

**MENLO GATEWAY**

**DRAFT**

**BELOW MARKET RATE HOUSING AGREEMENT  
(PAYMENT OF IN LIEU FEES)**

This "Agreement" is made as of this \_\_\_ day of \_\_\_\_\_, 2010 by and between the City of Menlo Park, a California municipality ("City") and Bohannon Development Company, a California corporation ("Developer"), with respect to the following:

**RECITALS**

A. Developer and its affiliated entities own certain real property in the City of Menlo Park, County of San Mateo, State of California, consisting of approximately 16 acres located at 100-190 Independence Drive and 101-155 Constitution Drive, more particularly described in Exhibit A ("Property").

B. Developer proposes to construct on the Property a commercial project consisting of hotel, health club, office, and parking structure components ("Project"). Developer has applied to the City for a General Plan Text Amendment, Zoning Ordinance Amendment, General Plan Amendment for Specific Development Application, Rezoning for Specific Development Application, Development Agreement, Conditional Development Permit, Parcel Maps, Heritage Tree Removal Permits and Environmental Review.

C. Developer is required to comply with Chapter 16.96 of City's Municipal Code, ("BMR Ordinance"), and with the BMR Housing Program Guidelines adopted by the City Council to implement the BMR Ordinance ("Guidelines"). In order to process its applications, the BMR Ordinance requires Developer 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 building permits for the Project.

D. The Property is not zoned for residential uses. Therefore, construction on-site of below market rate units is not feasible or desirable. Moreover, Developer does not own any sites in the City that are available and feasible for construction of sufficient below market rate units to satisfy the requirements of the BMR Ordinance. Based on these facts, City has found that development of such units off-site in accordance with the requirements of the BMR Ordinance and Guidelines also is not feasible.

E. City has determined not to require Developer to provide below market rate units and, under the terms of the BMR Ordinance, Developer therefore is required to pay an in lieu fee as provided in this Agreement, which Developer is willing to pay 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. Developer shall pay the applicable in lieu fee as provided in the BMR Ordinance and Guidelines, as well as provided for in the Development Agreement, which is incorporated herein by reference.

2. The applicable in lieu fee is that which is in effect on the date the payment is made. The current fee, which is subject to escalation each July 1, is \$14.01/s.f. for "Group A" uses, which include office uses, and \$7.61/s.f. for "Group B" uses, which include non-office uses. Based on these fees and the uses and building sizes shown on the project plans, the estimated total fee would be \$8,543,207.25. The actual fee would be based on the proposed uses shown on the building permit plans. If the specific use of a portion of a building is not known, then the Group A fee will apply. If a subsequent building permit indicates a use other than a Group A use, then the Developer would be eligible for a refund for the difference based on the rates in effect at the time of payment. If a portion of the building is converted from a Group B use to a Group A use, then the Developer shall pay the difference at the applicable fee rates at the time of conversion of any such space. The method of calculating the fee for the Project is more particularly described in Exhibit B.

3. The corresponding portion of the fee shall be paid before issuance of each building permit for the Project and credits for existing uses shall be applied to establish the BMR fee amount based on the net change in the gross floor area. If, for any reason, building permits are not issued and the development rights granted to Developer as set forth in the Development Agreement expire or terminate, City shall promptly refund the fee(s) paid, without interest, upon application of Developer following expiration or termination of such development rights. If, for any reason a building permit is canceled or expires and no work pursuant to the permit has commenced, City shall promptly refund the fee, without interest, upon application of Developer following such expiration or cancelation of the building permit.

4. This Agreement shall be binding on and inure to the benefit of the parties hereto and their successors and assigns.

5. This Agreement is a covenant running with the land for the benefit of the City and all lands owned by the City within the limits of the City.

6. 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 party prevailing shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action from the other party.

7. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

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

9. 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. Notwithstanding the foregoing, this Agreement is subject to the terms and conditions of the Development Agreement between the parties hereto and is subject to the terms and conditions of the Conditional Development Permit issued by the City for the Project.

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

11. 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

DEVELOPER

By: \_\_\_\_\_  
**Glen Rojas**  
City Manager

By: \_\_\_\_\_  
**David D. Bohannon**  
Vice President

Exhibits:

- A. Property Legal Descriptions
- B. BMR Housing Fee Calculation

**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 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 2 as shown on that certain map entitled "PARCEL MAP BEING A RESUBDIVISION OF LOTS 5 AND 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 Document No. 82032367, Official Records.

APN: 055-234-250-3 (JPN 055 023 234 16.02 A)

PROPERTY ADDRESS: 115 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 B**

**BELOW MARKET RATE (BMR) HOUSING FEE CALCULATION**

**MENLO GATEWAY (BOHANNON HOTEL & OFFICE)**

	Land Use	Existing Gross Floor Area (sf)	Proposed Gross Floor Area (sf)	Net Change in Gross Floor Area (sf)	Per-Square-Foot Fees as of July 1, 2009*	BMR Fee Amount
<b>Independence Phase - Parcel 2</b>						
<b>Group A</b>	Office/R&D	63,360	0	-63,360	\$14.01	-\$887,673.60
<b>Group B</b>	Non-Office	0	246,426	246,426	\$7.61	\$1,875,301.86
<b>Total</b>		63,360	246,426	183,066		\$987,628.26
<b>Independence Phase - Parcel 1</b>						
<b>Group A</b>	Office/R&D	21,697	200,000	178,303	\$14.01	\$2,498,025.03
<b>Group B</b>	Non-Office	0	0	0	\$7.61	\$0.00
<b>Total</b>		21,697	200,000	178,303		\$2,498,025.03
<b>Total Independence Phase</b>						
<b>Group A</b>	Office/R&D	85,057	200,000	114,943	\$14.01	\$1,610,351.43
<b>Group B</b>	Non-Office	0	246,426	246,426	\$7.61	\$1,875,301.86
<b>Total</b>		85,057	446,426	361,369		\$3,485,653.29
<b>Constitution Phase - Parcel 1</b>						
<b>Group A</b>	Office/R&D	85,386	247,335	161,949	\$14.01	\$2,268,905.49
<b>Group B</b>	Non-Office	0	0	0	\$7.61	\$0.00
<b>Total</b>		85,386	247,335	161,949		\$2,268,905.49
<b>Constitution Phase - Parcel 2</b>						
<b>Group A</b>	Office/R&D	48,288	247,335	199,047	\$14.01	\$2,788,648.47
<b>Group B</b>	Non-Office	0	0	0	\$7.61	\$0.00
<b>Total</b>		48,288	247,335	199,047		\$2,788,648.47
<b>Total Constitution Phase</b>						
<b>Group A</b>	Office/R&D	133,674	494,670	360,996	\$14.01	\$5,057,553.96
<b>Group B</b>	Non-Office	0	0	0	\$7.61	\$0.00
<b>Total</b>		133,674	494,670	360,996		\$5,057,553.96
<b>Project Total</b>						
<b>Group A</b>	Office/R&D	218,731	694,670	475,939	\$14.01	\$6,667,905.39
<b>Group B</b>	Non-Office	0	246,426	246,426	\$7.61	\$1,875,301.86
<b>Total</b>		218,731	941,096	722,365		\$8,543,207.25

Source: Gross floor areas based on Project Plan Set, dated March 10, 2010.

Note: \*Fee is adjusted annually on July 1 based on a five-year moving average of the percentage increase in the Consumer