

EXCLUSIVE BULK VOICE, INTERNET AND U-VERSE® TV AGREEMENT

EXISTING CONDOMINIUM PROPERTY – The Menlo Commons Homeowners Association

This **EXCLUSIVE BULK VOICE, INTERNET AND U-VERSE® TV AGREEMENT** ("Agreement") is entered into as of the date that AT&T executes this Agreement ("Effective Date"), by and between **AT&T Services, Inc.** ("AT&T"), a Delaware corporation and **The Menlo Commons Homeowners Association** ("Association"), a California nonprofit mutual benefit corporation. AT&T and Association may hereinafter be referred to individually as a "Party" or collectively as the "Parties".

RECITALS

A. Menlo Commons is a condominium property located as described in **Exhibit A**, attached hereto and incorporated herein by reference (the "Property"); and

B. Association is a duly constituted homeowners association established pursuant to, and organized as a nonprofit mutual benefit corporation under California law, and is responsible for the operation of portions of the Property. Association's authority is derived in part from the Amended and Restated Declaration recorded October 11, 2005 as Document No. 2005-177083 in the Official Records of San Mateo County, California, as amended from time to time (the "Declaration"). Pursuant to the Declaration, Association may operate common areas and enter into contracts as defined in the Declaration, subject to all grants, reservations, terms and conditions contained therein. Association is the record Association of the common areas of the Property.

C. AT&T and its Affiliates are in the business of delivering communications and other services, which include but are not limited to any audio, video, Internet access, local telephone, long distance and any other services which AT&T and its Affiliates offer for sale to consumers on a generally available basis on their networks.

D. In order to be able to provide the residents of the Property with voice, high-speed Internet access and U-verse® TV as a benefit of living at the Property, and in order to obtain those services at an attractive price, Association has asked AT&T and AT&T has agreed to provide those services on a "bulk" basis to the Residential Dwelling Units on the Property pursuant to the terms and conditions contained in this Agreement. Association intends that AT&T shall, consistent with this Agreement, be granted rights to install and operate Equipment and deliver Bulk Services and Premium Services as defined in Section 1 of this Agreement, to residents of the Property and acknowledges that AT&T will make a substantial investment in order to provide these Bulk Services. AT&T shall have the exclusive right to contract with Association to provide Bulk Services described herein under a bulk billing arrangement for the Property.

NOW, THEREFORE, for the mutual consideration set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as set forth below.

TERMS AND CONDITIONS

1. Definitions.

1.1 "Affiliate" is defined as a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or equivalent thereof) of more than 10 percent (10%).

1.2 "**Bulk Billing Start Date or BBSD**" is the latest date by which AT&T commits that billing for Bulk Services to the Association and billing for Premium Services to an End User become effective for any Residential Dwelling Unit and that direct retail billing for Retail Services to End Users ceases and will no longer be initiated. The BBSD will occur no later than **180 days** after the Effective Date and AT&T will provide email notice of the exact BBSD to Association at least **ten days** before the BBSD.

1.3 "Bulk Monthly Fee" is the monthly recurring charges, as described and set forth on **Exhibit C**, excluding taxes and fees, that are billed to the Association for Bulk Services for each Residential Dwelling Unit during the Term of this Agreement.

1.4 "Bulk Data Service" is AT&T's bulk 6.0 Mbps data product with downstream speeds of up to 6.0 Mbps and upstream speeds of up to 384 kbps that will be made available to Association for use by End Users pursuant to this Agreement. Bulk Data Services are described in further detail in this Agreement, and more specifically on **Exhibit B**, attached hereto and made a part hereof.

1.5 "Bulk Services" are Bulk Voice Service, Bulk Data Service and Bulk Video Service collectively.

1.6 "Bulk Video Service(s)" is AT&T's bulk U-verse® TV Service that will be made available to Association for use by End Users pursuant to the terms of this Agreement via the AT&T network that will at a minimum be competitive with the services provided by other video providers and substantially similar to U-verse® services provided to similarly situated AT&T customers in the local area in which the Property is located, and made available to End Users pursuant to this Agreement. The Bulk Video Service provided hereunder is described in greater detail in this Agreement and, and more specifically on **Exhibit B**, attached hereto and made a part hereof.

1.7 "Data Services" are Bulk Data Service and Premium Data Services collectively.

1.8 "End User" is an occupant of a Residential Dwelling Unit to whom Bulk Services and/or Premium Services are available for use.

1.9 "Equipment" is all wires, cables, antennas, towers, connectors, amplifiers, couplers, splitters, tuners, modulators, Customer Premise Equipment as defined in Section 6.4, and any other equipment and facilities owned and provided by AT&T or one or more of its Affiliates from time to time which are used to deliver Data Services or Video Services. Equipment shall not include inside wire or any preexisting facilities not owned or provided by AT&T.

1.10 "Full Bulk Billing Date" is the date that the Bulk Services become initially available to all Residential Dwelling Units.

1.11 "Individual Unit Owners" are those individuals or legal entities that have purchased Residential Dwelling Units at the Property, but excluding builders constructing such units in the ordinary course of business.

1.12 "Premium Data Services" are: (a) an internet service that provides a higher speed than or an increase in quantities of features from the Bulk Data Service and (b) additional features that are not included in the Bulk Data Service for residential use.

1.13 "Premium Services" are Premium Voice Services, Premium Data Services and Premium Video Services, collectively.

1.14 "Premium Video Services" are any residential U-verse® TV services, applications, equipment or upgraded package of features that are not included in the Bulk Video Service as defined above.

1.15 "Residential Dwelling Units" include all types of residential dwelling units on the Property including, but not limited to: condominiums constructed within the Property, and certified as ready for occupancy, whether occupied or not; but excluding common areas under the control of an association such as a homeowners association or property owner's association.

1.16 "**Retail Services**" are services that provide End Users equivalent functionality to the Bulk Services, and are provided and billed at retail rates directly to the End User prior to the **BBSD**. Retail Service will be available as stated in the Exclusive Marketing Contract ("EMA") (Contract # W1205021642 EMA).

1.17 "Services" are Voice Services, Data Services and Video Services, collectively.

1.18 "U-verse® TV Services" are the video component services of an integrated, switched, two-way, point-to-point and interactive IP-enabled service platform of voice, video and data services utilizing and provided over the AT&T network.

1.19 "Video Programming" is any audio, visual and data content which AT&T is authorized to provide or provides to the End Users under the terms of this Agreement, including but not limited to services that include broadcast television channels, premium channels, pay-per-view programs, video-on-demand, interactive-on-demand, and audio-only music, regardless of the technology used or the degree of subscriber interaction, customization and control provided as part of the service.

1.20 "Video Services" is Bulk Video Services and Premium Video Services collectively.

1.21 "Bulk Voice Service" is the right to originate and receive an unlimited number of local voice messages over the AT&T U-verse platform at charges in accordance with the provisions of this Agreement. Bulk Voice Service is described in further detail in this Agreement and more specifically on **Exhibit B**, attached hereto and made a part hereof.

1.22 "Premium Voice Services" are additional voice service features offered by AT&T over its U-verse platform that are available for use with, but are not included in the Bulk Voice Service or that are an upgraded package of features to the Bulk Voice Service.

2. Services.

2.1 Data Services. AT&T shall provision to each Residential Dwelling Unit Bulk Data Service and Premium Data Services during the Term (as defined in Section 4) of this Agreement so long as End Users agree to and comply with AT&T's standard terms and conditions, including all applicable acceptable use policies in effect at that time and as amended from time to time, incorporated herein by reference. An End User's use of the Data Services shall be subject to this Agreement, the AT&T Internet Service – Service Agreement; AT&T's Acceptable Use Policies; the end user license agreements associated with AT&T's high speed internet services and the Pricing Terms and Conditions for AT&T's high speed internet services; and all other policies or terms of service that apply to AT&T's high speed internet service, as applicable, and any successor documents (collectively, "Internet Terms of Service"). End Users will be required to acknowledge acceptance of the Internet Terms of Service. Association shall not be obligated to enforce End User's compliance with the Internet Terms of Service. The Bulk Data Services shall be available with dynamic IP addressing only.

