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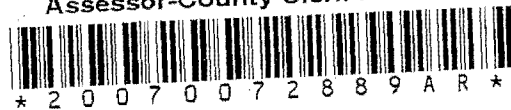
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County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder



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FIRST AMENDMENT TO  
AMENDED AND RESTATED DECLARATION OF  
MENLO COMMONS ASSOCIATION

THIS FIRST AMENDMENT TO THE AMENDED AND RESTATED  
DECLARATION is made on February 12, 2007, by the MENLO COMMONS  
ASSOCIATION, a California nonprofit corporation (hereinafter "Association").

RECITALS

A. On March 11, 1977, a DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS was recorded in the Office of the Recorder of San Mateo County, at  
Book 7405, page 331 for the Association and its members, applicable to the real property located  
in the City of Menlo Park, County of San Mateo, State of California, more particularly described  
in that certain Map entitled "Parcel Map of A Condominium Project", which map was filed for  
record on September 30, 1976, in Volume 33 of Parcel Maps, at Page 27, San Mateo County  
Records.

B. On November 6, 1987, an Amended and Restated Declaration of Covenants,  
Conditions and Restrictions was recorded in the Office of the Recorder of San Mateo County, as  
Document No. 87-169708.

C. On December 27, 1994, an Amendment to the Declaration of Covenants,  
Conditions and Restrictions was recorded in the Office of the Recorder of San Mateo County, as  
Document No. 94-192743.

D. On October 11, 2005, an Amended and Restated Declaration was recorded in the Office of the Recorder of San Mateo County, as Document No. 2005-177083.

E. Association now desires to make a First Amendment to the Amended and Restated Declaration pursuant to Article 9.4 of the Declaration as hereinafter provided.

Wherefore, the Amended and Restated Declaration is amended as follows.

1. Article 7.9F(2)(c) is amended to read as follows:

(c) "Quota" for purposes of this section 7.9 means the number of leased/rented Units at any point in time shall not be more than fifteen (15) out of a total one hundred twenty-two units. The Owners currently renting or leasing their Unit over and above the allowed fifteen (15) are permitted to continue renting or leasing their Unit until the sale of said Unit. Thereupon, the previously leased or rented Units, over the fifteen (15) Units allowed that have been sold shall not be leased or rented again.

2. Article 8.1(7) is amended to read as follows:

**8.1 Insurance:** The Association shall obtain and maintain the following insurance:

(7) earthquake insurance to the extent required by law, and if not required by law, then to the extent available at commercially reasonable rates in the opinion of the Board. For the purposes of earthquake insurance only, the following items of property contained within the 122 Units shall be the responsibility of the insured (Menlo Commons Homeowners Association) subject to the limits and deductible provisions of the earthquake policy:

(1) Fixtures, all walls, improvements and alterations that are a part of the building or structure.

(2) Appliances such as those used for refrigerating, ventilating, cooking,

dishwashing, laundering, security or housekeeping.

The earthquake insurance policy's deductible provisions, when applicable to an individual Unit, shall be the responsibility of the Unit Owner.

IN WITNESS WHEREOF, this First Amendment to the Amended and Restated Declaration is executed by the President of the Association.

Executed at Menlo Park California, on the 26 day of April, 2007.

MENLO COMMONS ASSOCIATION

BY: Sandra W. Kalt  
President

State of California )  
                                  )ss.  
County of San Mateo )

On April 26<sup>th</sup>, 2007, before me, Mayra Hermosillo, a Notary Public, personally appeared, SANDRA W. KALT personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Mayra Hermosillo



MENLO COMMONS  
 AMENDED AND RESTATED DECLARATION  
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THIS DECLARATION CONTAINS A BINDING ARBITRATION PROVISION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND/OR JUDICIAL REFERENCE CLAUSE THAT APPLIES TO CONSTRUCTION DEFECT CLAIMS. ARBITRATION AND JUDICIAL REFERENCE BOTH INCLUDE A WAIVER OF THE CONSTITUTIONAL RIGHT TO A JURY. YOU MUST READ THE PROVISIONS CAREFULLY AND SHOULD CONSULT LEGAL COUNSEL WITH ANY QUESTIONS.

