DEFERRED FRONTAGE IMPROVEMENT AGREEMENT AT 1505 O'BRIEN DRIVE

THIS AGREEMENT, dated this 12th day of March 2020, is by and between the City of Menlo Park, a political subdivision of the State of California, hereinafter referred to as "City", and MENLO PREP II, LLC, a Delaware limited liability company, hereinafter referred to as "MPII", and TPI Investors 9, LLC, a California limited liability company, hereinafter referred to as "TPI 9", with both "MPII" AND "TPI 9" collectively hereinafter referred to as "OWNER" or "MENLO PARK PORTFOLIO."

RECITALS

WHEREAS, the application for a building permit to remodel the existing building at 1505 O'Brien Drive, Menlo Park, California, hereinafter referred to as "PROPERTY" was submitted to the building department on October 08, 2019 with a condition of approval which requires the Owner to either submit documentation of a deferred frontage improvement agreement or complete any future frontage improvements as deemed necessary by the City.

WHEREAS, it has been mutually agreed by the parties that construction of the frontage improvements is not advisable at this time, and

WHEREAS, the parties hereto mutually desire to defer the construction of the frontage improvements to a later date as determined by the City.

NOW, THEREFORE, it is agreed by and between the City and Owner hereto as follows:

CONDITIONS OF AGREEMENT

1. Owner represents and warrants that Owner is the fee title owner of the PROPERTY and more particularly described in Exhibit A, which is attached hereto and incorporated herein. OWNER acknowledges that the building permit issued for building on the Property is subject to a condition of constructing frontage improvements. The application for building permit approval is expressly incorporated by reference and made part of this Agreement, together with the Conditions of Approval. The parties hereto agree that the actual construction of the frontage improvements may be delayed as provided herein. Failure to provide for the construction of the frontage improvements as required by the City will constitute not only a failure of condition as to the Owner's building permit, but also a breach of this Agreement which additional legal remedies are not precluded. If Owner constructs the frontage improvements as required herein, this Agreement will terminate. After such termination, City will duly
execute a confirmation of such termination in recordable form, within thirty (30) days after written request by Owner that provides a mutually acceptable form of such termination.

2. Owner agrees to provide for the construction of certain improvements along the frontage of the Property at the sole cost and expense of Owner. All frontage improvements shall be in accordance with the requirements set forth by the City Standards and Specifications. Said improvements shall include those shown on Exhibit B, which is attached hereto and incorporated herein. All private improvements within the public right of way shall be removed at the time of construction. Determination of when the required improvements are to be constructed shall be within the sole discretion of the City Public Works Director, subject to the terms of this Agreement.

3. Upon written notification to proceed by the City, Owner will engage a Civil Engineer, licensed in the State of California, to design and prepare construction drawings for the required improvements to be approved by the City Public Works Director. Said drawings shall be submitted to the City within 90 days after notification and construction shall commence within 30 days after approval of the construction drawings. Construction shall be diligently completed.

4. Upon written notice to Owner, the City Public Works Director may choose to perform the design engineering work and the construction of the frontage improvements as an alternative to Paragraph 3 above. If the estimated cost of such work exceeds the amount of the funds posted with the City of the design, construction, and construction management for the frontage improvements, the City shall provide Owner written notice thereof, including a detailed breakdown of such cost. Within thirty (30) days after Owner’s receipt of such notice, Owner may exercise the right to engage a licensed contractor to perform such at Owner’s cost. If City performs the design and construction work, Owner will reimburse the City within six (6) months of written notification, for the cost of the frontage improvements. The cost of the frontage improvements shall be the actual cost of construction.

5. In the event there is a default of Paragraph 3 above by the Owner, the City shall provide the Owner with written notice specifying the nature of such default and Owner shall have fifteen (15) days following Owner’s receipt of notice from the City to cure such default; provided, however, if Owner fails to cure such default following the expiration of such cure period, then the City may proceed to cause said construction to be done and charge the entire cost and expense to the Owner, including interest thereon at the maximum legal rate from the date of written notice of said cost and expense, until paid.