2.1.1 Additional Data Services. In the event an End User elects to purchase Premium Data Services,

upon AT&T credit approval, or if such End User requests an additional account at the End User location, AT&T may directly bill such End User for such service or additional account at the then current retail rate; however, an upgrade in the speed of the Bulk Data Service shall be priced to the End User at the difference between AT&T's standard retail market rate for the Premium Data Service and AT&T's standard retail market rate for the retail service that is equivalent to the Bulk Data Service at the time of purchase. Association shall not be obligated to pay for any Premium Data Services which any End User elects to purchase. Upon mutual written agreement, Association and AT&T shall have the option to amend this Agreement to reflect the modified rates, terms and conditions for provision of a higher speed Bulk Data Service as that higher speed becomes generally available to the Property.

2.2 Video Services. AT&T shall provision Video Services to each Residential Dwelling Unit during the Term of this Agreement subject to the terms of this Agreement so long as End Users agree to and comply with AT&T's standard Video Service terms of service ("Video Terms of Service") as they may be amended from time to time. In addition to being subject to this Agreement and the Video Terms of Service, a Resident End User's use of the Video Services shall be subject to any applicable software license terms provided in connection with software associated with Video Services. End Users will be required to acknowledge acceptance of such Video Terms of Service and software license terms at the time of installation of the Video Services. Association shall not be obligated to enforce End User's compliance with the Video Terms of Service and/or the software license terms.

2.2.1 Additional Video Services. In the event an End User elects to purchase Premium Video Services, upon AT&T credit approval, such Premium Video Services shall be priced to the End User at the difference between AT&T's standard retail market rate for the Premium Video Services requested and AT&T's standard retail market rate for the retail service that is equivalent to the Bulk Video Service at the time of purchase. If the End User requests an additional account at the Residential Dwelling Unit, AT&T may directly bill the End User for such service on a separate account at the then current retail rate. The End User shall be financially responsible for any additional Customer Premises Equipment necessary to deploy the requested additional Video Services. Association shall not be obligated to pay for any Premium Video Services which any End User elects to purchase. Any upgrade to the Bulk Video Services requested by Association and agreed to by AT&T shall be at additional cost to the Association. Upon mutual written agreement, AT&T and Association may amend this Agreement to reflect any such upgrade.

2.3 Voice Services. AT&T shall make available to each Residential Dwelling Unit Bulk Voice Service and Premium Voice Services during the Term of this Agreement pursuant to AT&T's U-verse voice terms of service ("Voice Terms of Service"), as applicable. Bulk Voice Service shall be limited to U-verse Voice Services and shall not include voice services not provisioned over the U-verse platform unless U-verse voice services are unavailable and inoperable; and provision of Voice Services shall be contingent on AT&T receiving a signed U-verse Voice 911 Acknowledgement Form and End User's agreement to the U-verse Voice Terms of Service. Association shall not be obligated to enforce End User's compliance with the Voice Terms of Service.

2.3.1 Additional Voice Services. In the event an End User elects to obtain a version of voice services other than Bulk Voice Service, or elects to purchase Premium Voice Services, or if such End User requests an additional account at the End User location, upon AT&T credit approval, AT&T may and shall directly bill such End User for such service on a separate account at the then current retail rate, however, Premium Voice Service shall be priced to the End User at the difference between AT&T's standard retail market rate for the Premium Voice Service and AT&T's standard retail market rate for the retail service that is equivalent to the Bulk Voice Service at the time of purchase. Notwithstanding the foregoing, any End User requests for non-U-verse voice service shall be billed to the End user at the then current retail rate. End Users shall be subject to credit verification by AT&T in order to qualify for any additional voice services beyond Bulk Voice Services. AT&T shall not bill the Association for End User requests for additional accounts or services and Association shall not be obligated to pay for any Premium Voice Services which any End User elects to purchase.

2.4 AT&T may use any technology that it chooses to deliver the Services, and may change the technology used at any time as long as the Services continue to meet the requirements of this Agreement. AT&T will coordinate with End Users in the transition of Bulk Services to such updated technology, including any necessary equipment changes or installations and any required execution of Video Terms of Service or Internet Terms of Service.

3. Bulk Services Fee. Association will pay AT&T a Bulk Monthly Fee for each Residential Dwelling Unit for the Term of the Agreement as described on **Exhibit C**, attached hereto and made a part hereof.

4. Term and Auto-Renewal. This Agreement shall commence when fully executed by both Parties, and shall continue for sixty two (62) months from the date of the first Bulk Bill sent by AT&T to the Association (the "Initial Term"), unless terminated in whole or in part as provided for in Section 12 below. THIS AGREEMENT WILL AUTOMATICALLY RENEW FOR AN INITIAL TERM OF TWO (2) YEARS AND THEREAFTER SUCCESSIVE SIX (6) MONTH PERIODS ("RENEWAL TERM") UNLESS EITHER PARTY GIVES NOTICE TO THE OTHER AT LEAST SIXTY (60) DAYS PRIOR TO THE END OF THE INITIAL TERM OR RENEWAL TERM OF ITS INTENT NOT TO RENEW. The Initial Term and Renewal Term(s) shall be referred to as the "Term".

5. Alternative Arrangements. During the Term of this Agreement, Association hereby agrees that it will not enter into any other bulk billing agreement with another service provider regarding or permitting the provision of internet services or video services or any other competing services to Association for use in Residential Dwelling Units.

5.1 **Association** will not contract for or expressly authorize any third party to promote any services which compete with said Bulk Services and shall ensure that any of its contractors or other representatives of Association comply with the restrictions set forth in this Section.

6. Equipment.

6.1 **Installation and Operation.** AT&T may, at its own expense, take any actions which are necessary or convenient to install, operate, alter, and remove Equipment and to deliver its services to the Property, including, without limitation, actions to:

- (a) maintain, move, repair, replace, and improve any Equipment within a public right of way;
- (b) use conduits on the Property owned and controlled by Association;
- (c) alter or remove trees, limbs, undergrowth and other objects in easement areas granted which are reasonably necessary to avoid interference with AT&T's ability to access Equipment or provide its services in a safe and efficient manner; and
- (d) enter into, upon, or across any portion of the Property controlled by Association, including the ground beneath such Property, except that AT&T may not enter a Residential Dwelling Unit without the permission of a resident of such Residential Dwelling Unit.

6.1.1 Association shall not take any action which will interfere with AT&T's ability to exercise rights granted to AT&T with respect to specific End Users under applicable Internet Terms of Service or Video Terms of Service.

6.2 **Repairs and Alterations.** AT&T shall promptly restore any buildings or improvements on the Property that are damaged by AT&T in connection with the initial installation of the Equipment to substantially the same condition that existed prior to the work, ordinary wear and tear excepted. If AT&T shall repair, alter, maintain, replace, remove or supplement the Equipment after the initial installation, AT&T shall restore any damaged portion of the Property to a condition that is as close to its original condition prior to the performance of such work on the Equipment as is commercially reasonable and shall replace all facilities or improvements including any trees, shrubbery or grass located thereon. AT&T shall give a thirty (30) day notice to Association prior to commencing any work on the Equipment that will result in a significant disturbance to the Property. AT&T shall not be required to give notice to Association, however, in an emergency situation where such notice cannot practicably be given or for routine servicing and repair of the Equipment.

6.3 **Ownership.** All Equipment will remain the sole property of AT&T during and after this Agreement. No piece of Equipment will be deemed to be a fixture or in any other manner a part of the Property owned and controlled by Association or Residents/End-Users. Association hereby waives and releases, for itself, its successors and assigns, any right, title, or interest which it has, or may have in the future, in or to any of the Equipment.

6.4 **Distribution and Recovery of U-verse[®] Equipment.** AT&T agrees to distribute a wireless router ("Residential Gateway") to the End User during initial installation of the Bulk Services and two (2) set top boxes during initial installation of Bulk Video Service (Bulk Customer Premises Equipment" or "CPE"). Any bulk CPE or other customer premises equipment provided to an End Users is the sole responsibility of the End User and the End User shall be responsible for returning such customer premises equipment to AT&T when the service is cancelled.