IF THIS DOCUMENT CONTAINS ANY RESTRICTION BASED ON RACE, COLOR, RELIGION, SEX, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, NATIONAL ORIGIN, OR ANCESTRY, THAT RESTRICTION VIOLATES STATE AND FEDERAL FAIR HOUSING LAWS AND IS VOID, AND MAY BE REMOVED PURSUANT TO SECTION 12956.1 OF THE GOVERNMENT CODE. LAWFUL RESTRICTIONS UNDER STATE AND FEDERAL LAW ON THE AGE OF OCCUPANTS IN SENIOR HOUSING OR HOUSING FOR OLDER PERSONS SHALL NOT BE CONSTRUED AS RESTRICTIONS BASED ON FAMILIAL STATUS.

*Law Offices of*  
 Hanna & Van Atta  
 525 UNIVERSITY AVENUE, SUITE 705  
 PALO ALTO, CA 94301  
 TELEPHONE (650) 321-3709

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- Exhibit – A Assessments Schedule (4 pages)
- Exhibit – B Items covered by Maintenance Provisions (1 page)
- Exhibit – C Civil Code Section 51.3 (4 pages)
- Exhibit – D The Plan (8 pages)



be done within sixty (60) days from the giving of such notice. Use of chemicals that may damage the drain pipes and fixtures is strictly forbidden.

In order to reduce the presence of mold, fungi, spores, pollens and other botanical substances, or other allergens (collectively "Mold") within the Unit, the Owners shall inspect the interior of their dwellings not less frequently than once each quarter to check for water leaks or other breaches of the watertight integrity of the improvements, and for the presence of Mold. If any water leaks and/or Mold are detected within the Unit, the Owner shall immediately take appropriate corrective steps to repair the leak, and/or remove the Mold and to maintain proper ventilation within enclosed areas, and to maintain humidity levels to reduce the risk of Mold growth, and take such other prudent steps as may be appropriate to prevent Mold growth, or eliminate any existing Mold. Any mold or other infestation detected shall be noted to the Board in writing for appropriate action.

In the event the Owner fails to carry out such maintenance within one week, the Board may, following notice and hearing as provided in the Bylaws, cause such work to be done and the cost of the work shall immediately be paid by such Owner to the Association as a Reimbursement Charge, and until paid shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate authorized by law).

## ARTICLE VIII INSURANCE; DAMAGE OR DESTRUCTION; CONDEMNATION

**8.1 Insurance:** The Association shall obtain and maintain the following insurance:

(1) a master hazard policy insuring all improvements, equipment and fixtures in the Project (including the Units as originally constructed) with policy limits of either: [a] full replacement value of the covered improvements or [b] no less than 80% of replacement cost of the covered improvements, excluding foundations and footings in either instances, unless otherwise required by FNMA or FHLMC requirements as set forth in subparagraph 8.1A, below. The following endorsements should be included in any such master hazard policy, if commercially reasonable to obtain:

- (a) changes in building codes ("ordinance or law endorsement");
- (b) inflation guard coverage;
- (c) demolition coverage;
- (d) "agreed-amount" endorsement (to eliminate a coinsurance problem);
- (e) replacement cost endorsement; and
- (f) primary coverage endorsement.

(2) an occurrence version comprehensive general liability policy insuring the Association, its agents, the Owners and their respective family members, against liability incident to the ownership or use of the Common Area or any other Association owned or maintained real or personal property. The amount of general liability insurance that the Association shall carry at all times shall be not less than the minimum amounts required by California Civil Code §1365.7 and § 1365.9;

(3) workers' compensation insurance to the extent required by law (or such greater amount as the Board deems necessary). The Association shall obtain a Certificate of Insurance naming it as an additional insured in regard to workers' compensation claims from any independent contractor who performs any service for the Association, if the receipt of such a certificate is practicable;

(4) fidelity bonds or insurance covering officers, directors, and employees that have access to any Association funds;

(5) officers and directors liability insurance in the minimum amounts required by California Civil Code §§ 1365.7;

(6) insurance against water damage, and liability for non-owned and hired automobiles, such other insurance as the Board in its discretion considers necessary or advisable; and

(7) earthquake insurance to the extent required by law, and if not required by law, then to the extent available at commercially reasonable rates in the opinion of the Board.

