REIMBURSEMENT AGREEMENT
Mitigation Improvements

THIS AGREEMENT, made and entered into in the City of Menlo Park, on this 10th day of October, 2014, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as “City” and ANTON MENLO, LLC, a California limited liability company, hereinafter referred to as “Developer.”

A. Developer owns that certain real property commonly known as 3605-3615, 3633-3655 and 3639 Haven Avenue, in the City of Menlo Park, California (APNs: 055-170-190; 055-170-200; 055-170-260; 055-170-180; 055-170-270 and 055-170-320) (collectively, the “Property”).

B. Development of the Property is subject to certain Housing Element mitigation measures designated as TR-1g and TR-2w (“Mitigation Measures”) that require the Developer to construct certain roadway improvements.

C. Developer has agreed to extend the geographic reach of the roadway improvements required by the Mitigation Measures to beyond the Atherton Channel and construct the Improvements, as defined below, in accordance with the conceptual plans attached hereto as Exhibit A and incorporated herein by this reference. While the final plans for the construction of the Improvements shall be subject to City approval, nothing contained in this Agreement shall be deemed to constitute an agreement by Developer to construct any Improvements which materially deviate from the conceptual plans attached hereto as Exhibit A.

i. At the intersection of Bayfront Expressway and Marsh Road (the “Intersection”), re-stripe the southbound approach on Bayfront Expressway (Haven Avenue approach) from one shared left turn/through lane, one through lane and one right turn lane to one left turn/through lane, and one through/right turn lane and one right turn lane (“Road Improvements”); and

ii. Construct (i) bicycle and pedestrian improvements on both sides of Haven Avenue, including a separate bike and pedestrian bridge on at least one side of the existing bridge over the Atherton Channel (“Bicycle and Pedestrian Improvements”) and (ii) aesthetic improvements (e.g. decorative paving) to the existing median on the Haven Avenue approach to the Intersection (“Median Improvements” and collectively with the Road Improvements and Bicycle and Pedestrian Improvements, the “Improvements”), all in accordance with conceptual plans prepared by Developer and approved by the City.

D. The Mitigation Measures also require the City to enter into a non-recourse reimbursement agreement with the party constructing the Improvements, whereby the City shall agree to levy and use commercially reasonable efforts to collect fees from other entities/persons that benefit from said Improvements (the “Sharing Parties”), including, without limitation, Menlo Gateway, Facebook Campus, Greystar (3645 Haven Avenue) and 3780 Haven Avenue projects, to the extent they are obligated to
participate in the cost of such improvements. Unless otherwise approved by the City, Developer is the party constructing the Improvements. In the event that Developer is not the party constructing the Improvements, the provisions contained in this Agreement shall be of no further force or effect. In the event of any inconsistency between the Mitigation Measures and any obligation of Developer described in this Agreement, this Agreement shall govern and control.

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

1. **GRANT OF LICENSE - USE OF LICENSE AREAS.** The City hereby grants to the Developer a license upon, across, under and over Haven Avenue, Bayfront Expressway, Marsh Road and the Atherton Channel for the limited purpose of construction and installation of the Improvements (collectively, the “License Areas”). The Developer shall have no obligation to maintain, repair or replace the public roadways or curbs surrounding the License Areas. Notwithstanding the foregoing, to the extent Developer damages the License Areas during construction of the Improvements, Developer shall be required to repair any such damage and restore the License Areas to their previous condition.

2. **NON-EXCLUSIVITY - NO INTEREST IN LAND.** The license granted herein shall be non-exclusive, and the City reserves the right to grant other licenses and/or allow other public use of the License Areas as it may deem appropriate. The Developer acknowledges that this License is non-possessory and the License Areas are subject to public use at all times, subject to Developer’s right to temporarily close access due to construction of the Improvements pursuant to an encroachment permit or other City approval. The parties agree that this license does not grant to or create in the Developer any fee, leasehold, easement or other interest or estate in land in the License Areas.

3. **TERM.** This Agreement shall become effective, and the obligations herein, commencing on the date set forth above. The City may, with or without cause, revoke this license at any time on thirty (30) days notice by service upon the Developer (or its heirs, successors and assigns) of a written notice of revocation when the City determines that it is in the best interests of the public to do so; provided, however, that the City may not revoke such license during the period of construction of the Improvements. This Agreement and the license granted herein may also be terminated at any time upon written mutual agreement of the parties.

4. **STANDARD OF WORK.** The Developer agrees by acceptance of this license to maintain the License Areas during the construction of the Improvements in a professional manner and in a clean and orderly condition. Any work contemplated under this Agreement and the license which requires excavation, involves the installation of permanent improvements or affects the established drainage shall be submitted to the City prior to commencement of the work for review and approval. Upon completion of the work each day, all trimmings, branches, cuttings, and other materials shall be removed, and no equipment shall be stored overnight within the License Areas.
without the prior written permission of the City. The Developer shall be responsible for obtaining any and all other permits, if any, if required for the performance of its work.