6.5 **Equipment Removal/Abandonment.** Notwithstanding anything provided in this Agreement to the contrary, upon termination of this Agreement for any reason, AT&T may leave any of its telecommunications equipment on the Property if (i) AT&T is required by any governmental requirements to provide or make available any of the Services to the Residents of the Property; or (ii) AT&T has provided Service to a Resident of the Property within the last six (6) months; provided, however, that at such time as AT&T is no longer providing any Services to any Residents of the Property for more than six (6) months and there are no governmental requirements that AT&T provide or make available any of the Services to the Residents of the Property, then AT&T shall, no later than 60 days following such date either remove all of its telecommunications equipment from the Property and repair all damages to the Property resulting therefrom or abandon its telecommunications equipment at the Property. If, AT&T elects to remove any of its telecommunications equipment from the Property, AT&T agrees to promptly repair and replace any damage to the Property or any improvements thereto caused by or resulting from such removal.

7. Activation/Installation/Maintenance and Repair of Bulk Services.

7.1 **Activation/Installation.** No installation charges shall apply for standard installations of Bulk Services, although End User requests for additional wiring, jacks or additional set top boxes, will be billed directly to the End User by AT&T at the applicable retail rate. Subject to AT&T being provided the necessary access to the Residential Dwelling Units, AT&T will make commercially reasonable efforts to provision the Bulk Services upon the scheduled move-in date of the End User, where applicable. Notwithstanding the foregoing, the End User must contact AT&T to schedule an installation date and provide contact information, including name, service address, and current contact telephone number at least fourteen (14) calendar days prior to the End User's desired installation date in order to provide AT&T with adequate time to provision the network facilities, as well as those within the Residential Dwelling Unit.

7.2 **Maintenance and Repair.** AT&T shall provide technical support for the Bulk Voice, Data and Video Services that is equivalent to that generally available to customers of AT&T's residential services comparable to the Bulk

Services. AT&T shall maintain and repair Bulk Services from the network side of the network interface device ("NID") through its Data Services and Video Services network in addition to the CPE. In the event an End User trouble is located on the End User side of the NID and is not CPE, and the End User requests AT&T to repair the trouble, AT&T shall bill the End User, where applicable, at AT&T's standard repair rate. If modem support is needed from AT&T, the modem must be an AT&T supported modem.

7.3 Wiring belonging to the End User or Association must meet the specifications set forth in **Exhibit D**, attached hereto and incorporated herein by reference. In the event that the wiring does not meet such specifications, AT&T shall not be responsible for any failure of the Data Services or Video Services caused by such wiring. In such case, Association or the End User may request AT&T to replace or upgrade the wiring to meet such specifications subject to separately negotiated rates, terms and conditions to be paid by the person (Association or End User) requesting such services. Association, to the extent it has the authority to do so, grants AT&T the exclusive right to use the portion of the wiring necessary to deliver AT&T's services during the Term of this Agreement, subject to any existing laws or regulations; however AT&T is not obligated to provide a Service where AT&T is not allowed to use wiring controlled by Association or End User.

7.4 Notwithstanding any other provision of this Agreement, AT&T reserves the right to refuse to activate Premium Services or require a non-refundable fee or refundable deposit for Premium Services from an End User if such End User fails to meet AT&T's credit requirements or temporarily suspend or terminate the Services in the event that an End User fails or has failed to pay AT&T for such Premium Services, but AT&T shall re-establish Bulk Service upon End User request, subject to the other terms in this Agreement that would otherwise have caused the Services to be suspended or terminated, as follows: If the End User contacts AT&T within the suspension period and pays any outstanding amounts to AT&T, AT&T will reconnect Bulk Services within a one day time frame. Otherwise, after the suspension period, End User may contact AT&T to reconnect Bulk Services but will be subject to the standard retail installation intervals in place for similarly situated retail customers.

8. Obligations of Association.

8.1 Grant of Easement or License. If a Property contains roads and utility easements and/or rights of way that are private, and if AT&T requires dedication of a designated parcel of land that is part of the Property (the "Parcel"), for the placement of its equipment, Association agrees that it shall grant to AT&T a mutually agreeable recordable easement or license as needed to allow AT&T to construct, install, remove, repair and maintain its facilities and equipment for the delivery of services to Residents. In the event Association conveys portions of a Property to a third party (e.g., Builder), Association will take all necessary actions to ensure the continuation of the aforementioned easements or licenses, through reservation of easement or license rights for itself and for AT&T and its successor, through related land sale contracts, or other binding means. Association agrees that AT&T may from time to time enter into various agreements or arrangements with its Affiliates, approved assignees, designated agents, or authorized vendors or operational providers, and this easement or license will extend to such parties, but only to the extent such parties use the easement or license for the provision of AT&T services. Association shall indemnify AT&T and its Affiliates and their directors, shareholders, officers, employees, agents, and contractors for any claims, liabilities, costs, and expenses (including costs and attorney's fees) incurred by or asserted against any of them relating to any pre-existing rights that conflict with the easements or licenses and rights granted to AT&T pursuant to this Agreement.

8.2 Non-Interference with Equipment. Except as authorized by AT&T, Association may not attach any device to, or disturb or use any Equipment. Association will use reasonable efforts to prevent persons that are not authorized by AT&T from attaching any device to, disturbing, or using any Equipment on the Property. Association will promptly notify AT&T of any known or suspected occurrence of the foregoing.

8.3 Changes to the Property. If Association makes changes to the Property which require AT&T to relocate any Equipment, then Association will reimburse AT&T for its reasonable relocation costs within thirty (30) days of receipt of invoices from AT&T. AT&T shall provide at least thirty (30) days notice to Association of its intent to relocate any Equipment; however AT&T will not be required to receive approval by Association for such relocation of Equipment.

8.4 No Liens. Neither party shall cause, suffer, or permit any lien or claim of lien to attach to or encumber the property of the other party as a result of or in connection with this Contract. If any lien is filed against the property of a party by anyone claiming through the other party, then such other party shall cause the lien to be removed or bonded around to the other party's reasonable satisfaction within twenty (20) days after demand.

8.5 Access. Association will provide to AT&T any equipment or information (e.g., keys, codes, access cards, etc.) needed to gain access to the Property controlled by Association. Subject to the limitations set forth herein, Association will provide employees, agents, and contractors of AT&T and its Affiliates reasonable access, at no charge, to those portions of the Property needed to perform any and all work required of AT&T or its Affiliates as authorized by this Agreement. AT&T will have the right to use, at no additional charge, and Association agrees to assist AT&T in locating, accessing, and interconnecting with, to the extent Association owns or controls and has access rights thereto, any distribution and inside wiring or cabling equipment room(s) and any already existing and available facilities, cross-connect boxes and/or distribution frames, any riser and conduit space and any rights of way, within and into the Property that Association controls, as necessary for delivery of the Bulk Services. Unless otherwise required by law or as limited herein, these rights shall survive the Agreement for as long as AT&T or the

applicable Affiliate owns telecommunications facilities and Equipment on a Property. In the event Association transfers ownership or control of any common areas of the Property to a third party, Association shall ensure, through deed provisions, reservations, declarations and covenants, and any such other provisions in any other legal, contractual or other documents that may be required, that any such successors of Association will also provide the employees, agents, and contractors of AT&T and the Affiliates the rights described in this Section.

8.6 Marketing List. To the extent not prohibited by law, Association will provide AT&T with a list of Residential Dwelling Unit addresses and the list will be utilized only for the purpose of marketing the services of AT&T and its Affiliates. Notwithstanding the foregoing, however, AT&T, and its employees and agents, shall at all times comply with all applicable laws, rules and regulations regarding the handling of customer information, in compliance with applicable FCC and other regulations and requirements.

8.7 No Additional Charges. Association shall not market or bill charges for the Bulk Services to residents at rates higher than those charged to Association by AT&T, but Association charges may include the reasonable costs of administering, billing and collecting such charges.

