ENCROachment Permit Agreement

3639 Haven Ave- Anton Menlo Retaining Wall in Public Right-of-Way

The City of Menlo Park, a municipal corporation ("Menlo Park") hereby grants to Anton Menlo, LLC, (collectively "Owner") a revocable encroachment permit (the "Permit") for the real property commonly known as 3639 Haven Ave (the "Property"), and more particularly described in the legal description attached hereto as Exhibit A for the use of, maintenance, and repair of a privately owned retaining wall within the public right of way across the frontage of 3639 Haven Ave (collectively, the "Facilities") within and beneath the surface of the public right of way in the City of Menlo Park, San Mateo County, California, depicted approximately on attached Exhibit B (the "Encroachment Area"), incorporated into this Encroachment Agreement.

1. ACCESS:

Menlo Park and Owner hereby agree:
Owner agrees to the following regarding access to the public right of way within the landscaped/fenced area along the subject property:

   a. Owner agrees to provide access to the City and any public utility companies requesting access to any existing utilities within the enclosed portion of the right of way.

   b. Owner agrees to remove the Facilities upon receipt of a 60-day advance notification from City, in the City’s sole and absolute discretion. Costs for removal of the Facilities shall be borne by the Owner. In the event Owner fails to do so, the City may remove the Facilities at the Owner’s cost and Owner shall reimburse City for such costs within ten (10) days of demand.

2. PERMITS:

Owner agrees to obtain all necessary permits from City for maintenance, removal, repair, or replacement. Permits may include, but are not limited to: Planning Permits, Building Permits, or Engineering Permits.
3. INDEMNIFICATION:

The Owner shall indemnify and hold harmless the City, its subsidiary agencies, their officers, agents, employees and servants from all claims, suits or actions of every name, kind and description, brought for, or on account of, injuries to or death of any person or damage to property resulting from the maintenance and/or lack of maintenance of the Facilities required by this Agreement by Owner and/or resulting from the maintenance or lack of maintenance of the public right of way that is enclosed within the landscape/fenced area. The duty of the Owner to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code, provided, however, that nothing herein shall be construed to require the Owner to indemnify the City, its subsidiary agencies, their officers, agents, employees and servants against any responsibility to liability in contravention of Section 2782 of the California Civil Code.

4. RESTRICTIONS ON SURFACE USE:

Owner shall not construct any new structures or other permanent improvements within the Encroachment Area. Menlo Park reserves the right to continued use of the Encroachment Area for any and all public purposes and or utilities.

5. RUN WITH THE LAND:

The covenants and conditions in this Encroachment Permit Agreement, including but not limited to indemnification of the City, shall run with the land commonly known as 3639 Haven Ave, Menlo Park, CA 94025 (A.P.N: 055-170-320), burden the Encroachment Area and bind and inure to the benefit of Menlo Park and Owner and their respective successors and assigns.

6. COUNTERPARTS:

This Agreement may be executed in counterparts, each of which shall be an original, but all counterparts shall constitute one instrument.

7. PERMITS

Owner shall obtain any appropriate permits and consents required by applicable law before performing future construction work within the Encroachment Area.

8. ATTORNEY'S FEE'S:

In the event of any litigation arising out of or to enforce the terms and provisions of this Agreement, the prevailing party in any such litigation shall be entitled to recover its attorneys' fees and costs of suit.
In the event of any litigation arising out of or to enforce the terms and provisions of this Agreement, the prevailing party in any such litigation shall be entitled to recover its attorneys’ fees and costs of suit.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the last date appearing by the parties’ signatures below.

OWNER:
DUBLIN MENLO, LLC

[Signature]

Date

November 01, 2018

Peter Geremia

Name

OWNER:
CANAL STREET, LLC

[Signature]

Date

November 01, 2018

Peter Geremia

Name
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 Sacramento  

On November 1, 2018 before me, Kellie Lyn Hamblin, Notary Public,  

Date  

personally appeared Peter Geremia  

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  

Signature of Notary Public  

Place Notary Seal Above

OPTIONAL

Though this section is 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 or Conservator  

☐ Other:  

Signer Is Representing:  

☐ Corporate Officer — Title(s):  

☐ Partner — ☐ Limited ☐ General  

☐ Individual ☐ Attorney in Fact  

☐ Trustee ☐ Guardian or Conservator  

☐ Other:  

Signer Is Representing:  

Item #5907
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 Orange  

On 11/2/18 before me, Jacob Partida, Notary Public, personally appeared Steven L. Eggert, 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

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is 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: Permit Agreement  
Document Date: 11/2/18  
Number of Pages: 10  
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 or Conservator  
□ Other:  
Signer Is Representing:  

Signer’s Name:  
□ Corporate Officer — Title(s):  
□ Partner — Limited □ General  
□ Individual □ Attorney in Fact  
□ Trustee □ Guardian or Conservator  
□ Other:  
Signer Is Representing:  

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Item #5907
In the event of any litigation arising out of or to enforce the terms and provisions of this Agreement, the prevailing party in any such litigation shall be entitled to recover its attorneys’ fees and costs of suit.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the last date appearing by the parties’ signatures below.