6. This Agreement, consisting of the burdens of constructing and/or paying for the costs of said frontage improvements, is intended to run with the land described in Exhibit A and is binding on the heirs, successors, and assigns of the Owner and the benefit is to run to the successors and assigns of the City. All reasonable costs incurred by the City in its performance under Paragraphs 4 or 5 of this Agreement shall constitute a lien upon the Property.

7. In the event of a default on the part of the Owner to pay for the actual cost of such frontage improvements, the City may pursue recovery of such cost against the Property and/or against the funds posted with the City for the design, construction, and construction management for the frontage improvements by Owner to secure performance of the frontage improvements.

8. In the event of litigation occasioned by any default by Owner, the prevailing party is entitled to reimbursement for reasonable attorney fees.

9. Owner will include in any sales agreement or transfer of any interest in any part or the whole of the Property which is covered by this Agreement, the requirement that the Buyer/Transferee assume the responsibilities set forth in this Agreement, as to the Property and agrees to be subject to the terms and conditions herein, as an heir, successor, or assignee of Owner. Owner shall require the Buyer/Transferee to sign and acknowledge a notarized statement substantially in the following form:

"Buyer/Transferee hereby acknowledges and assumes all responsibility for the construction of frontage improvements related to the property for which Buyer/Transferee is acquiring an interest, in accordance with the terms and conditions of the Agreement between the City of..."
Menlo Park and OWNER, fee title owner of the real property commonly known as **1505 O'Brien Drive**, recorded as part of the Official Records of San Mateo County.'

This statement shall be delivered to the City Public Works Director prior to the transfer of any interest in parcels covered by this Agreement.

10. The term of this Agreement shall commence of the date of recordation of this Agreement. The City reserves the right to enforce this Agreement at any time during the life of this Agreement.

11. Notice shall be considered effective for purposes to this clause upon placing the notice in the United States mail, postage prepaid and addressed to Owner. For purposes of notice, Owner's address is that listed below unless Owner so notifies City in writing of a change, for purpose of notice under this Agreement:

   **Attention:** Menlo Park Portfolio  
c/o Tarlton Properties, Inc.  
Attn: Elizabeth Kriitemeyer  
1530 O'Brien Drive, Ste C  
Menlo Park, California 94025  
650-330-3600  
ekriitemeyer@tarlton.com

12. In the event that there are any changes to the law which would make any part of this Agreement invalid, that portion of the Agreement shall be severed from the Agreement and the remaining portions of the Agreement shall remain in full force and effect.

13. Upon execution of this Agreement, Owner shall post funds with the City for the design, construction and construction management for the frontage improvements in the amount of $220,000.00 as shown in **Exhibit C** as a guarantee that said frontage improvements will be completed. The City shall place these posted funds in an interest bearing escrow account. Throughout the term of this Agreement, until the frontage improvements have been completed in accordance with the terms and provisions herein, these funds shall remain with the City. Nevertheless, Owner may substitute a performance bond for the posted funds, provided that the performance bond is for 200% of the Engineer's Estimate and will extend through the term of the Agreement.

   **Attachments:**  
   Exhibit A Legal Description of the Property  
   Exhibit B Proposed Improvements  
   Exhibit C Engineer's Estimate

   [SIGNATURES APPEAR ON NEXT PAGE]
SIGNATURES

IN WITNESS WHEREOF, the Parties have hereunder subscribed their names the day and year indicated below.

OWNER:

MENLO PREPI I, LLC, a Delaware limited liability company

By: PRINCIPAL REAL ESTATE INVESTORS, LLC, a Delaware limited liability company, its authorized signatory

By: ______________________________
Name: Jeffrey D. Uittenbogaard
Title: Investment Director
Asset Management

By: ______________________________
Name: ______________________________
Title: ______________________________

TPI INVESTORS 9, LLC, a California limited liability company,

By: ______________________________
Name: Ron Krietemeyer
Title: COO, Ta-Boo Properties, Inc.