8.8 Distribution. Neither the Association, nor any employee or agent under Association's control will tap or otherwise interfere with the Equipment or Bulk Services for any purpose. AT&T shall not interfere with the right of an individual Resident to install or use his own private reception device for the reception of locally broadcast television signals. AT&T will not penalize or hold the Association liable should a Resident be able to receive video programming services without Association providing the Resident with such ability.

8.9 Amendment. Association agrees that it will not amend the Declaration or consent to any proposed amendment to the Declaration if such amendment would frustrate the mutual intent and obligations of the Parties under this Agreement or materially and adversely affect AT&T's rights under this Agreement.

8.10 AT&T reserves the right to utilize a third party vendor or provider to provide any of the Bulk Services or to perform any of its obligations, in whole or in part, contemplated by this Agreement.

9. Representations and Warranties.

9.1 Association represents and warrants that:

- (a) Association has all necessary permissions and corporate or other legal authority to enter into and perform this Agreement, and this Agreement constitutes a legal, valid, and binding obligation enforceable against Association in accordance with its terms;
- (b) Association is a duly organized nonprofit mutual benefit corporation and in good standing in the State of California;
- (c) No agreement, easement, instrument, mortgage, encumbrance, or other document or grant of rights conflicts with Association's obligations under this Agreement, and Association's entry into and performance of this Agreement will not cause any default under any of the foregoing. Association will not, during the Term of this Agreement, enter into any other agreement that would interfere with or frustrate the mutual intent and obligations of the Parties, as set forth herein;
- (d) AT&T will have peaceful and quiet possession of the Equipment on the Property.
- (e) Association is the record Association of the common areas of the Property.
- (f) Signatory is a duly authorized representative of the Association with authority to bind Association under this Agreement.

9.2 AT&T represents and warrants that:

- (a) AT&T has or will acquire all necessary permissions and corporate or other legal authority to enter into and perform this Agreement, and this Agreement constitutes a legal, valid, and binding obligation enforceable against AT&T in accordance with its terms;
- (b) AT&T is a duly organized corporation and in good standing in the State of Delaware; and
- (c) Signatory is a duly authorized representative of AT&T with authority to bind AT&T under this Agreement.

10. Recording. Neither Party may record any complete copy of this Agreement in any official governmental public record.

11. Assignment.

11.1 Assignment by AT&T. AT&T may not assign this Agreement to any third party without the prior written consent of Association, which consent shall not be unreasonably withheld; provided, however, that AT&T shall not be required to seek such consent if an assignment is (i) in connection with the sale of all or substantially all of its assets; (ii) to the surviving entity in any merger or consolidation involving all or substantially all of the assets of AT&T, as applicable; (iii) to an Affiliate, a majority of the ownership interests of which are vested in AT&T or its parent entity; or (iv) to satisfy a regulatory requirement imposed by a governmental body with appropriate authority.

11.2 Assignment by Association. Association may not assign or transfer any of its rights, duties or obligations with respect to this Agreement without the prior written consent of AT&T, which consent shall not be unreasonably

withheld, denied or delayed. Specifically, among other reasons, consent may be withheld if the proposed assignee does not pass AT&T's credit qualifications or post a required security deposit.

11.3 Other Attempts Void. Any attempt to assign this Agreement or any rights hereunder except in accordance with this Section will be void. This Agreement shall remain in full force and effect as between AT&T (or its assignee) and Association (or its successor) for the Term of the Agreement.

12. Termination.

12.1 AT&T may, at its sole discretion, terminate this Agreement, if (i) Association fails to pay any amount within ten (10) days after written notice that the same is delinquent; or (ii) Association breaches any of the material terms, conditions, obligations, or representations contained in this Agreement (other than payment) and does not cure such breach within thirty (30) days of written notice of such breach; or (iii) Association becomes the subject of a voluntary or involuntary bankruptcy, insolvency, reorganization, or liquidation proceeding, makes an assignment for the benefit of creditors, or admits in writing its inability to pay debts when due. AT&T may, in its sole discretion, immediately terminate a particular End User's access to and use of (i) Data Services if such End User violates a provision of the Internet Terms of Service; (ii) Video Services if such End User violates a provision of the Video Terms of Service; or (iii) Bulk Services if the End User's or Association's equipment or use of the Bulk Services interferes with AT&T provided services to another End User. Should any device or any facility belonging to the Association or End User not comply with the technical specifications established by the FCC, including, but not limited to, signal leakage, AT&T reserves the right to discontinue Bulk Services until such non-conformance is cured by the Association or End User as the case may be. In addition, if AT&T reasonably determines that the continued provision of Bulk Services pursuant to this Agreement has become impractical or infeasible for any technical, legal, regulatory, AT&T may terminate this Agreement with at least sixty (60) days prior notice if reasonably practical.

12.2 Association may (as its sole remedy except for any credits that may be payable for downtime), terminate this Agreement, if (i) AT&T breaches any of the material terms, conditions, obligations, or representations contained in this Agreement and does not cure such breach within thirty (30) days of written notice of such breach; or (ii) AT&T becomes the subject of a voluntary or involuntary bankruptcy, insolvency, reorganization, or liquidation proceeding, makes an assignment for the benefit of creditors, or admits in writing its inability to pay debts when due.

12.3 Upon the expiration or termination of this Agreement, AT&T shall continue to have the right to market and provide its products and offerings directly to Residential Dwelling Units and Individual Unit Owners in any manner permitted by law.

13. Dispute Resolution - Independent Arbitration.

13.1 In the event of any dispute, claim or controversy arising out of or related to this Agreement or breach thereof, the Parties shall use their commercially reasonable efforts to settle such disputes, claims or controversies by consulting and negotiating with each other in good faith and attempt to reach a just and equitable solution satisfactory to both Parties. If the Parties do not reach such a resolution within thirty (30) days, the dispute, claim or controversy shall be finally settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (AAA) for expedited arbitrations, unless modified herein. The arbitration shall be held before a single arbitrator selected in accordance with said rules. A judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

13.2 Either Party may, without inconsistency with this Agreement, seek from a court any interim or provisional relief that may be necessary to protect the rights or property of that Party pending the arbitration tribunal's determination of the controversy. Neither Party nor the arbitrator may disclose the existence, content, or results of the arbitration without prior written consent of both Parties. There shall be no discovery other than the exchange of information that is required by the arbitrator from the Parties. The arbitration award shall be in writing and shall specify the legal and factual basis for the award. Each Party shall bear its own costs, attorney's fees and disbursements, regardless of which Party prevails.

13.3 Disputes that meet the small claims court requirements in the state in which the Bulk Services are provided may be resolved in small claims court. The Parties agree that this Section 13 shall not apply to debt collection matters or disputes relating to Intellectual Property.

13.4 Disputes under this Agreement may not be (a) resolved on a class-wide basis, (b) joined with another lawsuit, or (c) joined in an arbitration with a dispute of any other entity. The arbitrator may not award, and the Parties waive any claims for awards for, punitive damages or attorney fees or any damages that are barred by this Agreement, unless such damages are expressly authorized by a relevant statute.

13.5 Nothing in this Agreement shall be construed to limit either Party's right to obtain equitable or injunctive relief in a court of competent jurisdiction in appropriate circumstances.

14. Limitation and Disclaimer of Liability.

14.1 AT&T shall not be responsible for any use of Services by End User, or End User's authorized users or any third party. Without limiting the generality of the foregoing, AT&T shall not be liable to Association or to any End User for any lost profits or other consequential damages, even if AT&T has been advised of the possibility of such damages; any claim

or other action against Association by any third party (except as set forth in the section below on infringement) relating in any way to an End User's use of Services; any act or omission of any other entity furnishing products and services that are used by End User in connection with Services or for failure of any equipment provided by an End User in connection with Services; or any damages or losses caused by the fault or negligence of Association or an End User's failure to perform his responsibilities.

