

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Menlo Park
Attn: City Clerk
701 Laurel St.
Menlo Park, CA 94025

2018-075315

2:14 pm 09/26/18 AG Fee: NO FEE
Count of Pages 14
Recorded in Official Records
County of San Mateo
Mark Church
Assessor-County Clerk-Recorder



The undersigned declares this instrument to be exempt from Recording Fees (Cal. Govt. Code § 27383) and Documentary Transfer Tax (Cal. Rev. & Tax. Code § 11922).

(Space above this line reserved for Recorder's use only)

144

DEFERRED FRONTAGE IMPROVEMENT AGREEMENT FOR 1080 O'BRIEN DRIVE

THIS AGREEMENT, dated this 19th day of September, 2018, is by and between the City of Menlo Park, a Municipal Corporation, hereinafter referred to as "CITY," and MENLO PREPI I, 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 Use Permit Revision to remodel the existing building and site at 1080 O'Brien Drive, Menlo Park, California, hereinafter referred to as "PROPERTY," was approved by the Planning Department on March 21, 2018, 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:

1. CONDITIONS OF AGREEMENT

- A. OWNER represents and warrants that OWNER is the fee title owner of the PROPERTY and as more particularly described in Exhibit "A," which is attached hereto and incorporated herein. OWNER acknowledges that the Use Permit issued for building and site improvements on the PROPERTY is subject to a condition of constructing frontage improvements. The application for Planning Department approval is expressly incorporated by reference and made part of this agreement, together with the Use Permit and its Conditions of Approval.
- B. 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 CITY, after applicable notice and cure periods provided for in this agreement, will constitute not only a

failure of condition as to OWNER's Use Permit, but also a breach of this Agreement which additional legal remedies are not precluded.

2. IMPROVEMENT FUNDS AND BOND

Upon execution of this Agreement, OWNER shall post funds with CITY for the design, construction and construction management for the frontage improvements in the amount of one hundred and fifty-six thousand and seven hundred and eighty-seven and 00/100 dollars (\$156,787.00) as a guarantee that said frontage improvements will be completed. 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 percent of the Engineer's Estimate (refer to Exhibit "B") and will extend through the term of the agreement. OWNER's liability pursuant to Section 4 of this Agreement shall not be limited to the funds or bonds deposited with CITY.

3. REQUEST TO PROCEED AND PLANS

Upon written notification to proceed by 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 CITY's 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. PERFORMANCE OF THE WORK

- A. OWNER agrees to provide for the construction of certain improvements along the frontage of the PROPERTY at the sole cost and expense of OWNER. Said improvements shall include the following per Menlo Park Municipal Ordinance §16.44.110: curb and gutter, sidewalk, street trees (if applicable), and streetlights. Said improvements are shown in Exhibit "C," which is attached hereto and incorporated herein. For ease of constructability, the frontage improvements along O'Brien Drive may be completed in phases. Therefore, the funds provided may be used for construction of improvements at a location other than the project frontage, but which will satisfy OWNER's obligations under this Agreement. It is within the sole discretion of CITY's Public Works Director to determine the final street cross section and scope of improvements, and the location of such improvements. Determination of when the required improvements are to be constructed shall be within the sole discretion of CITY's Public Works Director, subject to the terms of this Agreement.
- B. Upon written notice to OWNER, the CITY's Public Works Director may choose to perform the design engineering work and the construction of the frontage improvements as an alternative to Section 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 by delivering written notice of such exercise to the CITY. 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, accompanied by a detailed breakdown of such cost. The cost of the frontage improvements shall be the actual cost of construction.

5. HEIRS, SUCCESSORS AND ASSIGNS

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 Section 4 of this Agreement shall constitute a lien upon the Property.

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 Menlo Park Portfolio, fee title owner of the real property commonly known as 1080 O'Brien Drive, recorded as part of the Official Records of San Mateo County."

This statement shall be delivered to CITY's Public Works Director before the transfer of any interest in parcels covered by this Agreement.

6. LIEN

In the event there is a default of Section 4 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 commence such cure and diligently pursue it to completion. If OWNER fails to do so, then upon written notice to OWNER the CITY may proceed to cause said construction to be done and charge the actual cost thereof to the OWNER, including interest thereon at the maximum legal rate from the date of written notice of said cost and expense, until paid.

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.

7. SEVERABILITY

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.

8. TERM OF AGREEMENT

The term of this Agreement shall commence of the date of recordation of this Agreement. CITY reserves the right to enforce this Agreement at any time during the life of this Agreement. The Agreement will expire only after completion of and CITY acceptance of the improvement specified in Exhibit "C" or upon the mutual written consent of both the OWNER and the CITY. 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.

