

REIMBURSEMENT AGREEMENT

THIS AGREEMENT (the "**Agreement**"), is made and entered in the City of Menlo Park, on and as of this 8th day of November, 2016, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "**City**" and MENLO GATEWAY, LP, a California limited partnership, hereinafter referred to as "**Developer**."

A. On December 7, 2010, the City conditionally approved Applicant's request for a hotel, health club, restaurant/café, office, research and development, retail/community facilities, and parking structures along Independence Drive in Menlo Park, California (the "**Project**").

B. To implement the Project, Developer will be installing utility connections beneath Independence Drive (the "**Improvements**"), as shown on Exhibit "A," attached hereto and incorporated herein, which will require work to occur beneath Independence Drive and subsequent restoration of the affected portion of Independence Drive. Ordinarily, this street restoration work would be subject to the City's standard detail for asphalt concrete patching. However, because the City intends to repave Independence Drive as shown in Exhibit "B, incorporated herein, at a later date (the "**City Work**"), the City has requested that, in lieu of Developer's performing the final asphalt concrete patching of the portion Independence Drive adjacent to the Project affected by the installation of utilities serving the Project, Developer agrees to temporarily patch the affected portion of Independence Drive and then reimburse the City for its fair share of the cost of asphalt concrete patching (based on what it would cost to re-patch the affected portion in accordance with the City's standard detail) of this portion upon the completion of the City Work.

C. The parties intend to enter into this Agreement to provide for the terms and conditions of Developer's Reimbursement.

D. NOW THEREFORE, in consideration of the mutual covenants and promises of the parties herein contained, the parties agree as follows:

1. **INCORPORATION OF RECITALS.** The foregoing recitals are hereby incorporated into this Agreement as if set forth in full herein.

(a) **CITY WORK.** The City shall perform the City Work as shown in Exhibit "B", using best efforts to complete such work by September 1, 2017, provided Developer has completed the Improvements and temporary patching of the affected portion of Independence Drive by the time City has selected a contractor and is ready to commence the City Work. In the event Developer has not completed all of its work by the time the City is ready to commence the City Work, City's obligation to use best efforts to complete such work by September 1, 2017, shall be extended by delays caused by Developer. The parties hereto agree that the Developer shall not be

obligated to perform any work included in Exhibit "B," subject to the terms of this Agreement. If the City does not complete the City Work by November 1, 2017, Developer shall have the option of restoring the areas affected by its work to City standard utility trench detail ST-9A at Developer's cost and this Agreement shall terminate upon satisfactory completion of Developer's work.

2. **TERM.** This Agreement, and the obligations herein, shall become effective commencing on the date set forth above and shall terminate upon either (i) the payment of Developer's Reimbursement to City, or (ii) if City does not complete the City Work in a timely fashion and Developer elects to restore the areas affected to City standard upon the completion of such work as described in Section 1 above. This Agreement may also be terminated at any time upon written mutual agreement of the parties

3. **REIMBURSEMENT - VERIFICATION OF COSTS.** Developer and City agree that Developer's Reimbursement will be determined based on Developer's fair share of the costs of the City Work attributable to the repaving of the portion of Independence Drive affected by Developer's installation of utilities. Developer and City agree that Developer's fair share cost of the City Work will be fifty four percent (54%) of the total costs incurred by the City for performing the City Work (the "**Developer's Reimbursement**"), which the parties estimate the Developer's 54% share to be \$271,000.00. Within forty five (45) days of the completion of the City Work, the City shall provide to Developer an invoice reflecting the actual itemized costs incurred by the City in performing the City Work along with the calculation of Developer's Reimbursement (the "**Invoice**"). Within fifteen (15) days of Developer's receipt of the Invoice, Developer shall pay to the City Developer's Reimbursement. Upon Developer's payment of the Developer's Reimbursement, Developer shall be released from any and all obligations to perform any additional asphalt concrete patching over Independence Drive. If Developer causes delay in City Work and contractor charges additional cost for delay caused by Developer, Developer shall be responsible for such additional cost.