14.2 NEITHER PARTY NOR ANY OF ITS UNDERLYING SERVICE PROVIDERS, INFORMATION PROVIDERS, LICENSORS, EMPLOYEES, OR AGENTS SHALL HAVE ANY LIABILITY FOR INCIDENTAL, CONSEQUENTIAL, ECONOMIC, PUNITIVE, INDIRECT OR SPECIAL DAMAGES SUFFERED BY THE OTHER OR ANY OTHER PARTY, NOR SHALL AT&T HAVE ANY LIABILITY FOR LOST PROFITS, LOSS OF USE, LOSS OR CORRUPTION OF ANY DATA OR INFORMATION, OR TOLL FRAUD SUFFERED BY ASSOCIATION OR END USER, AS A RESULT OF THIS AGREEMENT OR EITHER PARTY'S PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT, REGARDLESS OF WHETHER OR NOT SUCH PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSS. ASSOCIATION EXPRESSLY ACKNOWLEDGES THAT THE PROVISIONS OF THIS SECTION SHALL ALSO APPLY TO ALL CONTENT OR OTHER SERVICES AVAILABLE THROUGH OR AS PART OF THE SERVICES. ASSOCIATION AGREES THAT ASSOCIATION WILL NOT IN ANY WAY HOLD AT&T RESPONSIBLE FOR ANY SELECTION OR RETENTION OF, OR THE ACTS OR OMISSIONS OF, THIRD PARTIES, EXCLUDING AT&T'S SUBCONTRACTORS, IN CONNECTION WITH SERVICES.

14.3 In the event that a court should hold that the limitations of liabilities or remedies available in this Agreement are unenforceable for any reason, or that any of Association's remedies fail of their essential purpose, Association expressly agrees that under no circumstances shall AT&T's total liability to Association or any party claiming by, through or under Association for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, including negligence, in the aggregate, exceed the amount of charges paid by Association for Bulk Services during the twelve-month period preceding the date such claim first arose.

15. Limitation and Disclaimer of Warranties. NEITHER AT&T NOR ANY OF ITS UNDERLYING SERVICE PROVIDERS, INFORMATION PROVIDERS, LICENSORS, EMPLOYEES, OR AGENTS WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE OR MAKE ANY WARRANTY AS TO THE RESULTS TO BE OBTAINED FROM USE OF THE SERVICE. THE SERVICE IS PROVIDED WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE, OTHER THAN THOSE WARRANTIES (IF ANY) THAT ARE IMPLIED BY AND INCAPABLE OF EXCLUSION, RESTRICTION, OR MODIFICATION UNDER THE LAWS APPLICABLE TO THIS SERVICE AGREEMENT, ALL SUCH WARRANTIES BEING EXPRESSLY DISCLAIMED.

16. Remedies of Association. Association's sole remedy for any failure or non-performance of Bulk Voice Service, Bulk Data Service or Bulk Video Service (including any associated Equipment, software or other materials supplied in connection with Bulk Voice Service, Bulk Data Service or Bulk Video Service) shall be (i) for AT&T to use commercially reasonable efforts to effectuate an adjustment or repair of Bulk Service and to receive a pro-rata refund or credit as set forth in **Section 4 of Exhibit C**, or (ii) if such failure or non-performance results in downtime or degradation so substantial as to render Bulk Voice Service, Bulk Data Service or Bulk Video Service essentially unavailable to or unusable by an End User for normal use, to request termination of Bulk Voice Service, Bulk Data Service or Bulk Video Service, as applicable, to such End User. The maximum credit for service downtime associated with a particular End User shall not exceed the total monthly bill to Association for such End User's Bulk Service for the month in which such downtime or failure occurs.

17. Indemnification.

17.1 To the extent Bulk Services infringe any United States patent, trademark, copyright, or trade secret and a written claim is made or suit is brought by any third party against Association on that account, AT&T agrees to indemnify and defend or settle any such claim or suit at AT&T's expense. AT&T will also pay all damages and costs that by final judgment are assessed against Association attributable to such infringement.

17.2 AT&T's obligation as set forth in this Section is expressly conditioned upon the following: (a) that AT&T shall be notified promptly in writing by Association of any claim or suit of which Association is aware; (b) that AT&T shall have sole control of the defense or settlement of any claim or suit and that Association shall not make any compromise, admission of liability or settlement or take any other action impairing the defense of such claim without AT&T's prior written approval; (c) that Association shall cooperate with AT&T in all reasonable ways to facilitate the investigation, settlement or defense of any claim or suit; and (d) that the claim or suit does not arise from an End User's modifications, or from combinations of Bulk Service with equipment, software or services provided by Association or the End User or others.

17.3 If Bulk Voice Service, Bulk Data Service or Bulk Video Service becomes, or in AT&T's opinion, is likely to become the subject of a claim of infringement, or a final injunction is obtained against Association or an End User prohibiting usage of Bulk Data Service or Bulk Video Service by reason of such infringement, AT&T shall take prompt

action to, at its option: (a) procure for Association and End User the right to continue using Bulk Voice Service, Bulk Data Service or Bulk Video Service as applicable (b) replace Bulk Voice Service, Bulk Data Service or Bulk Video Service as applicable with a non-infringing service substantially complying with the specifications of the applicable Bulk Service; or (c) modify the Bulk Service so it becomes non-infringing and performs in a substantially similar manner to the original Service.

17.4 If options 17.3(a), (b) or (c) above are not reasonably available to AT&T, then AT&T may direct the End Users to cease use of Bulk Data Service or Bulk Video Service and return any amounts prepaid by Association for the applicable Bulk Voice Service, Bulk Data Service or Bulk Video Service beyond the date such use ceases.

17.5 The foregoing states the entire obligation of AT&T, and the exclusive remedy of Association, with respect to infringement of proprietary rights. The foregoing is given to Association solely for its benefit and is in lieu of, and AT&T disclaims, all warranties of non-infringement with respect to the Service.

17.6 If promptly notified in writing of any action brought against AT&T, due to claims for infringement of United States patents, copyright, trademark, or other intellectual property rights, or due to any other claims or causes of action by third parties of any nature whatsoever, arising from the use, in connection with Bulk Service, of equipment, software or information not provided by AT&T, or otherwise relating to or arising out of an End User's use of Bulk Service, Association will defend that action at its expense and will pay any and all fees, costs or damages that may be finally awarded in that action or a settlement resulting from it provided that (i) AT&T shall permit Association to control the defense of such action and shall not make any compromise, admission of liability or settlement or take any other action impairing the defense of such claim without Association's prior written approval and (ii) AT&T shall cooperate with Association in all reasonable ways to facilitate the settlement or defense of any claim or suit.

17.7 AT&T agrees to indemnify, defend, and hold harmless the Association (including its officers, directors, principals, assigns, successors, affiliates, agents, and employees) from and against any and all liability, loss, damage, claim or expense (including attorneys' fees and court costs), incurred by the Association in connection with (a) any third party claim, demand, or suit for damages, injunction or other relief to the extent it is caused by or results from the negligence, gross negligence or intentional misconduct (including, without limitation, breach or nonperformance of this contract) of AT&T (including any of its agents or subcontractors) excepting, however such claims, demands, suits or other relief to the extent such is caused by or results from the negligence, gross negligence or intentional misconduct (including without limitation, breach or nonperformance of this contract) of the Association; (b) noncompliance with the Laws by AT&T; and (c) any actual or alleged infringement of any third party's United States patent, trade secrets, trademark, copyright, or other intellectual property rights by AT&T. The indemnified Party agrees to provide the indemnifying Party with sufficient notice of any claim, to inform the indemnifying Party of any subsequent written communication regarding the claim, and to fully cooperate with the indemnifying Party in defense of the claim.

Association agrees to indemnify, defend, and hold harmless AT&T (including its officers, directors, principals, assigns, successors, affiliates, agents, and employees) from and against any and all liability, loss, damage, claim or expense (including attorneys' fees and court costs), incurred by AT&T in connection with (a) any third party claim, demand, or suit for damages, injunction or other relief to the extent it is caused by or results from the negligence, gross negligence or intentional misconduct (including, without limitation, breach or nonperformance of this contract) of the Association (including any of its agents or subcontractors), excepting, however such claims, demands, suits or other relief to the extent such is caused by or results from the negligence, gross negligence or intentional misconduct (including without limitation, breach or nonperformance of this contract) of AT&T; (b) noncompliance with the Laws by the Association; and (c) any actual or alleged infringement of any third party's United States patent, trade secrets, trademark, copyright, or other intellectual property rights by the Association. The indemnified Party agrees to provide the indemnifying Party with sufficient notice of any claim, to inform the indemnifying Party of any subsequent written communication regarding the claim, and to fully cooperate with the indemnifying Party in defense of the claim.

