AGREEMENT FOR COMPLETION OF MENLO GATEWAY HOTEL UTILITY CONNECTIONS

THIS AGREEMENT, made and entered into, in duplicate, this 3rd day of March 2016, by and between DAVID D. BOHANNON ORGANIZATION, a California corporation, hereinafter referred to as “Applicant,” INDEPENDENCE MENLO HOTEL OWNER, LLC, a Delaware limited liability company, hereinafter referred to as “Hotel Owner,” and the CITY OF MENLO PARK, a municipal corporation, situated in the County of San Mateo, State of California, hereinafter referred to as “City”.

WITNESSETH:

WHEREAS, the City issued a Conditional Development Permit on January 7, 2011 (as subsequently modified from time to time, the “CDP”) for the Menlo Gateway Project in the City of Menlo Park, approving (i) one eight-story office building, one parking structure with a fitness club, and a hotel to be located on the Independence Site, and (ii) two eight-story office buildings and two parking structures to be located on the Constitution Site at the locations shown on Exhibit “A” attached hereto and made a part hereof entitled, “Project Location Map”; and

WHEREAS, Condition 8.4 of the CDP stated the following:

“Prior to recordation of each final parcel map, the applicant shall install new utilities to the point of service or submit a bond for said improvements, subject to review and approval of the City Engineer. All electric and communication lines shall be placed underground”; and

WHEREAS, as a result of the foregoing, the City is requiring Applicant and Hotel Owner, as joint obligors on the terms set forth in this Agreement, to furnish a bond to the City guaranteeing the completion of certain utility connections for the hotel parcel as a condition precedent to recording the final parcel map;

WHEREAS, after the final parcel map is recorded, subject to the terms of a contribution agreement between an affiliate of Applicant and Hotel Owner, Hotel Owner will take title to the hotel parcel and assume sole responsibility for the completion of the utility connections for the hotel parcel, as described more fully below;

NOW, THEREFORE, IT IS AGREED as follows:

1. Applicant and Hotel Owner shall be jointly obligated to furnish at their own expense all the labor, material, equipment and inspection services necessary to complete, within ONE year(s) from the date of this agreement, all Utility Installations as set forth and described in the Plans and Specifications prepared for said improvements and that apply solely to the connection of utilities to the hotel parcel as shown on Exhibit
B attached hereto, and in compliance with City Standards and to the satisfaction of the City Engineer (the “Work”).

2. Applicant and Hotel Owner, as joint obligors, further agree, while engaged in the work provided for in this agreement, to place and maintain suitable safeguards sufficient to prevent injury to any persons and to indemnify, defend and save harmless the City, its officers, representatives, and employees from and against any and all claims for loss, injury or damage (the “Claims”) resulting from the prosecution of said work except to the extent the Claim arises out of the negligence or willful misconduct of the City. Applicant agrees to maintain comprehensive public liability and property damage insurance naming the City, its officers, agents, and employees as additional insured in a combined single limit of $1,000,000 for the death and injury of any persons in any one occurrence; and for property damage in any one occurrence. A certificate of said insurance policy shall be filed with the City.

3. Applicant and Hotel Owner further agree, contemporaneously with the execution of this agreement, to file with the City a faithful performance surety bond or other guarantee as approved by the City, in a sum equal to the City Engineer’s estimated value of the total cost of the Work, including engineering and contingencies as set forth on Exhibit C, attached hereto and made a part herein, entitled “Engineer’s Cost Estimate”. Said surety bond shall require the faithful performance of the terms and conditions of this agreement; and shall be in a form satisfactory to the City Attorney.

4. Applicant and Hotel Owner further agree to correct all defects in design, workmanship and material actually appearing during the warranty period, which period shall be ONE year(s) after the date of acceptance of the Work by the City, and to maintain said performance bond for the warranty period or to file with the City, prior to consideration of acceptance, a surety bond for the warranty period in a sum equal to at least fifty percent (50%) of said Engineer’s Cost Estimate. City further agrees that upon written acceptance of the Work by the City, the Public Works Director shall authorize the release of the faithful performance surety bond for the Work upon the furnishing of the warranty security required by this paragraph.

5. Applicant and Hotel Owner further agree that when defects in design, workmanship, and materials actually appear during the warranty period and have been corrected (the “Corrections”), the warranty period and surety bond shall automatically be extended for an additional year with respect to the Corrections only, to guarantee that such defects have been effectively corrected.