**OWNER:**

________________________
Signature

________________________
Date

________________________
Name

**OWNER:**

________________________
Signature

________________________
Date

________________________
Name
APPROVED AS TO FORM:

William L. McClure, City Attorney

CITY OF MENLO PARK:

Justin I. C. Murphy, Public Works Director

ATTEST:

Judi A. Herron, City Clerk

11/13/18

11/15/18

11/20/18
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 County

On November 15th, 2018 before me, Nancy Melgar, Notary Public, personally appeared, Justin I. C. Murphy, 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.

NANCY MELGAR
Comm. #2110298
Notary Public - California
San Mateo County
Comm. Expires May 7, 2019

Nancy Melgar
Notary Public, San Mateo County
Commission #2110298
Expires 05-07-2019
EXHIBIT “A”
LEGAL DESCRIPTION
ANTON MENLO PARK

Real property in the City of Menlo Park, County of San Mateo, State of California, described as follows:


PARCEL ONE:

PARCEL 1 AS SHOWN ON BOOK 9 OF PARCEL MAPS, PAGE 20, PARCELS 1 AND 2 AS SHOWN ON BOOK 53 OF PARCEL MAPS, PAGE 38 AND PARCEL A AS SHOWN ON BOOK 58 OF PARCEL MAPS, PAGE 33, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF PARCEL 1 AS SHOWN ON BOOK 9 OF PARCEL MAPS, PAGE 20; THENCE ALONG THE WESTERLY LINE OF SAID PARCEL 1, NORTH 19°16'33" EAST 443.64 FEET TO THE NORTHWEST CORNER OF SAID PARCEL 1, SAID POINT ALSO BEING THE SOUTHWEST CORNER OF PARCEL 1 AS SHOWN ON BOOK 53 OF PARCEL MAPS, PAGE 38; THENCE ALONG THE WEST LINE OF SAID PARCEL 1, NORTH 19°16'33" EAST 288.52 FEET TO THE NORTHWEST CORNER OF SAID PARCEL 1; THENCE ALONG THE NORTH LINE OF SAID PARCEL 1, SOUTH 88°38'30" EAST 233.25 FEET TO THE NORTHEAST CORNER OF SAID PARCEL 1, SAID POINT ALSO BEING THE NORTHEAST CORNER OF PARCEL 2 AS SHOWN ON BOOK 53 OF PARCEL MAPS, PAGE 38; THENCE ALONG THE NORTH LINE OF SAID PARCEL 2, SOUTH 88°38'30" EAST 59.16 TO AN ANGLE POINT; THENCE SOUTH 24°03'12" WEST 108.39 FEET; THENCE SOUTH 73°03'30" EAST 245.10 FEET TO THE NORTHEAST CORNER OF SAID PARCEL 2; THENCE ALONG THE EASTERLY LINE OF SAID PARCEL 2, SOUTH 24°12'50" WEST 258.19 FEET, TO A POINT ON THE EASTERLY LINE OF SAID PARCEL 2, SAID POINT ALSO BEING THE NORTHEAST CORNER OF PARCEL A, AS SHOWN ON BOOK 58 OF PARCEL MAPS, PAGE 33; THENCE ALONG THE NORTH LINE OF SAID PARCEL A, SOUTH 65°47'10" EAST 149.13 FEET TO THE NORTHEAST CORNER OF SAID PARCEL A; THENCE ALONG THE EASTERLY LINE OF SAID PARCEL A, SOUTH 24°12'50" WEST 429.74 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL A, SAID POINT ALSO BEING ON THE NORTH LINE OF HAVEN AVENUE; THENCE ALONG SAID NORTH LINE, ALONG THE ARCH OF A CURVE TO THE LEFT, HAVING A RADIUS OF 10508.50 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING NORTH 71°56'29" WEST 149.99 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL A, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF PARCEL 2 AS SHOWN ON BOOK 53 OF PARCEL MAPS, PAGE 38; THENCE CONTINUING ALONG THE NORTH LINE OF HAVEN AVENUE ALONG THE ARC OF A CURVE THE LEFT, HAVING A RADIUS OF 10508.50 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING NORTH 73°09'48" WEST 298.19 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL 2, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF PARCEL 1 AS SHOWN ON BOOK 9 OF PARCEL MAPS, PAGE 20; THENCE CONTINUING ALONG THE NORTH LINE OF HAVEN AVENUE ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 10508.50 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING NORTH 74°24'05" WEST 155.90 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL 1 AND THE POINT OF BEGINNING.

