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PRIVILEGED AND CONFIDENTIAL
ATTORNEY - CLIENT COMMUNICATION

VIA ELECTRONIC MAIL – jsandy@manorinc.com

Board of Directors
The Menlo Commons Association
c/o The Manor Association
Attention: Janis Sandy
353 Main Street
Redwood City, CA 94061

Re: Second Draft of Amended and Restated Declaration and Amended and Restated Bylaws

Members of the Board:

I am enclosing second drafts of the Amended and Restated Declaration, Amended and Restated Bylaws, Amended and Restated Articles of Incorporation and updated Senior Housing Residency Rules for your consideration. I am sorry not to have been able to provide these drafts to you sooner. However, as you know I had a recurrence of the illness that struck me in South Africa in September which had me out of commission for several weeks.

AMENDED AND RESTATED DECLARATION

As in the prior draft, I have highlighted certain provisions in the Amended and Restated Declaration to call them to your attention. In some instances this highlighting is intended to encourage you to consider whether you want to include the provision either as is or perhaps in some modified form. In other cases, I have suggested alternative provisions and ask that you select one or the other.

The current 2005 Declaration (at page 23) defines the term "quota" as a maximum of 30 units that may be leased or rented at one time. In the First Amendment to the 2005 Declaration recorded in 2007, you reduced the "Rental Quota" to 15 units. This change is a more restrictive provision than the provision in the 2005 Declaration. Accordingly, making this change in 2007 resulted in the requirement under Section 9.6 D(1)(b)(Ix) of the 2005 Declaration that the First Amendment be approved by 67% of the Members (rather than the approval of a majority of the voting power as would otherwise be the case) and by Eligible Mortgage Holders holding mortgages on Units whose owners hold at least 51% of the votes of condominiums subject to Eligible Mortgages. The First Amendment does not confirm that it was approved by either 67% of the Members or by any Eligible Mortgage Holders, if indeed there are any. Thus, I am obligated to advise you that reducing the Rental Quota to 15 Units may be subject to challenge unless the Board can document that the provisions of the 2005 Declaration were complied with. If there is any doubt about such compliance, the problem may be averted if the Amended and Restated Declaration is approved by 67% of the Members and, if there are any Eligible Mortgage Holders, by those holding mortgages on Units whose owners hold at least 51% of the votes of condominium subject to Eligible Mortgages.

As we discussed in our November 22, 2013 Proposal, whether or not there are Eligible Mortgage Holders depends on whether any first lenders have submitted requests to be notified of certain matters as listed in the 2005 Declaration. In our experience, it would not be unusual to find that no lenders have submitted such requests and in that case, there would be no Eligible Mortgage Holders whose approval of the Amended and Restated Declaration would be required. However, the super-majority approval of 67% of the Members would still be required. Accordingly, unless this was addressed in 2007, I suggest the manager conduct a careful search of the Association's records to determine whether any requests for notice have been submitted by first lenders.

Note that in Section 5.6(c), I have highlighted the term "community facilities." If there are no such facilities that members may use, this provision may be eliminated.

You will see that at pages 18 and 19 of the Amended and Restated Declaration, I have included three alternative smoking restrictions. Please let me know which, if any, you wish to include in the document.

With regard to Section 8.5.1, a 2017 addition to the applicable Civil Code provisions states:

"An association shall not

(1) Establish a general policy of prohibiting the installation or use of a rooftop solar energy system for household purposes on the roof of the building in which the owner resides, or a garage or carport adjacent to the building that has been assigned to the Owner for exclusive use."

Thus, this section should be deleted from the Amended and Restated Declaration. This new Civil Code provision also affects Sections 8.5.3 and 8.5.4.