18. Force Majeure. Neither Party will be liable for any delay or failure in delivery or performance of any of its obligations hereunder (except with regard to payment obligations) due to acts or omissions of any network or any other occurrence commonly known as force majeure, including war, riots, embargoes, accidents, acts of God, acts of terrorism, strikes or other concerted acts of workers, changes in law or government regulation, or any other event beyond its reasonable control ("Force Majeure"). AT&T may cancel or delay performance hereunder for so long as such performance is delayed by such occurrence or occurrences, and in such event AT&T shall have no liability to Association.

19. Advertising and Publicity.

19.1 Use of Marks. Each Party hereto recognizes and acknowledges the existence and validity of the other Party's and its Affiliates' intellectual property rights in its respective names, logos, trademarks, service marks, copyrights and/or other intellectual property ("Marks"). The Parties shall acquire no interest in the Marks of the other Party or the Party's Affiliates. Any request to use the other Party's Marks for the limited purposes stated in this Agreement other than by virtue of materials supplied by the Party owning such Marks shall be in accordance with the provisions set forth in an Affixation amendment to this Agreement or through a separate Trademark License Agreement duly executed between the owning Parties.

19.2 Sales, Advertising and Marketing. Association will use only materials supplied by AT&T (the "AT&T Materials") in promoting the Services described herein. The AT&T Materials will bear the Marks licensed exclusively by AT&T Intellectual Property ("ATTIP") and are provided solely in conjunction with the terms of this Agreement. Association is not authorized otherwise to use the Marks, in any form. Any use of the Marks that is not authorized by ATTIP is strictly prohibited. AT&T shall own all right, title and interest in the AT&T Materials. Upon termination or expiration of this Agreement, Association shall return to AT&T, or destroy, at the discretion of AT&T, any AT&T Materials in the possession of Association and shall cease using any portion of the AT&T Materials.

19.3 Publicity. Press releases, advertisements and other publicity statements, in any medium ("Publicity") that use, mention or imply Marks of AT&T are not permitted. Use or reproduction by Association for Publicity purposes of any testimonial quotations, thank you letters, reference letters or any other communications in any form or medium from AT&T, or its employees and/or agents is not permitted. Exceptions to the policies outlined above must be requested in writing solely from ATTIP, which may grant or refuse such requests in its sole discretion. Association agrees to submit to ATTIP in writing all such requests and materials relating to this Agreement. Association further agrees not to publish or use such Publicity materials without ATTIP's prior written consent.

19.4 Grant. Nothing in the Agreement will be construed as an assignment or grant of any license or other right, title or interest, either express or implied, with respect to any copyrighted material, logo, trademark, trade name, Marks, or any other intellectual property now or hereafter owned by any Party, or its Affiliates.

20. Injunctive Relief. All Parties shall be entitled to seek expedited relief in a court of competent jurisdiction if necessary to enforce its rights under this Agreement by injunctive relief, without limiting any other rights or remedies it may have and subject to the dispute resolution provisions of Section 13 above as to the ultimate disposition of any such dispute.

21. Confidential Information.

21.1 Except as otherwise expressly provided in this Agreement, each Party agrees that (a) all information communicated to it by the other and identified and marked as "confidential," whether before or after the date hereof, (b) all information identified as confidential to which it has access in connection with the Services, and (c) this Agreement, all associated contract documentation and correspondence, and the Parties' rights and obligations hereunder (collectively, "Confidential Information"), will be, and will be deemed to have been, received in confidence and will be used only for purposes of this Agreement.

Neither Party will in any way transfer to any third party nor use in direct or indirect competition with the other Party any Confidential Information disclosed by the other Party. Each Party agrees to use the same means it uses to protect its own confidential information, but in no event less than reasonable means, to prevent the disclosure and protect the confidentiality of Confidential Information. No Confidential Information will be disclosed by the recipient Party without the prior written consent of the disclosing Party; provided, however, that each Party may disclose this Agreement and any disclosing Party's Confidential Information to those who are employed or engaged by the recipient Party, its agents or those of its Affiliates who have a need to have access to such information in connection with their employment or engagement, provided the recipient Party notifies such persons of the obligations set forth in this Section and such persons agree in writing to abide by such obligations. Nothing herein shall limit any applicable obligation of the Association under applicable law with respect to the inspection and review of this Agreement by members of the Association and connection with such the Association will identify this Agreement as Confidential Information under this Agreement by inserting a cover page to the Agreement with such in their records and include language informing its members of the agreement not to disclose such Confidential Information and will require its members to protect such to the full extent permitted under state law.

21.2 The obligations set forth in subsection 21.1 above will not prevent any Party from disclosing information that belongs to such Party or (a) is already known by the recipient Party without an obligation of confidentiality other than under this Agreement, (b) is publicly known or becomes publicly known through no unauthorized act of the recipient Party, (c) is rightfully received from a third party, (d) is independently developed without use of the disclosing Party's Confidential Information or (e) is disclosed without similar restrictions to a third party by the Party owning the Confidential Information. If Confidential Information is required to be disclosed pursuant to law, regulation, tariff or a requirement of a governmental authority, or in connection with an arbitration or mediation, such Confidential Information may be disclosed pursuant to such requirement so long as the Party required to disclose the Confidential Information, to the extent possible, provides the disclosing Party with timely prior written notice of such requirement and coordinates with the disclosing Party in an effort to limit the nature and scope of such required disclosure. Upon written request at the expiration or termination of this Agreement, all documented Confidential Information (and all copies thereof) owned by the requesting Party (if previously received by the terminating Party) will be returned to the requesting Party or will be destroyed, with written certification thereof being given to the requesting Party. The provisions of this Section shall remain in effect during the term of the Agreement and shall survive the expiration or termination thereof for a period of four (4) years, provided that the obligations hereunder shall continue in effect for any Confidential Information for so long as it is a trade secret under applicable law. The Parties agree that monetary damages for breach of this Section 21 are not adequate and that either Party will be entitled to injunctive relief with respect to such breach.

22. Miscellaneous.

22.1 Governing Law. This Agreement is governed by and construed under the laws of California without regard to its principles of conflicts of law.

22.2 Notices. In order for any notice given under this Agreement to be effective, the notice must be in writing and sent to the address(es) below (i) by nationally-recognized overnight service; or (ii) by first class registered or certified mail, return receipt requested.

AT&T:

With Copy to:

AT&T Connected Communities
Attention: Contract Management
200 W. Center Street Promenade, Rm., 100
Anaheim, CA 92805

Facsimile: 714-991-0187

Association Legal Notice Address:

With Bulk Bills sent to:

The Menlo Commons Homeowners Association
c/o The Manor Association, Inc.
Attn: Sandra Long
353 Main Street
Redwood City, CA 94063
Phone: 650-637-1616
Fax: 650-637-1670
email: sandral@themanorassn.com

The Menlo Commons Homeowners Association
c/o The Manor Association, Inc.
Attn: Sandra Long
353 Main Street
Redwood City, CA 94063
Phone: 650-637-1616
Fax: 650-637-1670
email: sandral@themanorassn.com

Any notice sent in accordance with this Section will be deemed to have been received (i) one (1) business day after mailing, if sent by overnight service; or (ii) five (5) business days after any other form of delivery. A Party may change its address for notices by sending written notice to the other Party.

22.3 Entire Agreement. This Agreement and Exhibits A through D, incorporated herein by reference, constitute one and the same legally binding instrument and the entire agreement between Association and AT&T as to the matters provided for herein, and it supersedes all prior oral or written agreements between the Parties with respect to the matters provided for herein.

22.4 Modifications. No modifications to these terms, including handwritten modifications, are permitted or will be made without a duly executed written amendment between the Parties.