6. **REIMBURSEMENT - VERIFICATION OF COSTS.** The fees shall be collected by the City from the Sharing Parties prior to the issuance of any building permit for the applicable project for such Sharing Party, if required pursuant to applicable approvals for such projects. Such reimbursement shall be based upon the total number of residential units to be developed within the site as shown in approved site plans for development projects. Developer shall additionally be entitled to reimbursement through existing agreements that the City has (either by direct enforcement by Developer, in Developer's sole discretion, against the parties obligated for such reimbursements or by payment by the City of reimbursements collected by the City under such agreements to the extent such agreements require participation in the cost of Improvements by such projects) with the Menlo Gateway, Facebook Campus, Greystar (3845 Haven Avenue) and 3760 Haven Avenue projects, which reimbursements the City agrees to use commercially reasonable efforts to obtain. Developer shall also be eligible for reimbursement from future non-residential development in the Haven Avenue area as determined by the City at the time of such future development. The actual amounts to be paid to the Developer shall be based upon the final cost of construction and installation of the Improvements, which shall be evidenced by invoices or other evidence of such costs provided by Developer, and as verified by the City. In no event shall the costs subject to reimbursement include any of Developer's internal employee costs, or management expenses paid to affiliated entities of Developer. City further agrees to use commercially reasonable efforts to cause the reimbursement of Developer to occur in as expeditious manner as possible. The Developer shall provide to the City documentation of the scope of work and invoices showing the amounts paid for the construction of the Improvements. The City shall verify invoices that are directly related to the costs of construction for the Improvements. The City shall pursue reimbursement from the Sharing Parties, at Developer's cost. All reimbursements due under this Agreement shall be promptly paid by the City to Developer as the City obtains funds from the Sharing Parties after completion of the Improvements and acceptance of the Improvements by the City, as certified by Developer's contractor to the City. Fees paid to the City by the Sharing Parties need not be paid to the Developer until the limitations period for instituting legal action seeking refund of funds paid under protest has run and no court action has been instituted. If an action is instituted, the City shall not pay such funds to the Developer until the action has been completed and the authority of the City to collect such charges is sustained.

6. **INDEMNIFICATION.** Developer shall defend, indemnify and hold harmless the City, its officers, agents and employees (the "Indemnified Parties") from and against any claims, demands, or causes of action, including any writ of mandate proceeding, brought by any person or entity challenging the validity of this Agreement, including, but not limited to, a suit brought by any party from whom or which the City is attempting to collect reimbursement to pay Developer pursuant to the terms of this Agreement (provided, however, in the event of any such claim, demand, or cause of action, Developer shall have the right to determine whether or not the City should
pursue the defense of any such challenge). If the Developer fails to undertake defense of the action at its expense, the City may return the amounts so paid under protest, and the City shall not be further obligated to Developer as to funds so refunded. In the event the Developer fails to undertake defense of the action at its sole expense, and to agree to indemnify the City from liability, the City may cease collecting such funds, or enter into any other settlement of the litigation acceptable to the City, and the Developer shall lose any right to reimbursement of such funds under the this Agreement. Under no circumstances shall the City be deemed liable for any funds not collected from benefited Sharing Parties.

7. **NON-RECOUPMENT REIMBURSEMENT AGREEMENT.** It is agreed that the City shall levy and use commercially reasonable efforts to collect the fees from the Sharing Parties in accordance with this Agreement with all such fees going to the Developer for reimbursement of the amount by which the Developer's contribution to the cost of constructing the Improvements exceeds its fair share. The costs of levying and collecting fees from the Sharing Parties, including, but not limited to, staff time and administrative expenses, shall be at Developer's cost and expense and Developer shall have no recourse against the City for failure to pursue collection of such fees other than to obtain an assignment of the City's rights of collection against such Sharing Parties.

8. **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, overnight courier 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** Anton Menlo, LLC  
Attn: Peter H. Geremia  
1801 I Street, Suite 200  
Sacramento, CA 95811

**With a Copy to:** Andrew F. Sackheim  
Real Estate Law Group LLP  
3455 American River Drive, Suite C  
Sacramento, CA 95864
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 or sent by overnight courier, on the delivery date or attempted delivery date shown on the return receipt.

9. **NON-ASSIGNMENT.** The license granted herein is personal to the Developer and shall not be assignable; provided, however, the Developer may, at its discretion and on terms and conditions it determines, and subject to the terms of this Agreement, contract with consultants and contractors to construct and install the Improvements. Developer’s right to reimbursement, as set forth herein, may be assignable by Developer at its discretion and with notice to the City.

10. **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.

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

12. **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.

13. **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.
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

ANTON MENLO, LLC, a California limited liability company

BY: __________________________
NAME: Peter H. Geremia
TITLE: Manager

CITY OF MENLO PARK, a Municipal Corporation

BY: __________________________
NAME: Alex D. McIntyre
TITLE: City Manager
EROSION SEDIMENT CONTROL NOTES:

1. The contractor shall be responsible for damages to public and privately owned roads, stream banks, and other property structures if the contractor's activities are caused by sediment erosion.
2. Prior to any work, a work stop order must be obtained from the appropriate agency in writing that will include the work stop order number, site location, and other required information.
3. The work stop order must be obtained before any work can begin.
4. The work stop order must be returned to the appropriate agency in writing when the work is complete.

DUST CONTROL NOTES:

1. Water all active construction areas at least twice daily.
2. Cover all exposed soil, sand, and other loose materials with a minimum of 1 inch of water or other approved control measure.
3. Use approved control measures for sand, soil, and other loose materials.
4. Water all access roads before, during, and after construction activities.

NOTES:

1. Use approved control measures for sand, soil, and other loose materials.
2. Water all access roads before, during, and after construction activities.
3. Maintain effective and ongoing control measures in place for a minimum of 10 days after the work is complete.
4. Water all access roads before, during, and after construction activities.
5. Use approved control measures for sand, soil, and other loose materials.

MATERIALS:

1. Use approved control measures for sand, soil, and other loose materials.
2. Water all access roads before, during, and after construction activities.
3. Maintain effective and ongoing control measures in place for a minimum of 10 days after the work is complete.
4. Water all access roads before, during, and after construction activities.
5. Use approved control measures for sand, soil, and other loose materials.