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**AMENDED AND RESTATED BY-LAWS OF
PONDEROSA HOMEOWNERS ASSOCIATION NO. 1**

**ARTICLE I
NAME AND LOCATION**

The name of the corporation is PONDEROSA HOMEOWNERS ASSOCIATION NO. 1, referred to as the "Association". The principal office of the Association shall be located in Pima County, Arizona, but meetings of Members and Directors may be held at any place designated by the Board of Directors.

**ARTICLE II
DEFINITIONS**

Unless context otherwise specifies, the words and phrases used in these Bylaws are defined in the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Ponderosa Estates Townhouses No. 1, which were recorded in the Office of the County Recorder for Pima County, Arizona on September 1, 2004 in Docket 12378, Page 5021 et seq. ("Declaration"), office of the Pima County Recorder, and as amended from time to time.

**ARTICLE III
MEETING OF MEMBERS**

Section 3.1 Annual Meetings. The annual meeting of the Members shall be held each year during the month of February, or as otherwise determined by the Board of Directors.

Section 3.2 Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of the Secretary of the Association, by mailing a copy of the notice, postage prepaid, at least fifteen (15) days before the meeting to each Member. The notice shall be addressed to the Member's address which appears on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting and, in the case of a special meeting, the purpose of the meeting.

Section 3.3 Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board of Directors, or upon the written request to the Board from at least twenty-five percent (25%) of the Members who are entitled to vote. The original written request by the Members for a special meeting (and not a copy thereof) shall be provided to the Secretary of the Association. The date and time of any special meeting shall be determined by the Board of Directors, not by the Members requesting the meeting. However, a Special meeting requested by petition shall be scheduled not less than fifteen

1 (15) days and not more than thirty (30) days after the receipt of the petition. Only those
2 matters contained in the Notice of Special Meeting shall be on the agenda or discussed at
3 that meeting.
4

5 **Section 3.4 Quorum.** Except as otherwise required in the Declaration, ten percent
6 (10%) of the Members entitled to cast votes shall constitute a quorum at any annual, regular
7 or special meeting. If the required quorum is not present, the Members in attendance shall
8 have the power to adjourn the meeting from time to time, without notice other than
9 announcement at the meeting, until a quorum shall be present or be represented.
10

11 **Section 3.5 Proxies.** At all meetings of the Members, each Member may vote in
12 person or by proxy. All proxies shall be in writing and filed with the Secretary. Every
13 proxy shall be revocable and shall automatically cease upon conveyance by the Member
14 of his or her Lot.
15

16 **ARTICLE IV** 17 **VOTING** 18

19 **Section 4.1 Voting Rights.** 20

21 A. At any meeting of Association Members, for any election or vote on
22 an issue, the Members in good standing shall be entitled to one vote per Lot owned, on
23 each matter voted upon by the Members. The vote of a majority of the votes cast at any
24 election or vote on issues, provided there is a quorum, shall be the act of the full
25 Membership, except as may be otherwise specifically provided in the Governing
26 Documents or by applicable statute.
27

28 B. Election of the Board of Directors shall take place at the Annual
29 Meeting of Members in accordance with these Bylaws.
30

31 **Section 4.2 Voice Vote.** A voice or standing vote or show of hands of Members
32 (whichever shall be necessary to determine a majority) shall prevail on all matters of
33 business, except the following items which require a secret ballot vote:
34

35 A. Election of Directors.
36

37 B. Amending the Bylaws or Declaration of Covenants, Conditions and
38 Restrictions.
39

40 C. When a majority of the Board of Directors requires a ballot vote.
41

42 D. When a ballot is requested by a majority of the Members attending the
43 meeting.

1 **Section 4.3 Ballot Vote (Election Committee).** When a ballot vote is required,
2 voting shall proceed under the supervision of the Board of Directors or its designated
3 committee.

4
5 **Section 4.4 Mail Vote.**

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7 A. The Board may authorize mail-in ballots on any election or vote on
8 any issue it deems appropriate, including the election of Directors.

9
10 B. When mail-in ballots are authorized by the Board, said ballots shall be
11 prepared and mailed to the Members no more than thirty (30) days prior to the date of the
12 election or vote on an issue, and the date set for the tabulation of the ballots shall be stated
13 on the ballot. Ballots received on or after the date set for tabulation of the ballots shall not
14 be counted.