22.5 Waivers. No waiver of any provision of this Agreement will be effective unless executed in writing by the Party granting the waiver. If a Party fails to enforce any right under this Agreement, such failure will not be a waiver of such right. If a Party waives a breach by the other Party, such waiver is not a waiver of any other breach or any subsequent breach of the same provision.

22.6 Headings. The headings of this document are for convenience only, and are not for interpretation of this Agreement.

22.7 Severability. If a court of competent jurisdiction holds that any provision, or part hereof, of this Agreement is illegal, invalid or unenforceable, this Agreement and all other provisions will remain in effect, unless the illegal, invalid or unenforceable provision goes to the essence of this Agreement. The Parties will act in good faith in renegotiating such illegal, invalid or unenforceable provision to as closely reflect the original intent of the Parties as possible without changing the essence of this Agreement.

22.8 Compliance with Laws. The Parties shall each comply at their own expense with all applicable federal, state and local laws, rules and regulations in the performance of their obligations hereunder and the performance of each shall be contingent on obtaining all necessary legal and government approvals relating to such performance.

22.9 Regulatory Mandates. In the event this Agreement for any reason becomes the subject of a regulatory proceeding, Association will reasonably cooperate with AT&T in such proceeding. AT&T may, in the exercise of reasonable judgment and good faith, modify this Agreement to the extent it deems it necessary to ensure compliance with any rule, regulation, order or other requirement of a regulatory body or other governmental agency; and to the extent any such modification materially alters the obligations of or materially reduces the benefits received by AT&T under this Agreement, or the modification materially reduces the benefits received by Association under this Agreement, the Parties shall negotiate in good faith to make equitable adjustments to the Agreement that allow the disadvantaged Party to receive the same level of benefits originally contemplated under the terms of the Agreement. If after such negotiations the Parties are unable to agree on such equitable adjustments, either Party shall have the option to terminate this Agreement without further liability upon ninety (90) days written notice to the other.

Furthermore, if the obligations of AT&T under this Agreement are materially altered by a change in the degree of regulation or by a change in the application or interpretation of any rule, order or regulatory requirement existing at the time of the execution of this Agreement, then AT&T shall have the option to terminate this Agreement without further liability upon ninety (90) days written notice to Association.

22.10 Insurance. AT&T shall comply with, the insurance requirements designated for AT&T as set forth on attached Exhibit E at all times during the Term of this Agreement. AT&T shall require that its independent contractors, subcontractors, or other non-employees (collectively "Non-Employees") working on the Property to comply only with the insurance requirements designated for Non-Employees as set forth on attached Exhibit E. Owner shall purchase and maintain during the Term of this Agreement insurance related to the Property in accordance with Owner's usual policies and practices in effect from time to time. Owner is not required to insure the AT&T Equipment.

22.11 Eminent Domain. If all or a part of the Property controlled by the Association shall be taken in any proceeding by a public authority, by condemnation or otherwise, or shall be acquired for a public or quasi-public purpose, which shall cause the remaining portion of the Property to be inadequate or unsuitable for use by AT&T, in its usual business, AT&T shall have the option to terminate this Agreement effective on the date possession of the Property is surrendered. In such event, the Parties hereby waive any claim against each other for the remaining portion of the Agreement.

22.12 Binding Nature. This Agreement is binding upon and inures to the benefit of the permitted transferees, successors, and assigns of the Parties, and the rights, obligations, terms and conditions of this Agreement are to be construed as covenants running with the land.

22.13 Survival. Any respective obligations of the Parties hereunder which by their nature would continue beyond the termination, cancellation or expiration of this Agreement shall survive such termination, cancellation or expiration.

22.14 Relationship of the Parties. The Parties are independent contractors. This Agreement does not create a joint venture, partnership, or any agency or fiduciary relationship between the Parties. Neither Party has the power to create any obligation on behalf of the other.

22.15 Counterparts; Signatures. The Parties may execute this Agreement in multiple identical counterparts, each of which constitutes one and the same Agreement.

22.16 The Parties are deemed to have participated in the drafting and negotiation of this Agreement after consulting with their respective counsel of their own choosing. Therefore, this Agreement shall not be presumptively construed either in favor of, or against, any Party.

22.17 Cross Termination. In the event of any default by either Party under this Agreement which would allow the non-defaulting Party to terminate this Agreement, then the non-defaulting Party may also terminate for convenience the EMA with no liability to either Party resulting from such termination of the Exclusive Marketing Agreement. In the event of any default by either Party under the EMA which would allow the non-defaulting Party to terminate the EMA, then the non-defaulting Party may also terminate this Agreement for convenience.

UNLESS PREVIOUSLY WITHDRAWN OR IF THIS AGREEMENT IS SUBSEQUENTLY EXECUTED BY AT&T, THE PROPOSED TERMS OF THIS AGREEMENT SHALL EXPIRE IF NOT SIGNED BY ASSOCIATION ON OR BEFORE JUNE 25, 2012 AND RECEIVED FOR EXECUTION BY AT&T WITHIN THIRTY DAYS FROM SUCH DATE. SUBMISSION OF THIS AGREEMENT FOR EXAMINATION OR SIGNATURE DOES NOT CONSTITUTE AN OFFER BY AT&T FOR THE MARKETING OF SERVICES DESCRIBED HEREIN.

NOW, THEREFORE, the Parties, being fully apprised of all the contents and obligations contained in this Agreement, and intending to be fully bound thereby, hereby execute this Agreement, through their respective representatives, who are duly authorized to legally bind each Party.

(SIGNATURE PAGE FOLLOWS)

SO AGREED:

The Menlo Commons Homeowners Association,
a California nonprofit mutual benefit corporation
(Association)

AT&T Services, Inc.
a Delaware corporation
(AT&T)

Signature

Lois Cardinal

Printed/Typed Name

President

Title

Date

Signature

Tom Bennett

Typed Name

Sr. Customer Contracts Manager – AT&T Connected Commu

Title

Date

EXHIBIT A

"Property" means that condominium project located in the City of Menlo Park, County of San Mateo, State of California as more particularly shown and described on that certain map entitled "Parcel Map of A Condominium Project," recorded September 30, 1976 in Volume 33 of Parcel Maps at Page 27 of Official Records of San Mateo County.

Common Name and Address of Property:

Property Name: Menlo Commons

Address of the Property: 2140 Santa Cruz Avenue
Menlo Park, CA 94025

Number of Residential Dwelling Units: 122

EXHIBIT B

Notwithstanding the service descriptions below, AT&T may modify the Bulk Services at any time during the Term of this Agreement to conform to the functionally equivalent service available to similarly situated AT&T residential customers in the same geographic area. AT&T shall notify End Users of such changes in the same manner as it provides such notice to its residential subscribers.

BULK DATA SERVICE

Bulk Data Service Features included in Bulk Monthly Fee:

AT&T 6.0 Elite Uverse High Speed Internet
11 email accounts
AT&T Toolbar for one-click access to AT&T Yahoo! Pages
Access to free Yahoo! Services
AT&T Yahoo! Messenger
Integrated Flickr® access
Includes on-the-go access to AT&T's entire national Wi-Fi network at no extra charge
Parental Controls, SPAM Guard, and Pop-up Blocker, etc.

The Residential Gateway provided as part of Bulk Data Service shall remain the property of AT&T as specified in Section 6.4.

BULK VIDEO SERVICE

AT&T will provide Bulk Video Service to two (2) End User provided television(s) per Residential Dwelling Unit via an AT&T provided Residential Gateway and one (1) digital video recorder ("DVR") set top box and one (1) additional non-DVR set top box. Bulk Video Service shall include U-verse® U-200 HD service, with a minimum of approximately two hundred (200) channels to be provided to each End User; provided, however, that the channel line-up may vary during the Term.

The individual services and total channels included in AT&T's Video Services will vary by market, depending on the specific DMA (Designated Market Area) in which the property is located, AT&T's ability to secure related content rights for the individual services, and the actual commercial availability date of the features still in development. Referenced service components listed in this document reflect current plans. These plans are subject to change based on various business factors.