PARCEL TWO-A:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AND PUBLIC UTILITIES APPURTEINANT TO PARCEL A, AS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP BEING A RESUBDIVISION OF A PORTION OF LOT 4 OF SWEENEY RANCH, MENLO PARK,"
CALIFORNIA", FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN MATEO COUNTY, STATE OF CALIFORNIA ON DECEMBER 19, 1986 IN BOOK 58 OF PARCEL MAPS, AT PAGE 33 OVER THE SOUTHEASTERLY 20 FEET OF PARCEL B, AS SHOWN ON THE ABOVE REFERENCED PARCEL MAP.

PARCEL TWO-B:


BEGINNING AT A POINT IN THE NORTHERLY LINE OF SAID LOT 4, ABOVE MENTIONED, AS FOLLOWS:

COMMENCING AT A CONCRETE MONUMENT MARKING THE NORTHWESTERLY CORNER OF SAID LOT 4; RUNNING THENCE ALONG SAID NORTHERLY LINE OF LOT 4, NORTH 88° 56' 15" EAST, 89° 41' 15" EAST, A DISTANCE OF 1944.05 FEET; THENCE CONTINUING ALONG SAID NORTHERLY LINE, SOUTH 73° 03' 30" EAST, A DISTANCE OF 570.20 FEET TO THE POINT OF BEGINNING; RUNNING THENCE FROM SAID POINT OF BEGINNING, SOUTH 24° 12' 50" WEST, A DISTANCE OF 750.17 FEET, TO A POINT IN THE CENTER LINE OF HAVEN AVENUE, AS SHOWN ON THE MAP ENTITLED "BELLE HAVEN CITY", FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA ON AUGUST 12, 1939 IN BOOK 22 OF MAPS, AT PAGES 19, 20 AND 21; THENCE EASTERLY ALONG SAID CENTER LINE OF HAVEN AVENUE, A DISTANCE OF 150.00 FEET, MEASURED ALONG THE ARC OF A CIRCULAR CURVE, THE CENTER OF WHICH BEARS SOUTH 18° 26' 35" WEST, A DISTANCE OF 10,465.5 FEET FROM THE TERMINAL POINT OF THE COURSE LAST ABOVE DESCRIBED; THENCE LEAVING THE CENTER LINE OF HAVEN AVENUE, NORTH 24° 12' 55" EAST, A DISTANCE OF 755.22 FEET TO A POINT IN SAID NORTHERLY LINE OF LOT 4; NORTH 73° 03' 30" WEST, A DISTANCE OF 150.56 FEET TO THE POINT OF BEGINNING.


PARCEL TWO-C:

AN EASEMENT FOR A PIPE LINE AND INCIDENTAL PURPOSES OVER THE FOLLOWING DESCRIBED PROPERTY:

A STRIP OF LAND, 5 FEET IN WIDTH, LYING ADJACENT TO AND NORTHERLY AND WESTERNLY OF THE FOLLOWING DESCRIBED LINE:
BEGINNING AT A POINT ON THE NORTHERLY LINE OF SWEENEY RANCH, AS SAID LINE IS SHOWN ON A RECORD OF SURVEY MAP FILED IN VOLUME 4 OF LICENSED LAND SURVEYORS MAPS, AT PAGE 127, RECORDS OF SAN MATEO COUNTY, CALIFORNIA, SAID POINT BEING DISTANT ALONG SAID LINE, NORTH 73° 05’ WEST, 454.61 FEET FROM THE NORTHWESTERLY LINE OF MARSH ROAD, AS SHOWN ON SAID RECORD OF SURVEY MAP; THENCE FROM SAID POINT OF BEGINNING, ALONG SAID NORTHERLY LINE OF SWEENEY RANCH, SOUTH 73° 05’ EAST, 123 FEET AND NORTH 16° 55 FEET EAST, 57 FEET, MORE OR LESS, TO THE SOUTHERLY LINE OF PULGAS RANCHO, AS SHOWN ON SAID RECORD OF SURVEY.


APN:
055-170-360
Limits of keystone retaining wall at City ROW

ANTON MENLO PARK
PROPOSED WALL AGREEMENT, EXHIBIT B

RENDER TO EXHIBIT A FOR LEGAL DESCRIPTION