9. NOTICES

All notices hereby required under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid or by overnight courier service. Notices shall be effective upon receipt or rejection if a party refuses delivery.

Notices required to be given to CITY shall be addressed as follows:

Justin Murphy
 Director of Public Works
 City of Menlo Park
 701 Laurel St.
 Menlo Park, CA 94025
 650-330-6725
 JICMurphy@menlopark.org

Notices required to be given to OWNER shall be addressed as follows:

O'Brien Drive Portfolio
 c/o Tarlton Properties, Inc.
 Attn: Ron Krietemeyer
 1530 O'Brien Drive, Ste C
 Menlo Park, CA 94025
 650-330-3600
 rkrietemeyer@tarlton.com

Provided that any party may change such address by notice, in writing, to the other party and thereafter notices shall be addressed and transmitted to the new address.

10. HOLD HARMLESS

OWNER shall defend, indemnify and hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants from all claims, suits or actions that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the OWNER brought for, or on account of, injuries to or death of any person or damage to property resulting from the performance of any work required by this Agreement by OWNER, its officers, agents, employees and servants. Nothing herein shall be construed to require the OWNER to defend, indemnify or hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants against any responsibility to liability in contravention of Section 2782.8 of the California Civil Code.

11. INSURANCE

- A. OWNER shall not commence work under this Agreement until all insurance required under this Section has been obtained and such insurance has been approved by CITY, with certificates of insurance evidencing the required coverage.
- B. There shall be a contractual liability endorsement extending the OWNER's coverage to include the contractual liability assumed by the OWNER pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the CITY, at the address shown in Section 9, of any pending cancellation of the policy. OWNER shall notify CITY of any pending change to the policy. All certificates shall be filed with CITY.
 1. Workers' compensation and Employer's Liability Insurance:

The OWNER shall have in effect during the entire life of this Agreement workers' compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the OWNER makes the following certification, required by Section 18161 of the California Labor Code: "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement" (not required if the OWNER is a Sole Proprietor).

2. Liability Insurance:

The OWNER shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance (Commercial General Liability Insurance) on an occurrence basis as shall protect it while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as claims for property damage which may arise from the OWNER's operations under this Agreement, whether such operations be by OWNER or by any sub-consultant or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be not less than One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) in aggregate, or One Million Dollars (\$1,000,000) combined single limit bodily injury and property damage for each occurrence. OWNER shall provide the CITY with acceptable evidence of coverage, including a copy of all declarations of coverage exclusions. OWNER shall maintain Automobile Liability Insurance pursuant to this Agreement in an amount of not less than One Million Dollars (\$1,000,000) for each accident combined single limit or not less than One Million Dollars (\$1,000,000) for any one (1) person, and One Million Dollars (\$1,000,000) for any one (1) accident, and Three Hundred Thousand Dollars, (\$300,000) property damage.

3. Professional Liability Insurance:

OWNER shall maintain a policy of professional liability insurance, protecting it against claims arising out of the negligent acts, errors, or omissions of OWNER pursuant to this Agreement, in the amount of not less than One Million Dollars (\$1,000,000) per claim and in the aggregate. Said professional liability insurance is to be kept in force for not less than one (1) year after completion of services described herein.

- C. CITY and its subsidiary agencies, and their officers, agents, employees and servants shall be named as additional insured on any such policies of Commercial General Liability and Automobile Liability Insurance, (but not for the Professional Liability and Workers' compensation), which shall also contain a provision that the insurance afforded thereby to the CITY, its subsidiary agencies, and their officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if the CITY, its subsidiary agencies and their officers and employees have other insurance against a loss covered by a policy, such other insurance shall be excess insurance only .
- D. In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, CITY, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.
- E. Before the execution of this Agreement, any deductibles or self-insured retentions must be declared to and approved by CITY.

12. ATTORNEY FEES

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

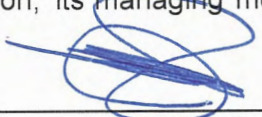
SIGNATURES

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

OWNER:

O'BRIEN DRIVE PORTFOLIO, LLC,
a Delaware limited liability company

By: TARLTON PROPERTIES, INC., a California corporation, its managing member

By: 

John C. Tarlton
President & CEO

By: O'BRIEN DRIVE PORTFOLIO MEMBER, LLC, a Delaware limited liability company, its co-managing member

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

By: _____
Name:
Title:

By: _____
Name:
Title:

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 August 22, 2018, before me, Kristen Roccaforte, notary public
Date Here Insert Name And Title Of the Officer
personally appeared John C. Tarlton,
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.