Bulk Voice Service Features available for selection by End User included in Bulk Monthly Fee:

Flat Rate Residential Exchange Service
Call Waiting
Call Forwarding
Preferred Call Forwarding
Caller ID
Caller ID Deluxe
Call Block
Anonymous Call Rejection
Three Way Calling
Unlimited Nationwide Long Distance
Voice Messaging/Voicemail

End Users shall have access to the same voice service features available to similarly situated U-verse voice residential customers, including those above.

EXHIBIT C

PAYMENT TERMS FOR BULK SERVICE

1. **Bulk Monthly Fee.** The Bulk Monthly Fee is **\$72.00** per Residential Dwelling Unit excluding applicable taxes and applicable fees, and is subject to increase as provided herein.

2. **Bulk Billing Implementation.** AT&T will invoice Association each month for all Bulk Services provided pursuant to this Agreement (the "Bulk Bill") and the first Bulk Bill will be issued in the month after the month in which the BBSD occurs (see Sec 1.2). AT&T shall waive the first two (2) Bulk Bills in order to allow the Residents time to migrate their Service to U-verse. Prior to the BBSD, Retail Services will be provided and billed directly to the subscribing Residents at AT&T standard retail rates (see Sec 1.15).

Subject to other provisions of this Agreement, the Bulk Bill shall equal the Bulk Monthly Fee times the number of Residential Dwelling Units for which the Bulk Monthly Fee applies; plus any and all fees, sales and use taxes, duties, or levies imposed or permitted by any authority, government, or government agency (other than taxes levied on AT&T's net income) and expenses incurred by AT&T reasonably relating to regulatory assessments stemming from an order, rule or regulation of the Federal Communications Commission or other regulatory authority or court having competent jurisdiction, in connection with Bulk Service.

AT&T will provide via email at least 10 days advance notice of the date that Bulk Services will be billed for all Residential Dwelling Units ("**Full Bulk Billing Date**"). Beginning on the Full Bulk Billing Date and continuing for the Term, the Bulk Monthly Fee will apply to all Residential Dwelling Units at the Property subject to other provisions of this Agreement. The first Bulk Bill that includes a specific Residential Dwelling Unit will also include charges prorated from the date the Bulk Service was activated or the Full Bulk Billing Date, whichever is applicable, until the date of that Bulk Bill.

3. **Payment Terms.** Association will pay the Bulk Bill on or before the 30th day after the date of the Bulk Bill ("Due Date"). Association will pay a \$35 charge for any check returned for non-sufficient funds. Association will reimburse AT&T for all costs, including attorney fees, incurred in any attempt to collect any balance unpaid thirty (30) days after its Due Date. If full payment is not received within thirty (30) days after the Due Date, in addition to any rights it may have, AT&T may send notice to Association that it will terminate, or suspend, at AT&T's election, the provision of the Bulk Services, if payment is not received within ten (10) days of the date of such written notice. Association shall defend, indemnify and hold AT&T harmless from any and all third party claims or causes of action of any nature arising from termination or suspension of Bulk Service for such non-payment. Payments received by AT&T after the Due Date will bear interest at an annual rate equal to the lesser of (i) 18% or (ii) the maximum permitted by applicable law.

4. **Credit for Service Failure.** If AT&T fails to deliver all Bulk Service, as required hereunder, for a period of more than 24 consecutive hours, then AT&T will provide a credit representing a pro-rated amount of the monthly recurring charges for each affected Residential Dwelling Unit to Association's account for each full day of service outage, upon written request of Association. The maximum credit for service downtime associated with a particular End User shall not exceed the total monthly bill to Association for such End User's Bulk Service, for the month in which such downtime or failure occurs.

5. **Bulk Price Escalation.** After the first anniversary of the BBSD, AT&T may increase the Bulk Monthly Fee by an amount equal to no more than five percent (5%) annually, provided that the resulting Bulk Monthly Fee may not exceed the retail price for AT&T services that are functionally equivalent to the Bulk Services. AT&T will use commercially reasonable efforts to provide Association sixty (60) days advance written or email notice of such change to the Bulk Monthly Fee and such increase shall apply from the date set forth in the notice. However, failure to make such notice does not exempt AT&T from instituting the increase no earlier than 1 year after the previous increase became effective. Notwithstanding the foregoing, and in addition to the Bulk Monthly Fees, AT&T will include in its Bulk Bill, charges for any and all fees, sales and use taxes, duties, or levies imposed or permitted by any authority, government, or government agency (other than taxes levied on AT&T's net income) or for expenses incurred by AT&T reasonably relating to regulatory assessments stemming from an order, rule or regulation of the Federal Communications Commission or other regulatory authority or court having competent jurisdiction in connection with Bulk Service..

EXHIBIT D
STRUCTURED WIRING REQUIREMENTS

MDU STRUCTURED WIRING REQUIREMENTS FOR U-VERSE®

1. **Existing Property:** All telecommunication wiring should be homerun cable and 4-Pair Category 3 or better or tri-shield RG6 or RG11 or better. AT&T's provision of the U-verse class of Services to all or any portion of the Property is subject to AT&T's technical evaluation of the existing Association facilities serving the Property, and the technical requirements of the new AT&T facilities required to enable the U-verse class of Services to serve the Property.

Acceptance of the Property for U-verse under this Agreement is subject to AT&T's technical evaluation of the existing on site telecommunication wiring serving the Property, and the technical requirements of the new AT&T facilities required to enable the U-verse product to serve the Property.

EXHIBIT E

INSURANCE REQUIREMENTS

A. AT&T shall:

- Carry the insurance listed below or provide evidence of self-insurance for the amounts below,
- Furnish Certificates of Insurance to Owner evidencing required coverages upon request.
- Furnish endorsements evidencing the additional insured status as provided in 6.a. below.
- Provide at least thirty (30) days prior written notice to Owner of cancellation or non-renewal of any required coverage that is not replaced.
- Use any combination of primary and excess to meet the required limits

1. Workers' Compensation: Workers' Compensation Insurance meeting statutory requirements.

2. Employers' Liability: With the following minimum limits:

\$500,000	Each Accident
\$500,000	Disease-Policy Limit
\$500,000	Disease-Each Employee

3. Commercial General Liability: (2004 ISO Form or its replacement): Insurance must provide broad form contractual liability coverage. The minimum limits must be \$2,000,000 general aggregate and \$1,000,000 each occurrence.

4. Business Automobile Liability: Insurance for claims arising out of ownership, maintenance, or use of owned, non-owned, and hired motor vehicles at, upon, or away from the Property with the following minimum limits:

\$1,000,000 Each Accident Single Limit Bodily Injury and Property Damage
combined

5. Umbrella Excess: Following form liability insurance, in excess of the Commercial General Liability, Employers' Liability, and Automobile Insurance above, with the following minimum limits:

\$3,000,000	Each Occurrence
\$3,000,000	Aggregate - Where Applicable

6. General Requirements: All policies must:

- a Except for the Workers' Compensation insurance, include Owner, its property management company, and their respective partners, members, officers, directors, employees, agents, successors, and assigns as "additional insureds"
- b Be written on an occurrence basis and not on a claims-made basis.
- c Be endorsed to waive any rights of subrogation against Owner, its property management company, and their respective partners, members, officers, directors, employees, agents, successors, and assigns.
- d Be written by an insurance company or companies with a current A. M. Best Company rating of A-/VII or better and be authorized to do business in the State where the Property is located.

B. AT&T shall require its Non-Employees working on the Property to carry the same insurance required of AT&T in A1 through 6 above except for the following:

1. The Umbrella Excess for Non Employees shall be limited to:

\$1,000,000	Each Occurrence
\$1,000,000	Aggregate-Where Applicable

2. General Requirements 6a and 6c shall not apply to Non-Employees

SO AGREED:

The Menlo Commons Homeowners Association,
a California nonprofit mutual benefit corporation
(Association)

Lois Cardinal

Signature

Lois Cardinal
Printed/Typed Name

President
Title

Date

June 22, 2012

AT&T Services, Inc.
a Delaware corporation
(AT&T)

Signature

Tom Bennett
Typed Name

Sr. Customer Contracts Manager – AT&T Connected Comm
Title

Date