6. Applicant and Hotel Owner further agree that should they fail to construct or complete the construction of any or all of said Development Improvements as herein provided, the City may complete or cause to be completed said Work and Applicant and Hotel Owner agree to reimburse the City for any and all services such as labor and materials used, for completing said work, and the bond herein mentioned shall be security therefor.
7. City reserves the right, without the prior consent of Applicant or Hotel Owner, Applicant's and Hotel Owner's surety, or any subsequent purchaser of property underlying or adjacent to said the hotel parcel to:

(a) Extend the period of time during which Applicant and Hotel Owner shall be required to construct all or any part of said Work;

(b) Eliminate any Work no longer deemed necessary, and to transfer or reconvey to Applicant or Hotel Owner any interest in real property no longer needed therefore;

(c) Exonerate or release Applicant's and Hotel Owner's surety from all or any portion of its bond;

(d) Accept a substitute surety bond (personal or corporate) in exchange for or in lieu of the surety bond originally deposited by Applicant and Hotel Owner herein.

8. Notwithstanding anything to the contrary set forth in this Agreement, City agrees that: (1) after the recordation of the final parcel map and prior to the transfer of the hotel parcel to Hotel Owner, as evidenced by recordation of a grant deed conveying the hotel parcel to Hotel Owner, Applicant (and not Hotel Owner) shall be solely responsible for the completion of the Work and any and all other obligations under this Agreement, and (2) upon the transfer of the hotel parcel to the Hotel Owner, Hotel Owner shall be solely responsible for the completion of the Work and for any and all other obligations otherwise provided for in this Agreement, and Applicant shall be released from any and all obligations to City under this Agreement.

9. The parties hereby agree that the effectiveness of this Agreement is contingent upon the recordation of the final parcel map for the Independence Phase of the Menlo Gateway Project.

IN WITNESS WHEREOF, Applicant, Hotel Owner and City have executed these presents by their respective officers, thereunto duly authorized the day and year first herein about written.

Applicant: DAVID D. BOHANNON ORGANIZATION, a California Corporation

By: 
Robert L. Webster
Chairman
Hotel Owner: INDEPENDENCE MENLO HOTEL OWNER, LLC, a Delaware limited liability company

By: [name] [Role] Michael Moskowitz Manager

CITY OF MENLO PARK
A Municipal Corporation

By: ____________________________
City Manager

Attest:

City Clerk, City of Menlo Park

Approved as to Form:

By: ____________________________
City Attorney
Exhibit A
Project Location Map
Exhibit B
Depiction of the Work
Exhibit C
Engineer's Cost Estimate
<table>
<thead>
<tr>
<th>Location</th>
<th>Utility</th>
<th>Description of Work</th>
<th>Quantity</th>
<th>Unit</th>
<th>Rate</th>
<th>Sub-Total</th>
<th>Total</th>
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<td>Hotel</td>
<td>Water</td>
<td>4 inch domestic water line</td>
<td>47</td>
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<td>$158.00</td>
<td>$7,426.00</td>
<td>$187,251.00</td>
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<td>ea</td>
<td>$5,600.00</td>
<td>$5,600.00</td>
<td></td>
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<tr>
<td>Fire Water</td>
<td></td>
<td>New water meter</td>
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<td>ea</td>
<td>$45,000.00</td>
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<td></td>
<td>6 inch fire water line</td>
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<td>if</td>
<td>$165.00</td>
<td>$16,445.00</td>
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<td>$11,200.00</td>
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<td>$175.00</td>
<td>$2,800.00</td>
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<td>Connection to existing catch basin</td>
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<td>ea</td>
<td>$3,820.00</td>
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<td>$51,750.00</td>
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<td>$200.00</td>
<td>$5,200.00</td>
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<td>Trench and conduit only</td>
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<td>if</td>
<td>$200.00</td>
<td>$6,000.00</td>
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<td>Grand Total</td>
</tr>
</tbody>
</table>
FAITHFUL PERFORMANCE BOND

WHEREAS, the CITY OF MENLO PARK, a municipal corporation of the State of California ("City"), and DAVID D. BOHANNON ORGANIZATION, a California corporation, and INDEPENDENCE MENLO HOTEL OWNER, LLC, a California limited liability company, as principals (collectively, "Principal") have entered into an agreement entitled AGREEMENT FOR COMPLETION OF MENLO GATEWAY HOTEL UTILITY CONNECTIONS, incorporated herein by reference and referred to as the “Contract,” which requires Principal to install and complete certain designated utility connections; and,

WHEREAS, under the terms of the Contract, Principal is required to furnish a bond to City for faithful performance of Section 8.4 of the Conditional Development Permit.

