

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Menlo Park
Public Works Department
701 Laurel Street
Menlo Park, CA 94025

2019-069679

2:21 pm 08/28/19 AG Fee: NO FEE
Count of Pages 40
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 (Govt. Code § 27383) and
Documentary Transfer Tax (Rev. & Tax. Code §11922).

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

FLOODPROOF BARRIER AGREEMENT AT 1080 O'Brien Drive

This Agreement Regarding Floodproof Barriers is dated this ___ day of _____, 2019, and is by and between the City of Menlo Park, a political subdivision of the State of California, hereinafter referred to as "City", and O'Brien Drive Portfolio, LLC, a Delaware limited liability company ("Owner") as the owner of the real property commonly known as 1080 O'Brien Drive, Menlo Park, CA, and legally described on Exhibit A attached hereto (the "Property"), and the City, who enter into this Agreement with reference to the following recitals:

RECITALS

WHEREAS, Owner has applied for a building permit in order to conduct certain improvements at the Property.

WHEREAS, the Property is located in a Special Flood Hazard Area (Zone AE) and is, therefore, subject to inundation by the 100-year flood which would pose a risk to the structure upon the Property (the "Building") as the Base Flood Elevation (BFE) is 13.5;

WHEREAS, the City is the permitting public agency with jurisdiction over the Property;

WHEREAS, in order for the City to comply with FEMA and Building Code requirements of redevelopment in the Special Flood Hazard Area, the City is requiring that Owner install a floodproof barrier from the foundation of the Building up to the Design Flood Elevation (DFE), which is 13.5;

WHEREAS, the Floodproof Barrier consists of a combination of silicon paint at the west side of the Building, two manual floor barriers at the south side, and one flood door at the west side Building's openings and outside perimeter that will prevent the passage of water.

WHEREAS, Owner acknowledges that the Floodproof Barrier shall be owned, maintained, and repaired by Owner to ensure its proper functioning for the health, safety, and welfare of the citizens of the City;

WHEREAS, attached hereto as Exhibit B is a legible reduced-scale copy of the Building and site plan, which has been approved by and is on file with the City, showing the location of the Floodproof Barrier; and

WHEREAS, it is the purpose of the Agreement to memorialize, in writing, Owner's Agreement for the installation, use, maintenance, and repair of the Floodproof Barrier.

Now, therefore, Owner hereby covenants and agrees as follows:

CONDITIONS OF AGREEMENT

1. Installation of Floodproof Barrier: In order for the City to issue building permits for Owner to proceed with its improvement work upon the Property, Owner agrees to enter into this Agreement. Owner shall require that its contractor install the Floodproof Barrier in strict accordance with the plans and specifications which have been approved by the City and shall be constructed to no lower than the project's DFE. Installation shall commence at the earliest reasonable date following the later of (a) the issuance of all permits requested by Owner for its improvement work or (b) the full execution of this Agreement. It is a condition to Owner's obligations under this Agreement that the permits for Owner's improvements are issued such that Owner may proceed with and complete its intended improvements to the Property.
2. Maintenance of the Floodproof Barrier: Upon installation of the Floodproof Barrier, as set forth above, Owner agrees to cause the Floodproof Barrier to be maintained per the product manufacturer's recommendations which are included as part of Exhibit C (the "Maintenance Plan"). Owner shall not destroy or remove the Floodproof Barrier from the Property or modify it in a manner that reduces its effectiveness, and shall, at Owner's sole expense, adequately maintain it in good working order and in accordance with Maintenance Plan.
3. Inspection and Access: The City may conduct occasional inspections of the Floodproof Barrier upon reasonable notice to Owner. Owner hereby grants permission to the City and FEMA to enter upon the Property at reasonable times and in a reasonable manner to inspect, assess, and ensure that the Floodproof Barrier is properly maintained and performing in an adequate manner; provided that City and FEMA use commercially reasonable efforts to minimize interference with operations on the Property.
4. Failure to Maintain the Floodproof Barrier: Owner recognizes that the use, modification, and proper maintenance of the Floodproof Barrier is for the benefit of all citizens of the City and that the City is an intended third party beneficiary of this Agreement and may exercise powers of enforcement of this Agreement, upon written notice to the Owner. In the event of any litigation to enforce the terms and provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and costs of such litigation. It is expressly understood and agreed that the City is under no obligation to maintain or repair the Floodproof Barrier and, in no event, shall this Agreement be construed to impose any such obligation on the City.
5. No Additional Liability: It is the intent of this Agreement to insure the proper maintenance of the Floodproof Barrier by Owner; provided, however, that this Agreement shall not be deemed to create or effect any additional liability not otherwise provided by law or any party for damage alleged to result from or caused by flood waters.
6. Transfer of Property: This Agreement shall run in perpetuity as long as the Building with the Floodproof Barrier remains in place and is binding upon, and insures to the benefit of the City, Owner and their heirs, successors, assigns, executors, administrators, personal and legal representatives. Owner further agrees whenever the Property or any portion thereof is held, sold, conveyed, or otherwise transferred, it shall be subject to this Agreement which shall apply to, bind and be obligatory to all present and subsequent owners of the Property or any portion thereof. This Agreement shall automatically terminate upon the demolition of the Building.

