where practical shall consult with the Mayor and/or the City Council prior to exercising such discretion. Notwithstanding such requirement to inform and consult with the City Council, Owner may rely on any writing evidencing the exercise of discretion by the City Manager.

21.15 Counterparts. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all of which when taken together shall constitute but one Agreement.

[Signatures follow on next page]

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

“City”

CITY OF MENLO PARK, a municipal corporation of the State of California

By : _____
Mayor

Attest:

City Clerk

Approved as to Form:

By: _____
City Attorney

“Owner”

BOHANNON DEVELOPMENT COMPANY, a California corporation

By: _____
Name: _____
Title: _____

DAVID D. BOHANNON ORGANIZATION, a California corporation

By: _____
Name: _____
Title: _____

125 CONSTITUTION ASSOCIATES, a California
limited partnership

By: _____
Name: _____
Title: _____

BOHANNON TRUSTS PARTNERSHIP II, a
California limited partnership

By: _____
Name: _____
Title: _____

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)ss:
COUNTY OF SAN MATEO)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

My Commission expires _____

STATE OF CALIFORNIA)
)ss:
COUNTY OF SAN MATEO)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

My Commission expires _____

EXHIBIT A

SITE PLAN OF PROPERTY



CONSTITUTION
SITE

INDEPENDENCE
SITE

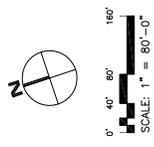


EXHIBIT B

LEGAL DESCRIPTION OF PROPERTY

LEGAL DESCRIPTION

Real property in the City of Menlo Park, County of San Mateo, State of California, described as follows:

PARCEL "A" AS SHOWN ON THAT CERTAIN PARCEL MAP WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA ON MARCH 17, 1966, IN BOOK 1 OF PARCEL MAPS AT PAGE 18, SAN MATEO COUNTY RECORDS.

A.P.N. 055-235-040
JPN 055-023-235-04 A

PROPERTY ADDRESS: 100 INDEPENDENCE DRIVE
MENLO PARK, CA 94025

LEGAL DESCRIPTION

Real property in the City of Menlo Park, County of San Mateo, State of California, described as follows:

PARCEL "B" AS SHOWN ON THAT CERTAIN PARCEL MAP WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA ON MARCH 17, 1966, IN BOOK 1 OF PARCEL MAPS AT PAGE 18, SAN MATEO COUNTY RECORDS.

A.P. NO.: 055-235-050
JPN 055 023 235 05 A

PROPERTY ADDRESS: 110 INDEPENDENCE DRIVE
MENLO PARK, CA 94025

LEGAL DESCRIPTION

Real property in the City of Menlo Park, County of San Mateo, State of California, described as follows:

PARCEL A, AS SHOWN ON THE MAP ENTITLED, "PARCEL MAP BEING A RESUBDIVISION OF PARCELS 1 AND 2 OF PARCEL MAP REC. IN VOL. 3, PG. 32 AND LOT 5 OF BOHANNON INDUSTRIAL PARK UNIT NO. 2, REC. IN VOL. 47 OF MAPS, PG. 32, SAN MATEO COUNTY RECORDS BOHANNON INDUSTRIAL PARK, CITY OF MENLO PARK, SAN MATEO COUNTY, CALIFORNIA", WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA ON MARCH 22, 1979, IN BOOK 46 OF PARCEL MAPS, AT PAGE(S) 22.

A.P. No.: 055-235-080 JPN 055 023 235 06A 055 023 235 06.01.01 A

PROPERTY ADDRESS: 120 INDEPENDENCE DRIVE
MENLO PARK, CA 94025

LEGAL DESCRIPTION

Real property in the City of Menlo Park, County of San Mateo, State of California, described as follows:

PARCEL B AS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP BEING A RESUBDIVISION OF PARCELS 1 AND 2 OF PARCEL MAP REC. IN VO. 3, PG. 32 AND LOT 5 OF BOHANNON INDUSTRIAL PARK UNIT NO. 2, REC. IN VOL. 47 OF MAPS, PG. 32, SAN MATEO COUNTY RECORDS, BOHANNON INDUSTRIAL PARK, CITY OF MENLO PARK, SAN MATEO COUNTY, CALIFORNIA," FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN MATEO COUNTY, STATE OF CALIFORNIA, ON MARCH 22, 1979 IN VOLUME 46 OF PARCEL MAPS AT PAGE(S) 22.

A.P. NO.: 055-235-100

JPN 055-023-235-07 A and 055-023-235-06.01 A and 055-023-235-03.01 A

PROPERTY ADDRESS: 150 INDEPENDENCE DRIVE
MENLO PARK, CA 94025

LEGAL DESCRIPTION

Real property in the City of Menlo Park, County of San Mateo, State of California, described as follows:

PARCEL C AS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP BEING A RESUBDIVISION OF PARCELS 1 AND 2 OF PARCEL MAP REC. IN VOL.3, PG. 32 AND LOT 5 OF BOHANNON INDUSTRIAL PARK UNIT NO. 2, REC.IN VOL. 47 OF MAPS, PG. 32, SAN MATEO COUNTY RECORDS, BOHANNON INDUSTRIAL PARK, CITY OF MENLO PARK, SAN MATEO COUNTY, CALIFORNIA", FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN MATEO COUNTY, STATE OF CALIFORNIA, ON MARCH 22, 1979 IN BOOK 46 OF PARCEL MAPS AT PAGE(S) 22.