NOW, THEREFORE, we the Principal and Federal Insurance Company a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California (“Surety”), are held firmly bound unto the City in the sum of One Hundred Eighty-Seven Thousand Two Hundred Sixty-One and 00/100 Dollars ($187,261.00), for the payment of which sum well and truly to be made, we the Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

The condition of this obligation is such that, if the Principal, Principal’s heirs, executors, administrators, successors, or assigns shall in all things stand to and abide by, and well and truly keep and perform all covenants, conditions, and agreements required to be kept and performed by Principal in the Contract and any changes, additions, or alterations made thereto, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meanings, and shall indemnify and save harmless City, its officers, employees, and agents, as therein provided, then this obligation shall be null and void; otherwise, it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the sum specified above, there shall be included all costs, expenses, and fees, including attorney’s fees, reasonably incurred by City.
in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the work to be performed thereunder or to the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Principal and Surety. SIGNED AND SEALED on February 22, 2016.

PRINCIPAL:

David D. Bohannon Organization,
a California Corporation

BY: [Signature]

(Seal) Federal Insurance Company

BY: [Signature]

SURETY:

Robert L. Webster
Chairman

INDEPENDENCE MENLO HOTEL OWNER, LLC,
a Delaware limited liability company

By: Independence Menlo Mezz, LLC, a Delaware limited liability company, its sole member

By: Independence Menlo Holdco, LLC, a Delaware limited liability company, its sole member

By: AECOM Independence Menlo, LLC, a Delaware limited liability company, its authorized Member

By: [Signature]

Name: Warren Wachsberger
Its: Vice President

Principal address and telephone:
Sixty 31st Avenue
San Mateo, CA 94403-3404

Surety address and telephone:
15 Mountain View Rd.
Warren, NY 07059
(908) 903-3493
Affix Corporate Seals
Attach Notary Acknowledgments for All Signatures
Attach Power-of-Attorney if executed by Attorney-in-Fact
ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of SAN MATEO

On FEBRUARY 24, 2016 before me, GERALDINE A. BLATT
(insert name and title of the officer)

personally appeared ROBERT L. WEBSTER, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) 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 ____________________________ (Seal)
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Los Angeles

On FEB 22 2016 before me, B. Wong, Notary Public
personally appeared, Kari Davis
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 she executed the same in her authorized capacity, and that by 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 of Notary

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

DESCRIPTION OF ATTACHED DOCUMENT:

TITLE OR TYPE OF DOCUMENT: ________________________________

NUMBER OF PAGES: ______________ DOCUMENT DATE: ________________

CAPACITY(IES) CLAIMED BY SIGNER(S)

Signer's Name: ________________________________

☐ INDIVIDUAL

☐ CORPORATE OFFICER

☐ PARTNER(S)☐ LIMITED ☐ GENERAL

☐ ATTORNEY-IN-FACT

☐ TRUSTEE(S)

☐ GUARDIAN/CONSERVATOR

☐ OTHER: ____________________________________

Signer is representing:

NAME OF PERSON(S) OR ENTITY(IES)

Signer's Name: ________________________________

☐ INDIVIDUAL

☐ CORPORATE OFFICER

☐ PARTNER(S)☐ LIMITED ☐ GENERAL

☐ ATTORNEY-IN-FACT

☐ TRUSTEE(S)

☐ GUARDIAN/CONSERVATOR

☐ OTHER: ____________________________________

Signer is representing:

NAME OF PERSON(S) OR ENTITY(IES)
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Los Angeles

On Feb 22, 2016 before me, RHONDA REBECCA SIMMONDS NOTARY PUBLIC

Date Here Insert Name and Title of the Officer

personally appeared Warren David Wachsbergere

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) 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

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document
Title or Type of Document: ____________________________ Document Date: ____________________________
Number of Pages: _______ Signer(s) Other Than Named Above: ____________________________

Capacity(ies) Claimed by Signer(s)
Signer's Name: ____________________________
☐ Corporate Officer — Title(s): ________________
☐ Partner — ☐ Limited □ General
☐ Individual □ Attorney in Fact
☐ Trustee □ Guardian or Conservator
☐ Other: ____________________________

Signer Is Representing: ____________________________

□ Corporate Officer — Title(s):
□ Partner — ☐ Limited □ General
□ Individual □ Attorney in Fact
□ Trustee □ Guardian or Conservator
□ Other: ____________________________

Signer Is Representing: ____________________________

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Know All by These Presents, That FEDERAL INSURANCE COMPANY, an Indiana corporation, VIGILANT INSURANCE COMPANY, a New York corporation, and PACIFIC INDEMNITY COMPANY, a Wisconsin corporation, do each hereby constitute and appoint Tenzer V. Cunningham, Kari Davis, Phuong Truong and Brenda Wong of Los Angeles, California, to be their true and lawful attorneys in fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY have each executed and attested these presents and affixed their corporate seals on this 3rd day of September, 2015.