15
16 C. The determination of eligibility and tabulation of votes shall proceed
17 under the supervision of the Board of Directors or its designated committee.

18
19 D. Any solicitation by the Association for written ballots must specify the
20 number of responses needed to meet the quorum requirement and the percentage of
21 affirmative members' votes necessary to approve each matter (other than election of
22 directors).

23
24 **Section 4.5 Retention of Ballots.** Following tabulation, all ballots will be sealed
25 and stored for a period of at least thirty (30) days in custody of the Board of Directors or
26 its designated committee.

27
28 **ARTICLE V**
29 **BOARD OF DIRECTORS: SELECTION AND TERM OF OFFICE**
30

31 **Section 5.1 Number.** The affairs of this Association shall be managed by a Board
32 of nine (9) directors, eight (8) of whom must be Members of the Association (i.e., Owners
33 of Lots). One (1) director may be a non-Association Member, but must be a resident of
34 Ponderosa Estates Townhouses No. 1.

35
36 **Section 5.2 Term of Office.** The directors shall be elected at the annual meeting
37 of the Members. The term of office shall be three (3) years and until a successor is elected
38 and qualifies. In order to assure staggered terms, at the first annual meeting following the
39 adoption of these Bylaws, if necessary, the members may elect three directors for a term
40 of one (1) year, three directors for a term of two (2) years; and three (3) directors for a term
41 of three (3) years. At each annual meeting thereafter the members shall elect three directors
42 for a term of three (3) years.
43

1 **Section 5.3 Removal and Filling Vacancies.** Any director may be removed from
2 the Board by the vote of a majority of the Members of the Association. The vote to remove
3 a director shall be taken at a special meeting called for that purpose. Members may vote
4 in person or by proxy. In the event of the death, resignation or removal of a director, the
5 successor director may be selected by the remaining members of the Board (not including
6 the removed member) and shall fill the unexpired term of the Board member who has left.
7

8 **Section 5.4 Compensation.** No director shall receive compensation for any
9 service he/she may render to the Association. However, any director may be reimbursed
10 for his/her actual expenses incurred in the performance of his/her duties. Directors will
11 be reimbursed for any out-of-pocket funds used to pay for expenses incurred in conducting
12 Association business, provided that the expenditure has prior approval of the Board and
13 provided that director submits all applicable bills and receipts to the Treasurer. Neither
14 a director nor an officer may be an employee of the Association.
15

16 **Section 5.5 Indemnification.** The members of the Board of Directors shall not be
17 liable to the Association or any Member for any mistake of judgment, negligence, or
18 otherwise, except for their own individual willful misconduct or bad faith. The Association
19 shall indemnify and hold harmless each of the members of the Board of Directors against
20 all contractual liability to others arising out of contracts made by the Board of Directors on
21 behalf of the Association unless any such contract shall have been made in bad faith or
22 contrary to the provisions of the Declaration or of these Bylaws.
23

24 **ARTICLE VI**
25 **NOMINATION AND ELECTION OF DIRECTORS**
26

27 **Section 6.1 Nomination.** Nomination for election to the Board of Directors shall
28 be made by a Nominating Committee. Nominations may also be made from the floor at the
29 annual meeting, unless the vote is by mail-in ballot. As per Section 5.1 above, the Board
30 must be comprised of Members of the Association. Any Member elected to the Board must
31 be in good standing. This means that any Member who is either in violation of the
32 Association's governing documents, or is delinquent in the payment of assessments is not
33 eligible to be elected to the Board. The Nominating Committee shall consist of a Chair, who
34 shall be a member of the Board of Directors, and two or more Members of the Association.
35 The Nominating Committee shall be appointed by the Board of Directors prior to each
36 annual meeting of the Members. The Nominating Committee shall accept nominations for
37 election to the Board of Directors. Such nominations must be made from among Members.
38

39 **Section 6.2 Election.** All ballots for election of directors will be tabulated at the
40 Annual Meeting by tellers appointed from among the Members at the meeting. At the
41 election, Members or their proxies may cast, in respect to each vacancy, as many votes as
42 they are entitled to exercise under the provisions of the Declaration and these Bylaws. The
43 Members receiving the most votes shall be elected. Cumulative voting is not permitted.

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**ARTICLE VII
MEETINGS OF DIRECTORS**

Section 7.1 Regular Meetings. Regular meetings of the Board of Directors shall be held at least six (6) times per year, at a place and time established by the Board. Notice of regular meetings of the Board of Directors shall be given to each director by the President or the Secretary at least five (5) days prior to the meeting. Notice shall be given to Association members as required by applicable law.