JPN: 055-023-235-03 A

APN: 055-235-110-8
JPN : 055-023-235-03 A

PROPERTY ADDRESS: 190 INDEPENDENCE DRIVE
MENLO PARK, CA 94025

LEGAL DESCRIPTION

Real property in the City of Menlo Park, County of San Mateo, State of California, described as follows:

PARCEL 1 AS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP BEING A RESUBDIVISION OF LOT 6, BOHANNON INDUSTRIAL PARK UNIT NO. 3, REC. IN VOL. 53 OF MAPS AT PAGE 44 AND PARCEL 1 OF PARCEL MAP RECORDED IN VOL. 8 OF P.M. PAGE 50, SAN MATEO COUNTY RECORDS, MENLO PARK, SAN MATEO COUNTY, CALIFORNIA", FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN MATEO COUNTY, STATE OF CALIFORNIA ON JULY 30, 1976 IN BOOK 32 OF PARCEL MAPS AT PAGE 41.

EXCEPTING THEREFROM ALL THAT PORTION OF SAID PROPERTY AS PASSED TO THE STATE OF CALIFORNIA BY THAT CERTAIN "FINAL ORDER OF CONDEMNATION", FILED IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SAN MATEO ENTITLED "STATE OF CALIFORNIA, PLAINTIFF VS. DAVID D. BOHANNON ORGANIZATION, A CALIFORNIA CORP. ET AL, DEFENDANTS", A CERTIFIED COPY OF WHICH WAS RECORDED APRIL 22, 1982 UNDER RECORDERS INSTRUMENT NO. 82032367, OFFICIAL RECORDS.

A.P. NO.: 055-234-240 JPN 055 023 234 15 A
055 023 234 15.01 A

PROPERTY ADDRESS: 105 CONSTITUTION DRIVE
MENLO PARK, CA 94025

LEGAL DESCRIPTION

Real property in the City of Menlo Park, County of San Mateo, State of California, described as follows:

PARCEL "A" AS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP BEING A RESUBDIVISION OF PARCELS 3 & 4 OF PARCEL AMP REC. IN VOL. 32 OF PARCEL MAPS AT PAGE 41, SAN MATEO COUNTY RECORDS BOHANNON INDUSTRIAL PARK CITY OF MENLO PARK SAN MATEO COUNTY, CALIFORNIA", FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN MATEO COUNTY, STATE OF CALIFORNIA ON AUGUST 15, 1979 IN BOOK 47 OF PARCEL MAPS AT PAGE 71.

EXCEPTING THEREFROM SO MUCH OF SAID PARCEL "A" AS LIES WITHIN THE FOLLOWING DESCRIBED PARCEL:

A PORTION OF PARCELS 1, 2, 3 AND 4 AS SHOWN ON PARCEL MAP FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN MATEO COUNTY, STATE OF CALIFORNIA ON JULY 30, 1976 IN BOOK 32 OF PARCEL MAPS AT PAGE 41, DESCRIBED AS A WHOLE AS FOLLOWS:

COMMENCING AT THE NORTHWESTERLY CORNER OF SAID PARCEL 1 ABOVE; THENCE ALONG THE NORTHERLY LINE OF SAID PARCELS 1, 2, 3 AND 4, SOUTH 70_06' 25" EAST, 1306.12 FEET TO THE NORTHEASTERLY CORNER OF SAID PARCEL 4; THENCE ALONG THE EASTERLY LINE OF SAID PARCEL 4 SOUTH 23_ 03' 25" WEST 38.25 FEET; THENCE NORTH 70_18' 56" WEST, 530.86 FEET; THENCE NORTH 70_03' 23" WEST 286.30 FEET; THENCE NORTH 75_26' 20" WEST 475.72 FEET; THENCE SOUTH 39_38' 50" WEST, 35.18 FEET TO THE WESTERLY LINE OF SAID PARCEL 1; THENCE ALONG LAST SAID LINE NORTH 25_20' 42" EAST, 165.00 FEET TO THE POINT OF COMMENCEMENT.

055-234-260; (JPN 055 023 234 16 A; 055 023 234 16.01.01 A)

PROPERTY ADDRESS: 125 CONSTITUTION DRIVE
MENLO PARK, CA 94025

LEGAL DESCRIPTION

Real property in the City of Menlo Park, County of San Mateo, State of California, described as follows:

PARCEL "B" AS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP BEING A RESUBDIVISION OF PARCELS 3 & 4 OF PARCEL MAP REC. IN VOL. 32 OF PARCEL MAPS AT PAGE 41, SAN MATEO COUNTY RECORDS BOHANNON INDUSTRIAL PARK CITY OF MENLO PARK SAN MATEO COUNTY, CALIFORNIA", FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN MATEO COUNTY, STATE OF CALIFORNIA ON AUGUST 15, 1979 IN BOOK 47 OF PARCEL MAPS AT PAGE 71.

