

CERTIFICATE OF ADOPTION

OF

BYLAWS

I, the undersigned, do hereby certify:

I am the duly elected and acting secretary of MENLO AVENUE HOMEOWNERS ASSOCIATION, a California nonprofit corporation, and that the foregoing Bylaws constitute the original Bylaws of said Association, as duly adopted at a meeting of the Board of Directors thereof, held on the _____ day of _____, 19__.

IN WITNESS WHEREOF, I have hereto subscribed my name and affixed the seal of said Association this _____ day of _____, 19__.

[Signature]
Secretary

[Signature]
President

[Signature]
Treasurer

Dated: March 10, 2001
(Verification of signatures)

BYLAWS
OF
MENLO AVENUE HOMEOWNERS ASSOCIATION

ARTICLE I
NAME AND LOCATION

The name of the corporation is MENLO AVENUE HOMEOWNERS ASSOCIATION, hereinafter referred to as the "Association." The address of the principal office of the Association shall initially be 3636 Camino Del Rio North, Suite 101, San Diego, California 92108. Meetings of members and directors shall be held at such places within the County of San Diego, State of California, as may be designated by the Board of Directors in accordance with these Bylaws. The principal office of the Association may be changed at any time by the Board of Directors.

ARTICLE II
DEFINITIONS

Section 1. "ARTICLES" means the Articles of Incorporation of the Association, as they may be amended from time to time.

Section 2. "ASSOCIATION" means MENLO AVENUE HOMEOWNERS ASSOCIATION, its successors and assigns.

Section 3. "COMMON AREA" means those portions of the Project not constituting the individual condominium units, as further described in the Declaration.

Section 4. "CONDOMINIUM" means an estate in real property as defined in California Civil Code Section 783, consisting of separate title to a unit and an undivided interest in a commonly owned area.

Section 5. "DECLARANT" means MENLO AVENUE PARTNERS, a California limited partnership.

Section 6. "DECLARATION" means the Declaration of Covenants, Conditions and Restrictions applicable to the Project and recorded or to be recorded in the Office of the San Diego County Recorder, and all amendments thereof.

Section 7. "GOVERNING DOCUMENTS" means the Declaration, the Articles, these Bylaws, and the rules and regulations for the members as established by the Association from time to time.

Section 8. "MEMBER" means those persons and entities entitled to membership in the Association as provided in the Declaration. Whenever "member" or "membership" is used in these Bylaws for the purpose of determining quorums, percentages, or minimum or maximum numbers for voting as specified in these Bylaws, all persons and entities who are members because of their joint ownership of a particular condominium shall be counted as one.

Section 9. "OWNER" means the record holder or holders of title, if more than one, of a fee simple interest in a condominium in the Project. "Owner" shall include contract sellers, but shall exclude persons or entities having an interest merely as security for the performance of an obligation. Whenever "owner" is used in these Bylaws for the purpose of determining quorums, percentages, or minimum or maximum numbers for voting as specified in these Bylaws, all the owners of a particular condominium shall be counted as one.

Section 10. "PROJECT" means the Real Property and all improvements located and to be located thereon.

Section 11. "REAL PROPERTY" means the real property located in the County of San Diego, State of California, more particularly described on Exhibit A attached hereto and by this reference made a part hereof.

ARTICLE III

MEETINGS OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the Association shall be held on the Project or as close thereto as practicable within forty-five (45) days after the closing of the sale of the condominium which represents the fifty-first (51st) percentile interest authorized for sale under the final subdivision public report for the Project; provided, however, that in no event shall the first meeting of the Association be held later than six (6) months after the first closing of a sale of a condominium in the Project. Thereafter, regular meetings of the Association shall be held annually commencing one (1) year after the first meeting at such reasonable time, place (either at the Project itself or at another meeting place located as near as is possible and practical to the Project), and date (not exceeding thirty (30) days before or after the anniversary date of the first meeting), as may be designated by the Board of Directors. Unless unusual conditions exist, meetings shall not be held outside of the county in which the Project is situated.

Section 2. Special Meetings. Special meetings of the members may be promptly called by the Board of Directors upon either (i) the vote for such a meeting by a majority of a quorum of the Board of Directors, or (ii) receipt of a written request for a special meeting signed by members having thirty-three and 1/3 percent (33 1/3%) or more of the total voting power of the Association.