4. **INDEMNIFICATION.** To the extent permitted by law and without waiving its sovereign immunity, the City shall defend, indemnify and hold harmless the Developer, its officers, agents and employees from and against any and all claims, demands or causes of action arising out of or related to the City's performance of the City Work. Developer shall defend, indemnify and hold harmless the City and its officers, agents and employees from and against any and all claims, demands or causes of action arising out of or related to any work performed by Developer or its contractors in Independence Drive, including but not limited to any temporary patch work performed within Independence Drive pending completion of the City Work.

5. **NOTICES.** 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, to the party's mailing address. The respective mailing addresses of the parties are, until changed, the following:

The City: Director of Public Works
City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025

With a Copy to: City Attorney
City of Menlo Park
1100 Alma Street, Suite 210
Menlo Park, CA 94025

The Developer c/o Bohannon Development Company
Sixty 31st Avenue
San Mateo, California 94403
Attention: Robert Webster

Either party may change its mailing address at any time by giving ten (10) days notice of such change in the manner proved in this paragraph. All notices 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.

6. **SEVERABILITY**. In the event any one or more of the provisions of the Agreement shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the remaining provisions of the Agreement shall remain in effect and the Agreement shall be read as though the offending provision had not been written or as the provision shall be determined by such court to be read.

7. **GOVERNING LAW**. This Agreement is made under, shall be governed by and construed in accordance with the laws of the State of California.

8. **CONSTRUCTION**. This Agreement has been reviewed and revised by legal counsel for both the Developer and the City and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of the Agreement.

9. **FURTHER ASSURANCES**. Each party covenants, on behalf of itself and its successors and assigns, to take all actions and do all things, and to execute, with acknowledgment or affidavit if required, any and all documents, instruments and writings as may be necessary or proper to achieve the purposes and objectives of the Agreement.

10. **ATTORNEY'S FEES**. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs of such litigation.

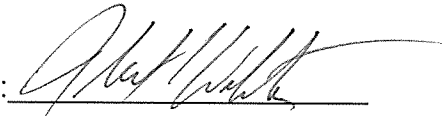
[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

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

DEVELOPER:

MENLO GATEWAY, LP,
a California limited partnership

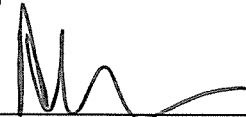
BY: Bohannon Development
Company, a California
corporation, its General
Partner

BY: 

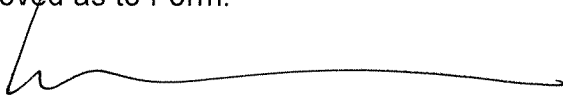
Name: Robert L. Webster
Title: President and CEO

CITY:

CITY OF MENLO PARK, a Municipal
Corporation

BY: 
NAME: Alex D. McIntyre
TITLE: City Manager

Approved as to Form:

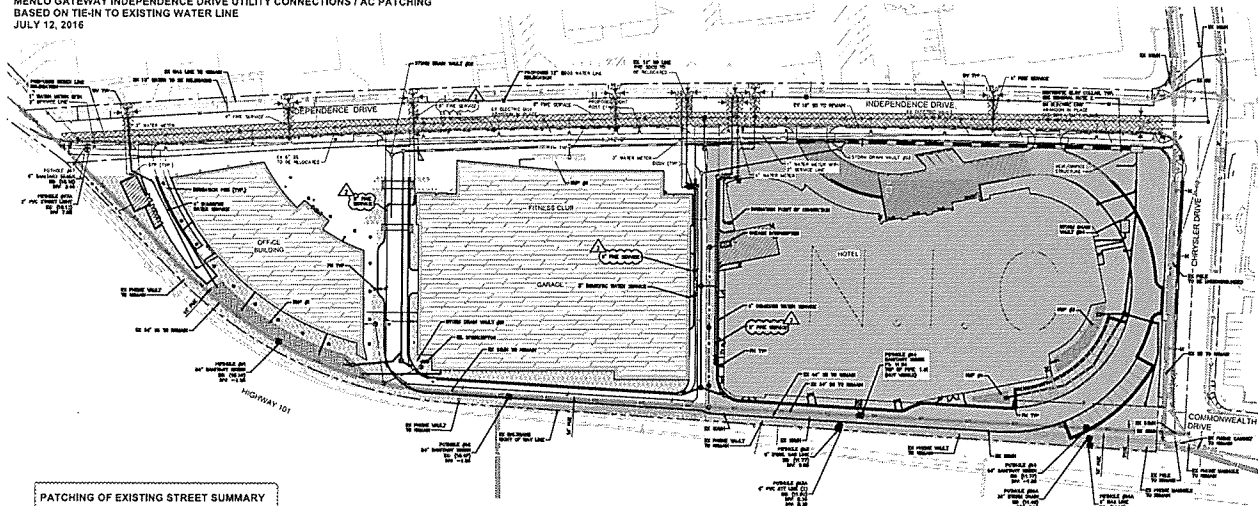
By: 
William L. McClure, City Attorney

Exhibits: A – Independence Avenue Utility Connections and Asphalt Concrete
Patching Improvements

B – City Work

Exhibit A

MENLO GATEWAY INDEPENDENCE DRIVE UTILITY CONNECTIONS / AC PATCHING
 BASED ON TIE-IN TO EXISTING WATER LINE
 JULY 12, 2016

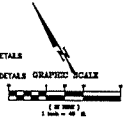


PATCHING OF EXISTING STREET SUMMARY
 (6) tie in locations 12' x 22' / 1,584 sq. ft.
 (2) tie in locations 19' x 22' / 836 sq. ft.
 Storm/Sewer relocation 1212' x 15' / 18,180 sq. ft.
 Total surface patching / 20,600 sq. ft.

Area of Patching - Project Requirement

LEGEND

- PIT-HOLE LOCATION
- PROPOSED STORM DRAIN LINE
- PROPOSED STORM DRAIN MANHOLE
- PROPOSED CATCH BASIN/JUNCTION BOX
- PROPOSED SANITARY SEWER LINE
- PROPOSED SANITARY SEWER MANHOLE
- PROPOSED SANITARY SEWER CLEANOUT
- PROPOSED DOMESTIC WATER LINE
- PROPOSED DOMESTIC WATER METER
- PROPOSED WATER VALVE
- PROPOSED FIRE WATER LINE
- PROPOSED BACK FLOW PREVENTION ASSEMBLY (TICCO B3510 OR EQUIVALENT)
- PROPOSED ISOLATION VALVE
- PROPOSED BRIDGATION POINT OF CONNECTION SEE UTILITY NOTE 3.
- FIRE DEPARTMENT CONNECTION
- PROPOSED FIRE HYDRANT
- PROPOSED GAS/ELECTRIC BOX (BY OTHERS)
- DISEASE/OIL INTERCEPTOR
- EXISTING STORM DRAIN LINE
- EXISTING SANITARY SEWER LINE
- EXISTING GAS LINE
- EXISTING ELECTRICAL LINE
- EXISTING WATER LINE
- EXISTING LINE
- STORMWATER TREATMENT
- LANDSCAPING
- SIDEWALK
- BUILDING
- ASPHALT CONCRETE
- REINFORCED VIBRACULAR CONCRETE
- UNIT PAVING
- SEE LANDSCAPE ARCHITECTURE PLANS FOR DETAILS
- DECORATIVE PAVING
- SEE LANDSCAPE ARCHITECTURE PLANS FOR DETAILS GRAPHIC SCALE