Dawn M. Chloros, Assistant Secretary

David B. Norris, Jr., Vice President

STATE OF NEW JERSEY
County of Somerset

On this 3rd day of September, 2015 before me, a Notary Public of New Jersey, personally came Dawn M. Chloros, to me known to be Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY, the companies which executed the foregoing Power of Attorney, and the said Dawn M. Chloros, being by me duly sworn, did depose and say that she is Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of the By-Laws of said Companies; and that she signed said Power of Attorney as Assistant Secretary of said Companies by like authority; and that she is acquainted with David B. Norris, Jr., and knows him to be Vice President of said Companies; and that the signature of David B. Norris, Jr., subscribed to said Power of Attorney is in the genuine handwriting of David B. Norris, Jr., and was thereto subscribed by authority of said By-Laws and in deponent’s presence.

Notarial Seal

KATHERINE J. ADELAAR
NOTARY PUBLIC OF NEW JERSEY
No. 2316655
Commission Expires July 16, 2019

CERTIFICATION

Extract from the By-Laws of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY:

"Except as otherwise provided in these By-Laws or by law or as otherwise directed by the Board of Directors, the President or any Vice President shall be authorized to execute and deliver, in the name and on behalf of the Corporation, all agreements, bonds, contracts, deeds, mortgages, and other instruments, either for the Corporation's own account or in a fiduciary or other capacity, and the seal of the Corporation, if appropriate, shall be affixed thereto by any of such officers or the Secretary or an Assistant Secretary. The Board of Directors, the President or any Vice President designated by the Board of Directors may authorize any officer, employee or agent to execute and deliver, in the name and on behalf of the Corporation, agreements, bonds, contracts, deeds, mortgages, and other instruments, either for the Corporation's own account or in a fiduciary or other capacity, and, if appropriate, to affix the seal of the Corporation thereto. The grant of such authority by the Board or any such officer may be general or confined to specific instances."

I, Dawn M. Chloros, Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY (the "Companies") do hereby certify that

(i) the foregoing extract of the By-Laws of the Companies is true and correct,

(ii) the Companies are duly licensed and authorized to transact surety business in all 50 of the United States of America and the District of Columbia and are authorized by the U.S. Treasury Department; further, Federal and Vigilant are licensed in the U.S. Virgin Islands, and Federal is licensed in Guam, Puerto Rico, and each of the Provinces of Canada except Prince Edward Island; and

(iii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Warren, NJ this FEB 2 2 2016

Dawn M. Chloros, Assistant Secretary

IN THE EVENT YOU WISH TO NOTIFY US OF A CLAIM, VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT ADDRESS:

Listed above, or by Telephone (800) 903-3463 Fax (908) 903-3658 e-mail: surety@chubb.com

Form 15-10-0225B-U GEN CONSENT (rev. 07-15)
<table>
<thead>
<tr>
<th>Agreement Coversheet</th>
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<tbody>
<tr>
<td>City Manager's Office</td>
</tr>
<tr>
<td>701 Laurel Street, Menlo Park, CA 94025</td>
</tr>
<tr>
<td>tel 650-330-6640</td>
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**Project Manager:** Theresa Avedian  
**Department:** Public Works  
**Date:** 2/25/2016

- [ ] Attest Only  
- [ ] Time Sensitive  
- [ ] New Agreement  
- [ ] Amendment

**First Party:** David D. Bohannon

**Title:** Completion of Menlo Gateway Office/Garage Utility Connections and Menlo Gateway Hotel

**Purpose:** Accept the bonds for the completion of Menlo Gateway office/garage utility connections and Menlo Gateway Hotel.

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<td>Available Budget: $</td>
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- [ ] Required Approval:  
  - [ ] Department  
  - [ ] City Manager  
  - [ ] City Council

- [ ] Language Modifications  
- [ ] Approved by City Attorney

**Summary of Modifications:**

**Attachments:**  
- [ ] One (1) Agreement  
- [ ] Staff Report  
- [ ] Prior Agreement/Amendments(s) for reference  
- [ ] Other

**Approval:**

**Supervisor:**  
**Department Head:**

**Assistant Director or Manager:**  
**City Attorney:**

CC Rev 20150113