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PARCEL:

A PORTION OF PARCEL 4 SHOWN ON PARCEL MAP FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN MATEO COUNTY, STATE OF CALIFORNIA ON JULY 30, 1976 IN BOOK 32 OF PARCEL MAPS AT PAGE 41, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHERLY EXTREMITY OF THAT 20.00 FOOT RADIUS CURVE WHICH CONNECTS THE EASTERLY LINE AND THE SOUTHERLY LINE OF SAID PARCEL 4; THENCE NORTHERLY ALONG SAID EASTERLY LINE OF PARCEL 4 NORTH 23° 03' 25" EAST 9.01 FEET; THENCE FROM A TANGENT THAT BEARS SOUTH 23° 03' 25" WEST, ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 30.00 FEET, THROUGH AN ANGLE OF 84° 02' 43" AN ARC LENGTH OF 44.01 FEET TO SAID SOUTHERLY LINE; THENCE ALONG LAST SAID LINE AND SAID 20.00 FOOT RADIUS CURVE SOUTH 72° 53' 52" EAST 9.01 FEET AND ALONG A TANGENT CURVE TO THE LEFT WITH A RADIUS OF 20.00 FEET, THROUGH AN ANGLE OF 84° 02' 43" AN ARC LENGTH OF 29.34 FEET TO THE POINT OF COMMENCEMENT.

ALSO EXCEPTING THEREFROM SO MUCH OF SAID PARCEL "B" AS LIES WITHIN THE FOLLOWING DESCRIBED PARCEL:

A PORTION OF PARCELS 1, 2, 3 AND 4 AS SHOWN ON PARCEL MAP FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN MATEO COUNTY, STATE OF CALIFORNIA ON JULY 30, 1976 IN BOOK 32 OF PARCEL MAPS AT PAGE 41, DESCRIBED AS A WHOLE AS FOLLOWS:

COMMENCING AT THE NORTHWESTERLY CORNER OF SAID PARCEL 1 ABOVE; THENCE ALONG THE NORTHERLY LINE OF SAID PARCELS 1, 2, 3 AND 4, SOUTH 70° 06' 25" EAST, 1306.12 FEET TO THE NORTHEASTERLY CORNER OF SAID PARCEL 4; THENCE ALONG THE EASTERLY LINE OF SAID PARCEL 4 SOUTH 23° 03' 25" WEST 38.25 FEET; THENCE NORTH 70° 18' 56" WEST, 530.86 FEET; THENCE NORTH 70° 03' 23" WEST 286.30 FEET; THENCE NORTH 75° 26' 20" WEST 475.72 FEET; THENCE SOUTH 39° 38' 50" WEST, 35.18 FEET TO THE WESTERLY LINE OF SAID PARCEL 1; THENCE ALONG LAST SAID LINE NORTH 25° 20' 42" EAST, 165.00 FEET TO THE POINT OF COMMENCEMENT.

APN: 055-234-270-1, JPN: 055 023 234 16.01 A

PROPERTY ADDRESS: 155 CONSTITUTION DRIVE
MENLO PARK, CA 94025

EXHIBIT C

PROJECT REVENUE BENCHMARKS

Menlo Gateway Revenue Guarantee
Target Revenue Amounts by Year

Exhibit C

<u>Year</u>	<u>Revenue Target (1)</u>
2010	\$1,251,900
2011	\$1,276,938
2012	\$1,302,477
2013	\$1,328,526
2014	\$1,355,097
2015	\$1,382,199
2016	\$1,409,843
2017	\$1,438,039
2018	\$1,466,800
2019	\$1,496,136
2020	\$1,526,059
2021	\$1,556,580
2022	\$1,587,712
2023	\$1,619,466
2024	\$1,651,855
2025	\$1,684,892
2026	\$1,718,590
2027	\$1,752,962
2028	\$1,788,021
2029	\$1,823,782
2030	\$1,860,257
2031	\$1,897,462
2032	\$1,935,412
2033	\$1,974,120
2034	\$2,013,602
2035	\$2,053,874
2036	\$2,094,952
2037	\$2,136,851
2038	\$2,179,588
2039	\$2,223,180
2040	\$2,267,643
2041	\$2,312,996
2042	\$2,359,256
2043	\$2,406,441
2044	\$2,454,570

Footnotes:

- (1) Target revenue is the total estimated sales tax and TOT revenue (assuming 10% TOT) to the City based on the Fiscal Impact Analysis dated July 1, 2009 (\$1,203,287) and escalated 2% per year for inflation starting in 2008.