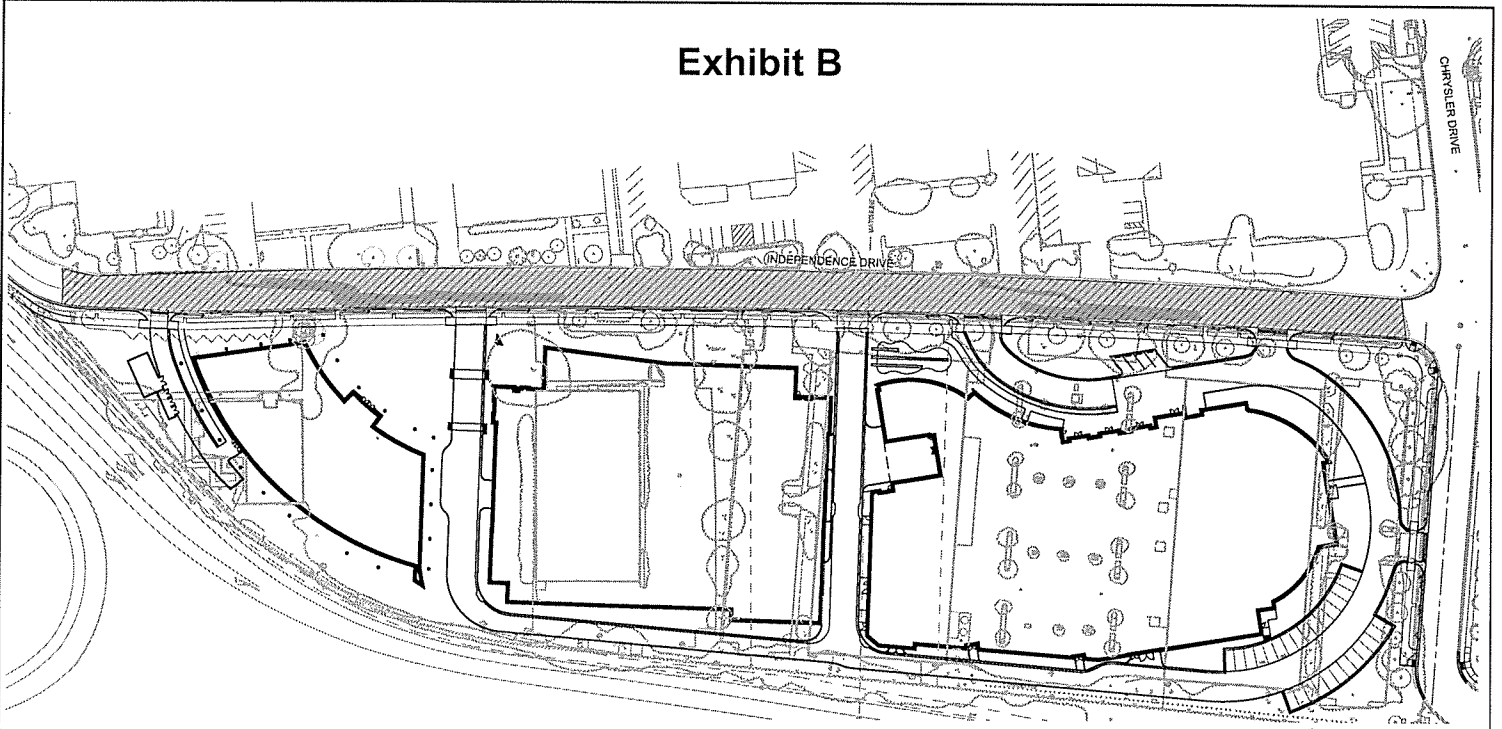
100% CONSTRUCTION DOCUMENTS
 MARCH 28, 2016


DATE	DESCRIPTION	DATE
MARCH 28, 2016	100% CONSTRUCTION DOCUMENTS	

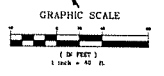
DATE: MARCH 28, 2016
 SHEET NO.:
 PIT-HOLE EXISTENT:
 SCALE: SEE SHEET
 SHEET NO.: C4.7


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Exhibit B



LEGEND
 PROPOSED RESURFACING AREA
 (APPROXIMATELY 38,340 SQ'±)



DATE: _____ SCALE: _____ DRAWN BY: _____ CHECKED BY: _____ APPROVED BY: _____	APPROVED: _____ _____ _____ _____	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th>NO.</th> <th>BY</th> <th>DATE</th> <th>REVISION</th> </tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> </table>	NO.	BY	DATE	REVISION																	 CITY OF MENLO PARK ENGINEERING DIVISION 701 LAUREL STREET, MENLO PARK, CA 94025-3488 MENLO PARK PHONE (650) 350-6740 FAX (650) 327-5497	INDEPENDENCE RESURFACING LIMITS	SHEET _____ OF _____ PROJ. NAME _____
NO.	BY	DATE	REVISION																						

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