Please carefully review Section 8.6.1. It provides for an Architectural/Remodeling Committee which is to be a committee of the board and its function is to conduct an *initial review and recommendation* to the full Board. As expressed in this draft, Section 8.6.1 says: An initial disapproval decision [by the Committee] immediately sends the decision back to the full Board for providing written notice to the Owner." If the Committee's only role is to review an application and make a recommendation to the Board, it is the Board that makes the decision and there would be no reason for the matter to be sent back to the Board.

You have asked for clarification of Section 13.1.8. That section was retained from Section 9.6H of the 2005 Declaration. Since it is a provision that benefits lenders, it cannot be excluded from the Amended and Restated Declaration (see Section 9.6D(b)(xii)) of that document. It is a standard provision in the Declaration of a homeowners association. Without such a provision, lenders would be unwilling to lend funds to purchasers of condominiums. It means that a first mortgage on a condominium will always have priority over an assessment lien which protects the lender's security interest in the condominium in the event of a default by an owner in his or her obligations to the lender under his or her mortgage or deed of trust.

Regarding Section 14.8.2, you have also asked about the Board's ability to collect enforcement assessments (fines). As you know, Civil Code section 5725(b) provides that a monetary penalty imposed as a disciplinary measure for violation of a governing document provision may not be characterized or treated as an assessment that may become a lien enforceable by the sale of the

owner's condominium by means of non-judicial foreclosure. However, an association has other avenues for collection of fines. It can record a lien against the condominium but instead of pursuing non-judicial foreclosure of the lien, it can maintain the lien in effect until the owner sells the condominium and then submit a demand for payment to the escrow in the sales transaction. Alternatively, an association can proceed to enforce the lien through judicial lien foreclosure proceedings. The Legislature has determined that judicial foreclosure better protects an owner's due process interests by virtue of the fact that a judge is involved in the foreclosure. Finally, an association can bring a collection action in court (usually in small claims court because the amount of most fines is within the jurisdiction of the small claims court).

To answer another question asked by the Board, Section 14.8.4 is included in Article 14 to emphasize that a Reimbursement Assessment is not a sanction (penalty) – it is a way for the Association to recoup expenses incurred due to the conduct of a member. We have observed that frequently board and members misunderstand that a Reimbursement Assessment is not a punitive measure, but a process by which an association may obtain reimbursement for expenses caused by a member's actions.

It is rare that a homeowner challenges the validity of a recorded declaration of CC&Rs. However, you have wondered about the implication of Section 15.3 of the Amended and Restated Declaration. That section provides protection to the Association in the unlikely event a member should seek to obtain a court ruling that a recorded Declaration was not properly approved by the requisite vote of the members. It provides that such a challenge must be commenced within one year of the recording date and creates a presumption of validity which means that a challenging member would bear the burden of presenting evidence that overcomes the presumption.

AMENDED AND RESTATED BYLAWS

I believe I have made all of the modifications to the first draft of this document you requested in your edits of the first draft. Please review carefully to confirm that all requested changes have been made and that no further changes are desired.

AMENDED AND RESTATED ARTICLES OF INCORPORATION

In your edited version of the Articles, you deleted Article 2 as it appeared in the first draft of this document. I understand that this election to be governed by all provisions of the Nonprofit Mutual Benefit Corporation law was included in the 2005 Restated Articles of Incorporation. However, that 2005 document is invalid and ineffective because it was recorded in the office of the San Mateo County Recorder, but was not filed with the California Secretary of State which is required to cause it to be a valid, effective restatement of the original Articles of Incorporation. Accordingly, it is necessary that the Amended and Restated Articles include this provision when it is approved and filed in the office of the Secretary of State.

Please let me know when you have completed your review of the enclosed documents. After consideration and approval by the Board, I will prepare a final set of these documents in a form suitable for duplication and distribution to the members. At that time I will also provide a final version of the executive summary of the content of the documents and a ballot for the Board to distribute to the members when it is time for the membership vote.

Meanwhile, should you have any questions or any further changes to the enclosed documents, please let me know.

Very truly yours,

BERDING & WEIL LLP

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