7. Recordation: This Agreement shall be recorded with the San Mateo County Recorder within twenty days of the date of the full execution of this Agreement. Owner shall cause the Agreement to be recorded and once a conformed copy is returned to Owner, Owner shall provide a copy thereof to the City.

8. Miscellaneous:

- (a) Counterparts: This Agreement may be signed in two or more counterparts. When at least one such counterpart has been signed by each party, this Agreement shall be deemed to have been fully executed and each counterpart shall be deemed to be an original and all counterparts taken together shall be one and the same Agreement.
- (b) Neutral Interpretation: This Agreement shall be interpreted neutrally between the parties regardless of which party drafted or caused to be drafted this Agreement.
- (c) Modification: This Agreement shall not be modified or amended without the prior written consent of the City and Owner. Such modifications shall be effective upon the date of execution by Owner and the City shall be recorded promptly thereafter.

Attachments:	Exhibit A	Legal Description of the Property
	Exhibit B	Site Plan
	Exhibit C	Maintenance Plan

[SIGNATURES APPEAR ON NEXT PAGE]

<p>SIGNATURES</p> <p>IN WITNESS WHEREOF, the Parties have hereunder subscribed their names the day and year indicated below.</p>

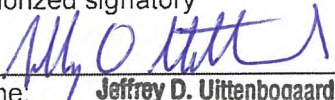
OWNER:

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

CO-MANAGING MEMBER:

O'BRIEN DRIVE PORTFOLIO MEMBER, LLC

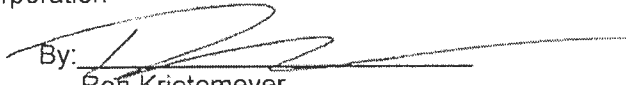
By: PRINCIPAL REAL ESTATE INVESTORS,
LLC, a Delaware limited liability company,
authorized signatory

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

By: _____
 Name: _____
 Title: _____

MANAGING MEMBER

TARLTON PROPERTIES, INC., a California
corporation

By: 
 Ron Krietemeyer
 Chief Operating Officer

Notary Signature for Waterproof Barrier Agreement at 1080 O'Brien Drive

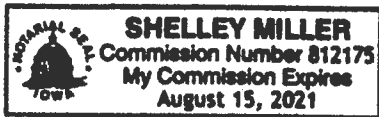
STATE OF IOWA)
) ss.
COUNTY OF POLK)

On August 14, 2019, before me, Shelley Miller, a Notary Public in and for said state, personally appeared Jeffrey D. Wittenbergard 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.

Shelley Miller
Notary Public in and for said State



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

CO-MANAGING MEMBER:

O'BRIEN DRIVE PORTFOLIO MEMBER, LLC

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

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

MANAGING MEMBER

TARLTON PROPERTIES, INC., a California
corporation

By:  _____
Ron Krietemeyer
Chief Operating Officer

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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 8, 2019 before me, Kristen Roccaforte, notary public
Date Here Insert Name and Title of the Officer

personally appeared Ron Krickmeyer
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.



Place Notary Seal and/or Stamp Above

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 Kristen Roccaforte
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: _____

Signer's Name: _____

Corporate Officer – Title(s): _____

Partner – Limited General

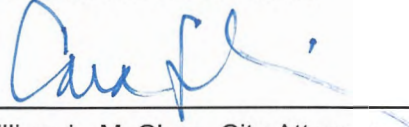
Individual Attorney in Fact

Trustee Guardian of Conservator

Other: _____

Signer is Representing: _____

APPROVED AS TO FORM:

For 

William L. McClure, City Attorney



Date

CITY OF MENLO PARK:



Justin I. C. Murphy, Deputy City Manager



Date

ATTEST:



Judi Herren, City Clerk



Date

**CALIFORNIA ALL-PURPOSE
ACKNOWLEDGMENT**

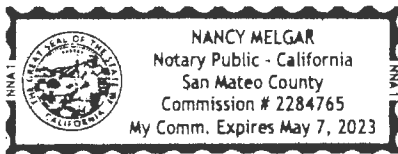
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Mateo County