Place Notary Seal Above

Kristen Roccaforte
Signature of Notary Public

KRISTEN ROCCAFORTE
Commission # 212095
Notary Public California
Santa Clara County
My Comm. Expires Sep 7, 2019




SIGNATURES

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

OWNER:

O'BRIEN DRIVE PORTFOLIO, LLC,
a Delaware limited liability company

By: TARLTON PROPERTIES, INC., a California corporation, its managing member

By: 

John C. Tarlton
President & CEO

By: O'BRIEN DRIVE PORTFOLIO MEMBER, LLC, a Delaware limited liability company, its co-managing member

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:

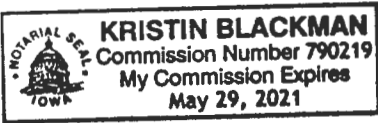
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF Iowa)

On August 24th 2018, before me, Kristin Blackman Sr. Operation Analyst,
Date Here Insert Name And Title Of the Officer

personally appeared Jeffrey D. Wittenbogaard - Investment Dir.,
Name(s) of Signer(s)
Asst Management

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.

Kristin Blackman
Signature of Notary Public

Place Notary Seal Above

SIGNATURES

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

OWNER:

Signature

Date

Name

APPROVED AS TO FORM:



William L. McClure, City Attorney

9/18/18

Date

CITY OF MENLO PARK:

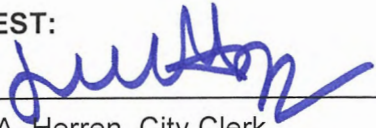


Justin I. C. Murphy, Director of Public Works

9/18/18

Date

ATTEST:



Judi A. Herren, City Clerk

9/19/18

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 County

On September 19th, 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
Notary Public, San Mateo County
Commission #2110298
Expires 05-07-2019

EXHIBIT A
LEGAL DESCRIPTION

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

PARCEL ONE:

PARCEL F, AS SHOWN ON THAT CERTAIN MAP ENTITLED "RECORD OF SURVEY OF LOTS 3, 4 AND 5 OF KAVANAUGH INDUSTRIAL PARK UNIT NO. 1 AND A PORTION OF LANDS OF KAVANAUGH, MENLO PARK, CALIFORNIA", FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN MATEO COUNTY, STATE OF CALIFORNIA, ON OCTOBER 31, 1961 IN BOOK 4 OF MAPS AT PAGE(S) L.L.S. MAPS AT PAGE 154.

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT FOR ACCESS, PARKING AND LANDSCAPING PURPOSES AS THE SAME IS SET FORTH IN AND SUBJECT TO THE TERMS AND CONDITIONS AS SET FORTH IN THE GRANT DEED DATED JULY 9, 1991, RECORDED NOVEMBER 10, 2005 AS INSTRUMENT NO. 2005-197871 OF OFFICIAL RECORDS OF SAN MATEO COUNTY.

APN: 055-434-020 JPN: 055-043-434-02A

EXHIBIT B
ENGINEER'S ESTIMATE



10211 Howard Ave., Suite D 650.391.0707 Phone codybrock.com
San Carlos, CA 94070 650.691.0755 Fax info@codybrock.com

November 30, 2017

Ron Krietemeyer
Tarlton properties
1530 O'Brien Dr
Menlo Park, CA 94025

RE: Sidewalk Estimate
1080 O'Brien Dr
Menlo Park, CA

1080 O'BRIEN DR

1. DEMO	\$10,910
a. Remove curb/gutter and AC for new sidewalk/drive aprons.	
2. GRADING	\$12,750
a. Re-work subgrade for new sidewalk.	
3. PAVING	\$ 7,500
a. Patch AC to new cutter.	
4. CONCRETE	
a. Curb & Gutter	\$ 9,500
b. Sidewalk	\$26,500
c. (2) Aprons	\$20,000
5. UTILITIES	
a. Modify SD inlets.	\$7,500
6. ELECTRICAL	
a. Replace (1) Street Lights	\$11,000
7. CONTINGENCY	
a. Includes a contingency of 10% of the subtotal.	\$ 10,566
SUBTOTAL	\$116,226
OVERHEAD & PROFIT	\$ 5,811
LIABILITY INSURANCE	\$ 1,220
TOTAL BUDGET	\$122,037

Design \$ 34,750

Total \$156,787

EXHIBIT C PROPOSED IMPROVEMENTS