Section 3. Notice of Meetings. Written notice of each meeting of the members shall be given by or at the direction of the Board by mailing a copy of such notice, postage prepaid, not less than ten (10) days nor more than ninety (90) days before such meeting to each member entitled to vote thereat. The notice shall be addressed to the

member's address last appearing on the books of the Association or supplied by such member for the purpose of notice. The notice shall specify the place, day and hour of the meeting, and in the case of a special meeting, the nature of the business to be undertaken.

Section 4. Quorum. Except as may otherwise be provided in the Articles or the Declaration, the presence at any meeting of the owners of a majority of the condominiums, either in person or by proxy, shall constitute a quorum for the transaction of business at such meeting. In the absence of a quorum at a meeting, a majority of the owners present in person or by proxy may adjourn the meeting to another time, but may not transact any other business. An adjournment for lack of a quorum shall be to a date not less than five (5) days and not more than thirty (30) days from the original meeting date, and the quorum for such adjourned meeting shall be the presence of twenty-five percent (25%) of the total voting power of the Association. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting, or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to members in the manner prescribed for regular meetings.

Section 5. Proxies. At all meetings of members, each vote entitled to be cast may be cast in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his condominium.

Section 6. Action Taken Without a Meeting. Any action which may be taken by the vote of members at a regular or special meeting (except for the election of Directors where cumulative voting is a requirement) may be taken without a meeting if done in compliance with

the provisions of Section 7513 of the California corporations code.

ARTICLE IV

BOARD OF DIRECTORS; SELECTION;

TERM OF OFFICE

Section 1. Number of Directors. The affairs of this Association shall be managed by a Board of three (3) directors, who need not be members of the Association; provided, however, that all directors who are elected after conversion of Class B membership to Class A must be members of the Association.

Section 2. Term of Office. Directors shall serve for terms of one (1) year. All three (3) members of the Board of Directors shall be elected at the first annual meeting of members. At each annual meeting thereafter, the members shall elect directors to serve for the next following term.

Section 3. Removal. The entire Board of Directors may be removed from the Board by the vote (by secret written ballot) of a majority of the owners entitled to vote at an election of directors. However, unless the entire Board of Directors is removed, an individual director shall not be removed prior to the expiration of his term of office if the number of votes cast against the resolution for his removal would be sufficient to elect him if voted cumulatively at an election at which the same number of total votes were cast and the entire number of directors authorized at the time of the most recent election of directors were then being elected. If any one or all directors are so removed, new directors may be elected at the same meeting. Except in the case of an election where only one director is elected, in the event that at an election no member of the Board of Directors could have been elected solely by the votes of owners other than Declarant (through the cumulating of all

of their votes), the elected director having received the smallest number of votes shall be eliminated (and if more than one elected director shall fall in that category, one of the elected directors shall be eliminated by lot), and nominations and elections of a director shall be forthwith accomplished with only owners other than Declarant being entitled to vote in such election. A director who has been elected to office solely by the votes of owners other than Declarant in the manner set forth in the preceding sentence may be removed from office prior to the expiration of his term of office only by the vote of at least a simple majority of the voting power of owners other than Declarant.

Section 4. Compensation. Directors may receive compensation for services rendered to the Association only upon the vote prescribed in Article VII, Section 2. However, directors may, without such vote, be reimbursed for actual expenses incurred.

ARTICLE V

NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among members or non-members, except that

nominations for directors must be members of the Association after termination of Class B membership.

Section 2. Election. Election to the Board of Directors shall be by secret written ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting shall be prescribed for all elections in which more than two (2) positions on the Board are to be filled. As is more fully set forth in Article IV, Section 3 hereof, owners other than the Declarant shall be entitled to nominate and elect directors at elections where only owners other than Declarant are entitled to vote.

ARTICLE VI

MEETINGS OF BOARD OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held monthly at a time and place within the Project fixed by resolution of the Board. Notice of the time and place of such meeting shall be posted at a prominent place or places within the Common Area, and shall be communicated to directors not less than four (4) days prior to the meeting unless the time and place of the meeting is fixed by the Bylaws; provided, however, that notice of a meeting need not be given to any director who signs a waiver of notice or a written consent to holding of the meeting.

Section 2. Special Meetings. A special meeting of the Board may be called by written notice signed by the President of the Association or by any two members of the Board other than the President. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be

posted in the manner prescribed for notice of regular meetings, and shall be sent to all members of the Board not less than seventy-two (72) hours prior to the scheduled time of the meeting; provided, however, that notice of the meeting need not be given to any director who signs a waiver of notice or a written consent to holding of the meeting.