On August 8th, 2019 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 #2284765
Expires 05-07-2023

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 SITE PLAN

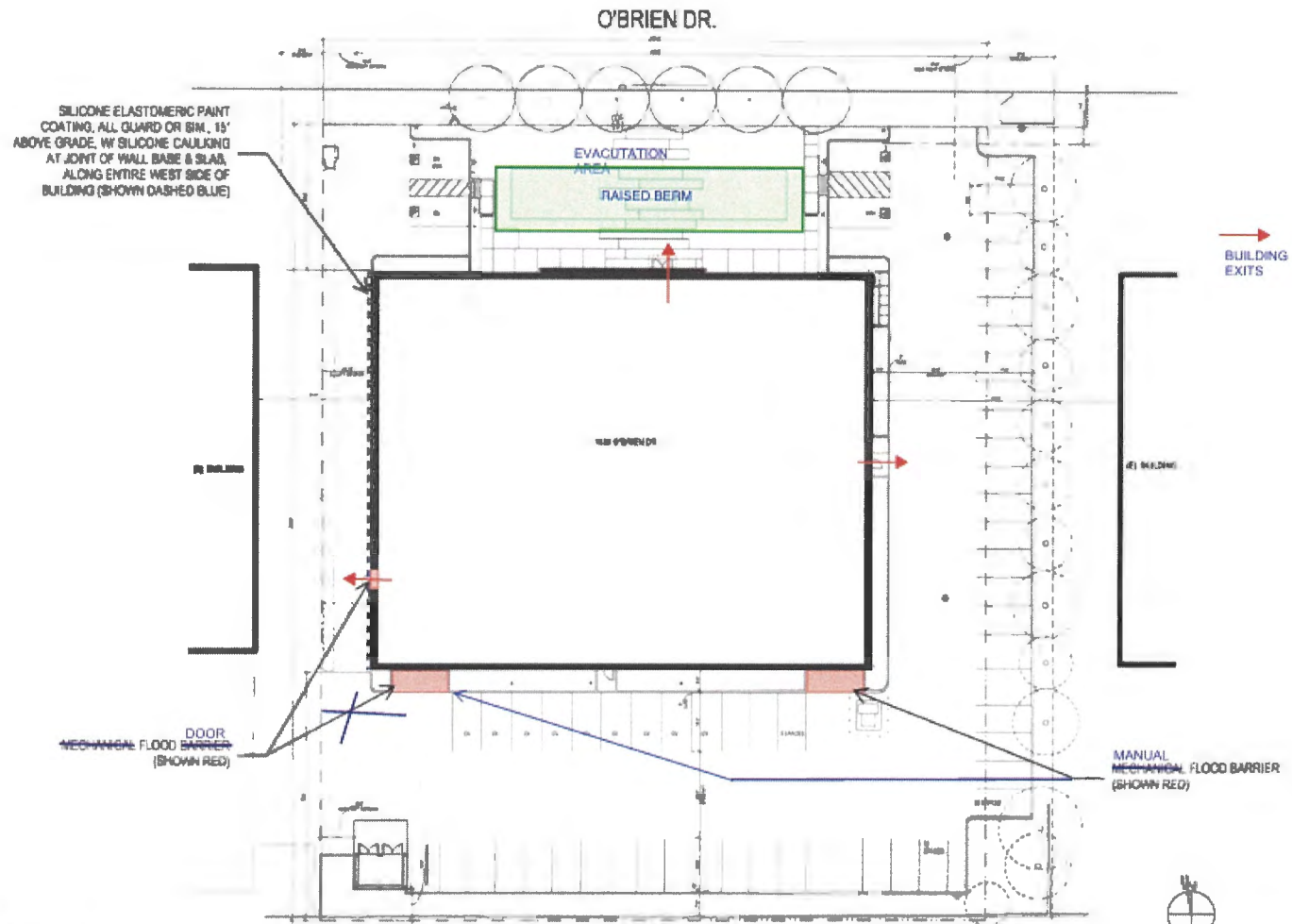


EXHIBIT C
MAINTENANCE PLAN

Flood Emergency Operation Plan

Responsible Personnel and Flood Operation Plan:

TPI (Tarlton Properties Incorporated) emergency property management team (on call 24hrs) will be the main point of contact in charge of the Flood emergency operation plan as described in "Flood equipment Operation and Maintenance". The building elevation is 13.25 and the flood elevation is 13.5. The 4" potential flooding at this site is related to storm water runoff from the streets of East Palo Alto. TPI monitors weather conditions and will be aware of major storms that could potentially flood this site. A security guard visually monitors this site four times daily. If any flood waters are noted on the property the security guard will notify the emergency property management team. Two TPI personnel will arrive onsite within an hour. Tenants will be advised to evacuate the building. Flood logs, stored onsite, will be installed within the following hour at the two roll up doors indicated in Exhibit B.

