BELOW MARKET RATE HOUSING IN LIEU FEE AGREEMENT

This Below Market Rate Housing In Lieu Fee Agreement ("Agreement") is made as of this ___ day of __________, 2016 by and between the City of Menlo Park, a California municipality ("City") and Pollock Realty Corporation, LLC, a California Corporation ("Applicant"), with respect to the following:

RECITALS

A. Applicant owns certain real property in the City of Menlo Park, County of San Mateo, State of California, consisting of approximately 22,489 square feet, more particularly described as Assessor’s Parcel Number: 061-422-190 and 061-422-330 ("Property"), more commonly known as 1400 El Camino Real, Menlo Park.

B. The Property previously contained a gas station use, which was demolished in December 2013. The gross floor area of the previous gas station building is approximately 1,932 square feet.

C. Applicant proposes to construct a 61-room hotel consisting of four stories and an underground parking level totaling approximately 33,657 square feet. Applicant has applied to the City for architectural control and use permit approval at the Public Benefit Bonus level ("Project"), which would exceed the Base level floor area ratio (FAR) for uses on the subject site.

D. Applicant is required to comply with Chapter 16.96 of City’s Municipal Code ("BMR Ordinance") and with the Below Market Rate Housing Program Guidelines ("Guidelines") adopted by the City Council to implement the BMR Ordinance. In order to process its application, the BMR Ordinance requires Applicant to submit a Below Market Rate Housing Agreement. This Agreement is intended to satisfy that requirement. Approval of a Below Market Rate Housing Agreement is a condition precedent to the approval of the applications and the issuance of a building permit for the Project.

E. Residential use of the Property is allowed by the applicable zoning regulations. Applicant is not proposing to construct residential uses as part of the Project. Site constraints due to the requirement to construct a right-turn pocket along the project’s Glenwood Avenue frontage and to develop a financially viable hotel project on an approximately half-acre infill site limit opportunities to develop residential uses as part of the Project as it is currently designed. Applicant does not own any sites in the City that are available and feasible for construction of sufficient below market rate residential housing units to satisfy the requirements of the BMR Ordinance. Based on these facts, the City has found that development of such units off-
site in accordance with the requirements of the BMR Ordinance and Guidelines is not feasible.

F. Applicant, therefore, is required to pay an in lieu fee as provided for in this Agreement. Applicant is willing to pay the in lieu fee on the terms set forth in this Agreement, which the City has found are consistent with the BMR Ordinance and Guidelines.

NOW, THEREFORE, the parties agree as follows:

1. If Applicant elects to proceed with the Project, Applicant shall pay the in lieu fee as provided for in the BMR Ordinance and Guidelines. Notwithstanding the proceeding, nothing in this Agreement shall obligate Applicant to proceed with the Project. The applicable in lieu fee is that which is in effect on the date the payment is made. The in lieu fee will be calculated as set forth in the table below; however, the applicable fee for the Project will be based upon the amount of square footage within Group B at the time of payment. The estimated in lieu fee is provided below.

<table>
<thead>
<tr>
<th>Use Group</th>
<th>Fee/SF</th>
<th>Square Feet</th>
<th>Component Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Existing Building - Non-Office Areas</td>
<td>B- Non-Office</td>
<td>$8.45</td>
<td>1,932</td>
</tr>
<tr>
<td>Proposed Building- Non-Office Areas</td>
<td>B- Non-Office</td>
<td>$8.45</td>
<td>33,657</td>
</tr>
</tbody>
</table>

**Total Estimated In Lieu Fee**

$268,076.25

2. If the Applicant elects to proceed with the Project, the Applicant shall pay the in lieu fee before the City issues a building permit for the Project. The in lieu fee may be paid at any time after approval of this Agreement by the Planning Commission. If for any reason, a building permit is not issued within a reasonable time after Applicant's payment of the in lieu fee, upon request by Applicant, City shall promptly refund the in lieu fee, without interest, in which case the building permit shall not be issued until payment of the in lieu fee is again made at the rate applicable at the time of payment.

3. This Agreement shall be binding on and inure to the benefit of the parties hereto and their successors and assigns. Each party may assign this Agreement, subject to the reasonable consent of the other party, and the assignment must be in writing.

4. If any legal action is commenced to interpret or enforce this Agreement or to collect damages as a result of any breach of this Agreement, the prevailing
party shall be entitled to recover all reasonable attorney's fees and costs incurred in such action from the other party.

5. This Agreement shall be governed by and construed in accordance with the laws of the State of California and the venue for any action shall be the County of San Mateo.

6. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by all of the parties hereto.

7. This Agreement supersedes any prior agreements, negotiations, and communications, oral or written, and contains the entire agreement between the parties as to the subject matter hereof.

8. Any and all obligations or responsibilities of Applicant under this Agreement shall terminate upon the payment of the required fee.

9. To the extent there is any conflict between the terms and provisions of the Guidelines and the terms and provisions of this Agreement, the terms and provisions of this Agreement shall prevail.

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

CITY OF MENLO PARK

By: __________________________
   City Manager

Pollock Realty Corporation, LLC

By: __________________________
   Jeff Pollock
   Pollock Realty Corporation, LLC
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 May __________, 2016, before me, ____________________________________________ , Notary Public personally appeared ____________________________________________ 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 ______________________________________________________________________

[Notary Public Seal]

[Commission Number]

[Notary Public - California]

[San Mateo County]