Section 3. Open Meetings. Regular and special meetings of the Board shall be open to all members of the Association; provided, however, that Association members who are not on the Board may not participate in any deliberation or discussion unless expressly so authorized by the vote of a majority of a quorum of the Board. The Board may, with the approval of a majority of a quorum of the Board, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

Section 4. Quorum. A majority of the number of the directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers and Duties. The Board of Directors shall have the power and duty to:

(a) enforce all applicable provisions of the governing documents, and all other related instruments or documents with respect to the ownership, management, or control of the Project, and in so doing exercise

for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the membership by other provisions of these Bylaws, the Articles, or the Declaration;

(b) adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the owners and their guests thereon, and to establish and impose monetary penalties, temporary suspensions of an owner's rights as a member, or other appropriate discipline for the infractions thereof or for violations of provisions of governing documents; provided, however, that such monetary penalties, suspensions and other discipline may be imposed only if the procedures for notice and hearing which satisfy the minimum requirements of Section 7341 of the California Corporations Code are followed with respect to the accused before a decision to impose discipline is reached;

(c) declare the office of a director to be vacant in the event such director shall be absent from three (3) consecutive regular meetings of the Board of Directors;

(d) employ a manager, an independent contractor, or such other employees as the Board shall deem necessary, and to prescribe their duties;

(e) pay all taxes, assessments, and other charges which are or could become a lien on the Common Area or some portion thereof;

(f) pay for pest control, state franchise taxes, and other costs and expenses with respect to the Association, and cleaning and other necessary charges, costs and expenses with respect to the Common Area;

(g) enter into contracts for the furnishing of goods or services to the Common Area or the Association; provided, however, that such contracts must be termi-

nable by the Association for cause upon thirty (30) days notice, and further provided that no such contract shall have a duration of more than one (1) year unless approved by the vote or written consent of a majority of the voting power of the Association residing in members other than the Declarant. Notwithstanding the foregoing, the Association may enter into the following types of contracts in connection with the Common Area or Association for contract terms of more than one (1) year without approval of a majority of the voting power of the Association: (1) contracts with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission; provided, however, that the term of such contract shall not exceed the shortest term for which the supplier will contract at the regulated rate; and (2) contracts for prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration provided that the policy permits for short rate cancellation by the insured;

(h) delegate its powers to agents or employees of the Association, to such extent and in such manner as the Board of Directors may from time to time reasonably determine.

(i) cause to be kept a complete record of all its acts and affairs, and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Class A members who are entitled to vote;

(j) supervise all agents and employees of the Association, and see that their duties are properly performed;

(k) as more fully provided in the Declaration, to:

(1) fix the amount of the annual assessments against each condominium;

(2) send written notice of each assessment to every owner subject thereto;

(3) foreclose the lien against any property for which assessments are not paid and received by the Association, or to bring an action at law against the owner personally obligated to pay the same;

(l) issue, or cause an appropriate director to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid (a reasonable charge may be made by the Board for the issuance of these certificates, and a properly executed certificate of the Association as to the status of assessments on a condominium is binding upon the Association as of the date of its issuance);

(m) cause financial statements for the Association to be regularly prepared and distributed to all members, regardless of the number of members or the amount of assets of the Association, as follows:

(1) a pro forma operating statement (budget) for each fiscal year shall be distributed not less than 60 days before the beginning of the fiscal year;

(2) a balance sheet (as of an accounting date which is the last day of the month closest in time to six months from the date of closing of the first sale of an interest in the subdivision) and an operating statement (for the period from the date of the first closing to the said accounting date) shall be distributed within 60 days after such accounting date. This operating statement shall include a schedule of assessments received and receivable identified by the number of the subdivision interest and the name of the entity assessed; and

(j) an annual report consisting of the following shall be distributed within 120 days after the close of the fiscal year;

(A) a balance sheet as of the end of the fiscal year;

(B) an operating (income) statement for the fiscal year;

(C) a statement of changes in financial position for the fiscal year; and

(D) any information required to be reported under Section 8322 of the California Corporations Code.

The annual report referred to in this subparagraph (m) (j) shall be prepared by an independent accountant for any fiscal year in which the gross income to the Association exceeds \$75,000.00; provided, however, that such report need not be prepared by an independent accountant if it is accompanied by the certificate of an authorized officer of the Association stating that the report was prepared without audit from the books and records of the Association.