TPI Emergency Property Management team: 650-330-3600
On-Site Security Guard (on call 24 hrs): 650-796-6600

FLOOD PANEL, LLC

GENERIC OEM
(Original Equipment Manual)

FLOOD LOGS

**INSTALLATION AND
MAINTENANCE MANUAL**

GENERIC OEM – Original Equipment Manual
FLOOD LOGS
INSTALLATION AND MAINTENANCE MANUAL

HAVE YOUR SITE SPECIFIC SHOP DRAWING AND FLOOD LOG INVENTORY SHEET ALONG WITH THE DEPLOYMENT PLAN AVAILABLE AS A REFERENCE TO THE GENERAL NOTES AND INSTALLATION DETAILS BELOW

NOTE: FLOOD LOGS, SUPPORT CHANNELS AND EMBED PLATES MUST BE STORED IN A CLEAN, COOL, DRY ENVIRONMENT

Handling and Storage:

General: The Aluminum Flood Logs supplied for this project are virtually maintenance free. However, there are certain things you should bear in mind concerning their proper care, storage and handling.

The Flood Logs are deployed when an impending storm is threatening the area. When it is time to install the Flood Logs, time is of the essence and proper storage of the Flood Logs will greatly aid in the speedy deployment and installation of the Flood Logs.

For proper handling and storage the following guidelines should be followed:

- ❑ When storing, stack Flood Logs one on top of the other metal side down in a clean, dry environment. **NOTE: *Discoloration may occur if moisture is trapped between stacked FLOOD LOGS.***
- ❑ Stack Flood Logs so gaskets in adjacent stacks do not touch each other. Typically, you can stack three (3) Flood Logs wide on a pallet per layer.
- ❑ Do not stack or store anything on top of the logs, this could cause damage to the logs.
- ❑ The floor on which the logs are stored should be free of sand, pebbles and debris. Debris embedded in the gasket material may prevent the proper sealing of the gasket material.
- ❑ Logs should always be handled by two individuals. Dragging or sliding of the logs on the neoprene gasket surface may damage the gasket material and interfere with the sealing capability of the gasket.
- ❑ If the wall supports are removable, they should be stored on the pallets they were shipped with. Do not store the supports resting on their gaskets. Lay the supports down and protect the gaskets.
- ❑ Store all bolts and hardware in clearly marked containers and store near Flood Logs and/or supports.

GENERIC OEM – Original Equipment Manual
FLOOD LOGS
INSTALLATION AND MAINTENANCE MANUAL

- Store a copy of the Flood Log Inventory Sheet, drawings and deployment plan in the same location as the Flood Log and Support storage.
- If Flood Logs are being stored after a flooding event, wash and clean all surfaces including the inside cavities of the Flood Logs with soap and water and thoroughly rinse with clean water. Let dry before storing.
- Check all Flood Logs and supports for damage after a flood event. Take pictures and record the damage. If the damage requires repair contact your local Flood Panel dealer or contact Flood Panel at www.floodpanel.com or call 561-744-2727

Installation of Flood Log supports:

The following steps need to be followed in order to ensure that the Flood Log and Embed Plates supports are installed in the proper manner to provide leak-free operation:

- **For fixed- Wall, Jamb and Offset support applications:**
 - Unless specified Stainless Steel, Embed plates are commercially primed ONLY. Finish coat responsibility lies with the end user.
 - Locate the associated Flood Log supports that corresponds with the openings you are about to install. The identification of the Flood Log supports and color codes can be found on the "Flood Log inventory spread sheet" which was shipped with the Flood Log order.
 - Move the Flood Log supports to the desired location taking care not to damage the sealing gaskets in any way.
 - Using a broom or air compressor, clean the floors of any and all debris in the area where the Flood Logs and supports are to be installed.
 - If using an embed plate included with the supports, install the embed plate with anchors and grout or waterproof curtain wall caulk. See the Flood Log approved submittal drawings for notes, embed details and anchor details. Be sure to cover "butter" the entire back of embed with grout or caulk and create squeeze out on all sides to assure a proper seal.
 - If the supports are to be fixed without an embed plate, install the support with anchors and grout or waterproof curtain wall caulk. See the Flood Log approved submittal drawings for notes and anchor spacing details. Be sure to cover "butter" the entire back and bottom of the support with grout or caulk and create squeeze out on all sides to assure a proper seal.