**A. Amount, Term and Coverage.** The amount, term and coverage of any policy required hereunder (including the type of endorsements, the amount of the deductible, the named insureds, the loss payees, standard Mortgage clauses, notices of changes or cancellations, and the insurance company rating) shall satisfy the minimum requirements imposed for this type of project by the Federal National Mortgage Association ("FNMA") and the Federal Home Loan Mortgage Corporation ("FHLMC") or any successor to either of those entities (except for earthquake insurance, the purchase of which shall be within the discretion of the Board, as provided in § 8.1(7) above). If the FNMA or FHLMC requirements conflict, the more stringent requirement shall be met. If FNMA and FHLMC do not impose requirements on any policy required hereunder, the term, amount and coverage of such policy shall be no less than that which is customary for similar policies on similar projects in the area. The Board shall adopt a policy regarding payment of deductibles on any insurance coverage. Unless the Board determines otherwise, the Association shall pay deductibles required under any insurance claims from Association funds, unless insufficient funds are available to the Association from the Association's accounts or from funds borrowed by the Association in accordance with this Declaration, in which event the Association shall levy a Special Assessment, in accordance with sections 4.3B and 4.4 of this Declaration, with respect to the amount of any such deductible which exceeds funds available to the Association from Association funds or from borrowing.

**B. Representation for Claims.** Each Owner appoints the Association or any insurance trustee designated by the Association to act on behalf of the Owners in connection with all insurance matters arising from any insurance policy maintained by the Association, including without limitation, representing the Owners in any proceeding, negotiation, settlement or agreement.

**C. Waiver of Subrogation.** Any insurance maintained by the Association shall contain "waiver of subrogation" as to the Association and its officers, directors and Members, the Owners and occupants of the Condominiums and Mortgagees, and, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured.

All individually owned insurance shall contain a waiver of subrogation as to the Association and its officers, directors and Members, the Owners and occupants of the Condominiums and Mortgagees, and all Members are deemed to have waived subrogation rights as to the Association and/or other Members, whether or not their policies so provide.

**D. Review of Policies.** The Association shall periodically (and not less than once every three (3) years) review all insurance policies maintained by the Association to determine the adequacy of the coverage and to adjust the policies accordingly.

**E. Separate Insurance Limitations.** No Owner shall separately insure his or her Condominium against loss by fire or other casualty covered by any insurance carried by the Association. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under the Association's policies that results from the existence of such other insurance will be chargeable to the Owner who acquired other insurance. The insurance maintained by the

Association does not cover the personal property in the residences and does not cover personal liability for damages or injuries occurring in the Units. Owners shall insure their personal property against loss and shall carry personal liability insurance. In addition, any improvements made by an Owner within his or her Unit shall be separately insured by the Owner. The insurance shall be the type of coverage commonly known as "improvements insurance" (commonly referred to as "HO-6 coverage"). The Owner shall not obtain such insurance if the policy referred to in section 8.1(1) will provide coverage for such improvements. Tenants shall carry tenants' contents insurance (commonly referred to as "HO-4 coverage").

**F. Copies of Policies; Notice to Members.** The Association shall make available to all Members a copy of the Association's policy to enable Members to insure their Units without duplicating insurance carried by the Association and inadvertently triggering a co-insurance clause in the Association's policy referred to in section 8.1(1). The Association shall distribute annually to the Members a summary of the Association's insurance policies as required by Civil Code section 1365(e) and as provided in the Bylaws. The Association, as soon as reasonably practical, shall notify its Members by first-class mail if any of the policies have been cancelled and not immediately renewed or restored or if there is a significant change such as a reduction in coverage or limits or an increase in the deductible for any policy. If the Association receives any notice of non-renewal of a policy, the Association immediately shall notify its Members if replacement coverage will not be in effect by the date the existing coverage will lapse.

To the extent that the information required to be disclosed, as described in Civil Code §1365(e), is specified in the insurance policy declaration page, the Association may meet its disclosure obligations by making copies of that page and distributing copies to all its Members.

**G. Limitation on Liability.** The Association, and its directors and officers, shall have no liability to any Owner or Mortgagee if, after a good faith effort, it is unable to obtain the insurance required hereunder, because the insurance is no longer available or, if available, can be obtained only at a cost that the Board in its sole discretion determines is unreasonable under the circumstances, or the Members fail to approve any Assessment increase needed to fund the insurance premiums. In such event, the Board immediately shall notify each Member and any Mortgagee entitled to notice that the insurance will not be obtained or renewed.

**H. Policies and Procedures Regarding the Filing and Processing of Claims:** The Board shall adopt a policies and procedures regarding the filing and processing of claims for damage and destruction of Common Area improvements or any other matters covered by insurance maintained by the Association.