(n) cause the Common Area (except exterior window glass surfaces of a "condominium building," as defined in the Declaration) to be maintained,

(o) select officers of the Association; and

(p) fill vacancies on the Board of Directors (except for a vacancy created by the removal of a director by the vote of the Association).

Section 2. Restrictions. The Board of Directors shall be prohibited from taking any of the following actions, except with the vote or written assent of a majority of the voting power of both classes of membership of the Association:

(a) incurring aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year;

(b) selling during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year; and

(c) paying compensation to members of the Board of Directors for services performed in the conduct of the Association's business; provided, however, that the Board may cause a director to be reimbursed for expenses incurred in carrying on the business of the Association.

(d) filling a vacancy on the Board of Directors created by the removal of a director by the vote of the Association.

ARTICLE VIII

OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The officers of this Association shall be a president, vice president, secretary, treasurer, and such other officers as the Board may from time to time by resolution create. The president and vice president must at all times be members of the Board of Directors.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. Term. The officers of this Association shall be elected annually by the Board, and each officer shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise become disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the president or the secretary. Such resignations shall take effect on the date of receipt of such notice, unless a later time is specified therein. Unless otherwise specified in a resignation, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

(a) President. The president shall preside at all meetings of the Board of Directors; see that orders and resolutions of the Board are carried out; and sign documents and written instruments on behalf of the Association.

(b) Vice President. The vice president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

(c) Secretary. The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses; and perform such other duties as may be required by the Board.

(d) Treasurer. The treasurer (or at the option of the Board of Directors, a professional property manager) shall receive and deposit in appropriate bank accounts all monies of the Association; disburse such funds as directed by resolution of the Board of Directors; and keep proper books of account.

ARTICLE IX

COMMITTEES

The Association shall appoint a Nominating Committee, as provided in these Bylaws. In addition, the Board of Directors may appoint such other committees as it deems appropriate.

ARTICLE X

BOOKS AND RECORDS

The membership register, the books of account, and the minutes of meetings of the members and of the Board of Directors and of committees of the Board of Directors shall be made available for inspection and copying by any member of the Association (or by his duly appointed representative) for all purposes reasonably related to such member's interest as a member. The place where said items shall be available for inspection shall be the office of the Association or such other place within the Project as the Board may prescribe. The member desiring to make the inspection shall

give at least forty-eight (48) hours notice to the custodian of the records desired to be inspected. The hours and days of the week when an inspection may be made are Monday through Friday (except legal holidays) from 9:00 A.M. to 3:00 P.M. Each member requesting copies of documents shall pay the cost of reproducing the copies upon receipt thereof. Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association, and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extracts and copies of documents.

ARTICLE XI

ASSESSMENTS

As more fully provided in the Declaration, each owner is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the condominium against which the assessment is made. If any assessment is not paid and received by the Association within fifteen (15) days after the due date, a late charge of an amount not less than \$5.00 and not more than \$25.00 (the exact amount to be determined by the Board in its discretion at the first meeting of the Board for each fiscal year, such amount to be applied uniformly to all owners during such fiscal year) shall be assessed for each month or fraction thereof from the due date until the assessment and all late charges are paid. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the condominium. Late charges, costs of suit, and reasonable attorneys' fees and expenses incurred in any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his condominium.

ARTICLE XII
CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words:

MENLO AVENUE HOMEOWNERS ASSOCIATION

ARTICLE XIII
AMENDMENTS

So long as Class A and Class B membership are in existence, these Bylaws may be amended only by the vote or written consent of at least a bare majority of the voting power of each class of membership.

After the termination of Class B membership, these Bylaws may be amended only by the vote or written consent of both (i) at least a bare majority of the voting power of the Association, and (ii) at least a bare majority of the votes of members other than the Declarant.

Notwithstanding the foregoing, the percentage of voting power necessary to amend a specific provision of these Bylaws shall not be less than the prescribed percentage of votes required for action to be taken pursuant to that provision.

ARTICLE XIV
MISCELLANEOUS

The fiscal year of the Association shall begin on July 1 and end on June 30 of each calendar year, except that the first fiscal year shall begin on the date of incorporation.

In the case of any conflict between the Articles and these Bylaws, the Articles shall control. In the case of any conflict between the Declaration and these Bylaws, the Declaration shall control. In the case of any conflict between the Articles and the Declaration, the Declaration shall control.