APPROVED AS TO FORM:

______________________________
William L. McClure, City Attorney

Date: 3/25/2020

CITY OF MENLO PARK:

______________________________
Nikki H. Nagaya, Interim Director of Public Works

Date: 3/12/2020

ATTEST:

______________________________
Judith A. Herren, City Clerk

Date: 3/12/2020
SIGNATURES APPEAR ON NEXT PAGE

Exhibit C
Proposed Improvements
Legal Description of the Property

Exhibit B
Attachment: Exhibit A

The term of the Agreement shall be a guarantee that said proposed improvements will be completed. The City shall place these improvements in the amount of $720,000.00 shown in and construction management for the funds. There is no prepayment of funds.
State of California  
County of San Mateo County  

On March 12, 2020 before me, Neetu Salwan, Notary Public, personally appeared, Nicole Nagaya 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]

Neetu Salwan  
Notary Public, San Mateo County  
Commission #2278678  
Expires 02-24-2023
STATE OF IOWA

) ss.
COUNTY OF POLK

On Jan 22, 2020, before me, Kristin Blackman, a Notary Public in and for said state, personally appeared Jeffrey D. Wittenbarger, and

personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons or the entity upon behalf of which the persons 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.

Notary Public in and for said State

Classification: Internal Use
SIGNATURES

IN WITNESS WHEREOF, the Parties have hereunder subscribed their names the day and year indicated below.

OWNER:

MENLO PREPI I, LLC, a Delaware limited liability company

By: PRINCIPAL REAL ESTATE INVESTORS, LLC, a Delaware limited liability company, its authorized signatory

By:
Name:
Title:

By:
Name:
Title:

TPI INVESTORS 9, LLC,
a California limited liability company,

By: Ron Krietermeier
Name: Ron Krietermeier
Title: COO, Tafton Properties, Inc

APPROVED AS TO FORM:

__________________________________________
William L. McClure, City Attorney
Date

CITY OF MENLO PARK:

__________________________________________
Nikki H. Nagaya, Interim Director of Public Works
Date

ATTEST:

__________________________________________
Judi A. Herren, City Clerk
Date
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 San Mateo

On January 17, 2020 before me, ____________________________
here insert name and title of the officer

personally appeared Ronald W. Kreelmaier

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

Place Notary Seal and/or Stamp Above

Signature of Notary Public

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 of Conservator
☐ Other: ____________________________

Signer is Representing: ____________________________

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

Signer is Representing: ____________________________

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Exhibit A

Legal Description

The land referred to in Exhibit A is situated in the State of California, County of San Mateo, City of Menlo Park and is described as follows:

PARCEL F (1505 O'BRIEN DRIVE):


APN: 055-474-110
August 18, 2019

Tariton Properties
1530 Obrien Dr. Suite C
Menlo Park, Ca. 94025
Attention: Bob Wood

Project Location
Sidewalk improvement at 814

Concrete sidewalk through landscape – ADA COMPLIANT

- Demo landscape, excavate native soils, off haul and dispose. 3000 square feet. 3000 @ $11 = $33,000.00
- Form and pour new concrete flatwork (4" Concrete over 4" compacted base material including #3 reinforcing bars, 18" o.c.). 3000s.f. @ $25 = $75,000.00
- 300 Linear 12" incorporated vertical curb as retaining wall where needed to address slope. 400L.F. @ $30 = $12,000.00
- Landscape Impact and replanting 3000s.f. @ $5 = $15,000.00
- Replace 2 streetlamps (1 on O’Brien, 1 on Adams) 2 @ $22,500.00 = $45,000.00
- Additional excavation and grading for ADA Compliant ramps and both ends. $25,000.00 (5% Slope, 2% cross-slope)

Project Total: $205,000.00

Civil drawing and Construction Administration fees: $15,000

Project Total Fees: $220,000

- No plans or shop drawings provided.
- Pricing valid until 12-31-19