**8.2 Damage or Destruction:** If Project improvements are damaged or destroyed by fire or other casualty, the improvements shall be repaired or reconstructed substantially in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction and subject to such alterations or upgrades as may be approved by the Board, unless either of the following occurs: (1) the cost of repair or reconstruction is more than fifty percent (50%) of the current replacement costs of all Project improvements, available insurance proceeds are not sufficient to pay for at least eighty-five percent (85%) of the cost of such repairs or reconstruction, and three-fourths (3/4) of the total voting power of the Association residing in Members and their First Lenders vote against such repair and reconstruction; or (2) available insurance proceeds are not sufficient to substantially repair or reconstruct the improvements within a reasonable time as determined by the Board, a Special Assessment levied to supplement the insurance fails to receive the requisite approval (if such approval is required) as provided in section 4.4, and the Board, without the requirement of approval by the Owners, is unable to supplement the insurance by borrowing on behalf of the Association sufficient monies to enable the improvements to be substantially repaired or reconstructed within a reasonable time.

**A. Process For Repair or Reconstruction:** If the improvement is to be repaired or reconstructed and the cost for repair or reconstruction is in excess of twenty-five percent (25%) of the current replacement cost of all the Project improvements, the Board shall designate a construction consultant, a general contractor, and an architect for the repair or reconstruction. All insurance proceeds, Association monies allocated for the repair or reconstruction, and any borrowings by the Association for the repair or reconstruction shall be deposited with a commercial lending institution experienced in the disbursement of construction loan funds (the "depository") as selected by the Board. Funds shall be disbursed in accordance with the normal construction loan practices of the depository that require as a minimum that the construction consultant, general contractor and architect certify within ten (10) days prior to any disbursement substantially the following:

(1) that all of the work completed as of the date of such request for disbursement has been done in compliance with the approved plans and specifications;

(2) that such disbursement request represents monies which either have been paid by or on behalf of the construction consultant, the general contractor or the architect and/or are justly due to contractors, subcontractors, materialmen, engineers, or other persons (whose name and address shall be stated) who have rendered or furnished certain services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the respective amounts paid or due to each of said persons in respect thereof and stating the progress of the work up to the date of said certificate;

(3) that the sum then requested to be disbursed plus all sums previously disbursed does not exceed the cost of the work insofar as actually accomplished up to the date of such certificate;

(4) that no part of the cost of the services and materials described in the foregoing paragraph 8.2(1) has been or is being made the basis for the disbursement of any funds in any previous or then pending application; and

(5) that the amount held by the depository, after payment of the amount requested in the pending disbursement request, will be sufficient to pay in full the costs necessary to complete the repair or reconstruction.

If the cost of repair or reconstruction is less than twenty-five percent (25%) of the current replacement cost of all the Project improvements, the Board shall disburse the available funds for the repair and reconstruction under such procedures as the Board deems appropriate under the circumstances.

The repair or reconstruction shall commence as soon as reasonably practicable after the date of such damage or destruction and shall be completed as quickly as is reasonably practicable after commencement of reconstruction, subject to delays that are beyond the control of the party responsible for making the repairs. The Owner of the damaged or destroyed improvement immediately shall take such steps as may be reasonably necessary to secure any hazardous condition and to screen any unsightly views resulting from the damage or destruction.

**B. Process If Repair or Reconstruction Not Undertaken:** If the improvements are not repaired or reconstructed in accordance with the foregoing, all available insurance proceeds shall be disbursed among the Owners of the damaged Units and their respective Mortgagees in proportion to the respective fair market values of their Condominiums as of the date immediately preceding the date of damage or destruction as determined by a qualified independent appraiser selected by the Board, after first applying the proceeds to the cost of

mitigating hazardous conditions on the Project, making provision for the continuance of public liability insurance to protect the interests of the Owners until the Project can be sold, and complying with all other applicable requirements of governmental agencies. In the event of a failure to agree upon an appraiser, the appraiser shall be appointed by the then President of the San Mateo County Bar Association.

If the failure to repair or reconstruct results in a material alteration of the use of the Project from its use immediately preceding the damage or destruction as determined by the Board (a material alteration shall be conclusively presumed if repair or reconstruction costs exceed twenty-five percent (25%) of the current replacement cost of all Project improvements), the Project shall be sold in its entirety under such terms and conditions as the Board deems appropriate. If any Owner or First Lender disputes the Board's determination as to a material alteration, the dispute shall be submitted to arbitration pursuant to the rules of the American Arbitration Association, and the decision of the arbitrator shall be conclusive and binding on all Owners and their Mortgagees.

