AGREEMENT FOR COMPLETION OF MENLO GATEWAY OFFICE/GARAGE
UTILITY CONNECTIONS

THIS AGREEMENT, made and entered into, in duplicate, this 3rd day of
March, 2016, by and between David D. Bohannon Organization hereinafter referred to
as “Applicant” and CITY OF MENLO PARK, a municipal corporation, situated in the
County of San Mateo, State of California, hereinafter referred to as “City”.

WITNESSETH:

WHEREAS, on December 7, 2010, the City conditionally approved Applicant’s
request for a hotel, health club, restaurant/cafés, office, research and development,
retail/community facilities, and parking structures 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.”

WHEREAS, as a result of the foregoing, the City is requiring Applicant to furnish
a bond to the City guaranteeing the completion of certain utility connections for the
office/parking structure parcel as a condition precedent to recording the final parcel
map;

NOW, THEREFORE, IT IS AGREED as follows:

1. Applicant agrees to furnish at his/her 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 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 further agrees, 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 $346,586.33 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 further agrees, 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 further agrees 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 Development Improvements by the City Council, 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 further agrees 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 further agrees that should he/she fails to construct or complete the construction of any or all of said Work as herein provided, the City may complete or cause to be completed said Development Improvements and Applicant agrees to reimburse the City for any and all services such as labor and materials used, for completing said work, and the bonds herein mentions shall be security therefore.

7. City reserves the right, without the prior consent of Applicant, Applicant's surety, or any subsequent purchaser of property underlying or adjacent to said Work to:
   
   (a) Extend the period of time during which Applicant 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 any interest in real property no longer needed therefore;

   (c) Exonerate or release Applicant'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 herein.

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 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

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 B
Depiction of the Work
Exhibit C
Engineer's Cost Estimate
### Menlo Gateway Development
#### Street Utility Connections
#### Budget Estimate Office and Garage

**November 24, 2015**

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<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>$5,600.00</td>
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<td>n/a</td>
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<td>if</td>
<td>$200.00</td>
<td>$6,000.00</td>
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</table>

**GRAND TOTAL**  $346,586.33
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, as principal have entered into an agreement entitled AGREEMENT FOR COMPLETION OF MENLO GATEWAY OFFICE/GARAGE 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 Lexon 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 Three Hundred Forty Six Thousand Five Hundred Eighty Six and 33/100 Dollars ($346,586.33), 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 16, 2016**

**DAVID D. BOHANNON ORGANIZATION**
PRINCIPAL:

BY: Robert L. Webster
Chairman

**Lexon Insurance Company**
SURETY:

Bradley N. Wright
Attorney in Fact

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

Surety address and telephone:
10002 Shelbyville Road, Suite #100
Louisville, Kentucky 40223
POWERS OF ATTORNEY
LEXON INSURANCE COMPANY

KNOW ALL MEN BY THESE PRESENTS, that LEXON INSURANCE COMPANY, a Texas Corporation, with its principal office in Louisville, Kentucky, does hereby constitute and appoint: Victoria M. Campbell, Carolynn Emery, Bradley N. Wright its true and lawful Attorney(s)-In-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in nature of a bond.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of LEXON INSURANCE COMPANY on the 1st day of July, 2003 as follows:

Resolved, that the President of the Company is hereby authorized to appoint and empower any representative of the Company or other person or persons as Attorney-In-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in nature of a bond not to exceed $2,500,000.00, Two Million Five Hundred Thousand dollars, which the Company might execute through its duly elected officers, and affix the seal of the Company thereto. Any said execution of such documents by an Attorney-In-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company. Any Attorney-In-Fact, so appointed, may be removed for good cause and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of the President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Assistant Secretary, and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certificate so executed and sealed shall, with respect to any bond of undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS WHEREOF, LEXON INSURANCE COMPANY has caused this instrument to be signed by its President, and its Corporate Seal to be affixed this 5th day of August, 2015.

LEXON INSURANCE COMPANY

BY

David E. Campbell
President

ACKNOWLEDGEMENT

On this 5th day of August, 2015, before me, personally came David E. Campbell to me known, who be duly sworn, did depose and say that he is the President of LEXON INSURANCE COMPANY, the corporation described in and which executed the above instrument; that he executed said instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.

BY

Amy Taylor
Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of LEXON INSURANCE COMPANY, A Texas Insurance Company, DO HEREBY CERTIFY that the original Power of Attorney of which the forgoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

Signed and Seal at Mount Juliet, Tennessee this 16th Day of February, 2016.

BY

Andrew Smith
Assistant Secretary

"WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files and application for insurance of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties."
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 Francisco

On February 16, 2016 before me, Carolyne Emery, Notary Public (insert name and title of the officer), personally appeared Bradley N. Wright, 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: Carolyne Emery (Seal)
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 18, 2016 before me, Deanna Wright, Notary Public, 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: Deanna Wright

Signature of Notary Public

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: Faithful Performance Bond
Document Date: February 18, 2016
Number of Pages: 2
Signer(s) Other Than Named Above: Michael Moskowitz

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: __________________________