If the Project is sold, the sales proceeds shall be distributed to all Owners and their respective Mortgagees in proportion to their respective fair market values of their Condominiums as of the date immediately preceding the date of damage or destruction as determined by the independent appraisal procedure described above. For the purpose of effecting a sale under this section 8.2, each Owner grants to the Association an irrevocable power of attorney to sell the entire Project for the benefit of the Owners, to terminate the Declaration and to dissolve the Association. In the event the Association fails to take the necessary steps to sell the entire Project as required hereunder within sixty (60) days following the date of a determination by the Board or arbitrator of a material alteration, or if within one hundred twenty (120) days following the date of damage or destruction the Board has failed to make a determination as to a material alteration, any Owner may file a partition action as to the entire Project under California Civil Code §1359, or any successor statute, and the court shall order partition by sale of the entire Project and distribution of the sale proceeds as provided herein.

Notwithstanding anything herein to the contrary, any Owner or group of Owners shall have a right of first refusal to match the terms and conditions of any offer made to the Association in the event of a sale of the Project under this section 8.2 B, provided this right is exercised within ten (10) days of receipt by the Owners of a notice from the Association containing the terms and conditions of any offer it has received. If the Owner or group of Owners subsequently default on their offer to purchase, they shall be liable to the other Owners and their respective Mortgagees for any damages resulting from the default. If more than one (1) Owner or group elects to exercise this right, the Board shall accept the offer that in its determination is the best offer.

**8.3 Condemnation:** The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Area(s), or part thereof. In the event of a taking or acquisition of part or all of the Common Area(s) by a condemning authority, the award or proceeds of settlement shall be payable to the Association, or any trustee appointed by the Association, for the use and benefit of the Owners and their Mortgagees as their interests may appear. In the event of an award for the taking of any Condominium in the Project by eminent domain, the Owner of such Condominium shall be entitled to receive the award for such taking and after acceptance thereof he or she and his or her Mortgagee shall be divested of all interest in the Project if such Owner shall vacate his or her Condominium as a result of such taking. The remaining Owners shall decide by majority vote whether to rebuild or repair the Project, or take other action. The remaining portion of the Project shall be resurveyed, if necessary, and the Declaration shall be amended to reflect such taking and to readjust proportionately the percentages of undivided interest of the remaining Owners in the Project. In the event of a taking by eminent domain of any part of the Common Area, the Association shall participate in the negotiations, and shall propose the method of division of the proceeds of condemnation, where Condominiums are not valued separately by the condemning

authority or by the court. Proceeds of condemnation shall be distributed among Owners of Condominiums and their respective Mortgagees according to the relative values of the Condominiums affected by the condemnation, said values to be determined by the method provided in section 8.2.

If there is a substantial taking of the Project (more than fifty percent (50%)), the Owners may terminate the legal status of the Project and, if necessary, bring a partition action under California Civil Code §1359 or any successor statute, on the election to terminate by fifty-one percent (51%) of the total voting power of the Association and the approval of Eligible Mortgage Holders holding Mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to Eligible Mortgages. The proceeds from the partition sale shall be distributed to the Owners and their respective Mortgagees in proportion to the fair market values of their Condominiums as determined under the method described in section 8.1.

## ARTICLE IX GENERAL PROVISIONS

**9.1 Enforcement:** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration, the Articles and the Bylaws, and in such action shall be entitled to recover reasonable attorneys' fees as are ordered by the Court. The Association shall have the right to record a Notice of Violation against the Condominium of an Owner who is not in compliance with the provisions of the Project Documents if permitted by law. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**9.2 Invalidity of Any Provision:** Should any provision or portion hereof be declared invalid or in conflict with any law of the jurisdiction where this Project is situated, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.

**9.3 Term:** The covenants and restrictions of this Declaration shall run with and bind the Project, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners of the Condominiums, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions in whole or in part, or to terminate the same.

**9.4 Amendments:** This Declaration may be amended only by the affirmative vote (in person or by proxy) or written consent of Members representing a majority of the total voting power of the Association. However, the percentage of voting power necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be certified in a writing executed and acknowledged by the President or Vice President of the Association and recorded in the Recorder's Office of the County of San Mateo.

**9.5 Encroachment Rights:** If any portion of the Common Area encroaches on any Unit or any part thereof or any portion of a Unit encroaches on any Common Area due to engineering errors, errors or adjustments in original construction, reconstruction, repair, settlement, shifting, or movement of the building, or any other cause, the owner of the encroachment shall have the right to maintain, repair or replace the encroachment, as long as it exists, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that no right shall be created in favor of an Owner or Owners if said