Section 7.2 Special Meetings. Special Meetings of the Board of Directors shall be held when called for by the President of the Association, or by any two (2) directors, after not less than three (3) days notice to each director. Notice is valid if delivered in person or by telephone to the director. In the event of an emergency where the safety of personnel or property is in jeopardy, an emergency meeting for the same day may be called by telephone by any one (1) director of the Association.

Section 7.3 Waiver of Notice. Before or at any meeting of the Board of Directors, any director may waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall be a waiver of notice by him/her of the date, time, and place thereof.

Section 7.4 Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Except as otherwise provided in the Association's Governing Documents, any decision made by a majority of the directors who are present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board. The quorum requirements shall be satisfied if a quorum was present at the time the meeting was called to order, even if directors leave the meeting prior to its adjournment. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice. Proxies may not be given by directors for use at Board meetings.

Section 7.5 Action Without a Meeting. The directors may take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any such action shall have the same effect as though taken at a meeting of the directors.

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**ARTICLE VIII
POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

Section 8.1 Powers. The Board of Directors has all of the powers of a Board of Directors of an Arizona non-profit corporation, subject only to those limitations set forth in the Articles of Incorporation, these Bylaws, and the Declaration. The Board has the

1 power to do any and all lawful acts which may be authorized by the Articles, these Bylaws,
2 the Declaration, or any applicable law, and any acts which may be necessary or incidental
3 to the exercise of any of the express powers of the Association. In addition to any other
4 powers, the Board of Directors has the specific power to:
5

6 A. Suspend the voting rights of a Member during any period in which the
7 Member is in default in the payment of any assessment levied by the Association. Such
8 rights may also be suspended after notice and hearing, for a period not to exceed sixty (60)
9 days or for so long as the violation is in effect, whichever is longer, for infractions of the
10 Association's published rules or violations of the provisions of the Declaration.
11

12 B. Exercise for the Association all powers, duties and authority vested
13 in or delegated to this Association and not reserved to the Membership by other provisions
14 of the Bylaws, the Articles of Incorporation, or the Declaration.
15

16 C. Declare the office of a Member of the Board of Directors to be vacant
17 in the event such member is absent from three (3) consecutive regular meetings of the
18 Board of Directors, without good cause.
19

20 D. Employ a manager, an independent contractor, or any other
21 employees which the Board deems necessary, and to prescribe their duties.
22

23 E. Grant easements over, across or under the Common Areas for public
24 utilities, ingress, egress and such other purposes as may be deemed advisable by the Board.
25

26 F. With the prior written approval of two-thirds (2/3) of the Members,
27 encumber, sell or transfer any Common Area(s), with any proceeds deposited in the
28 general operating funds of the Association.
29

30 **Section 8.2 Duties.** As more fully set forth in the Declaration, and subject to the
31 provisions of the Declaration, the Board of Directors has the duty to:
32

33 A. Accept for membership all persons owning a Lot in PONDEROSA
34 ESTATES TOWNHOUSES NO. 1.
35

36 B. Adopt and amend the budget for the Association.
37

38 C. Set the amount of the annual assessment against each Lot and send
39 written notice thereof to every Member at least thirty (30) days prior to the effective date
40 of the assessment.
41

42 D. Record a lien against any Lot for which assessments are not paid
43 within thirty (30) days after the date the assessments are due and bring an action at law

1 against the Member personally obligated to pay the Assessments, provided such action
2 is cost effective in the sole discretion of the Board of Directors.
3

4 E. Issue, or cause an appropriate officer to issue, upon demand by any
5 Member, or his/her agent, a certificate setting forth whether or not any assessment has
6 been paid. The Board may charge a reasonable fee for the issuance of the certificate.
7 Issuance of a certificate shall be conclusive evidence of the payment of this fee.
8

9 F. Procure and maintain insurance as required by the Declaration.
10

11 G Procure employee dishonesty or fidelity insurance on all officers or
12 employees having fiscal responsibilities.
13

14 H. Maintain the Common Area and all other areas which are the
15 responsibility of the Association as provided for in the Declaration.
16

17 **Section 8.3 Liability of Board Members.** No Member of the Board of Directors
18 shall be personally liable to any Member or his/her assigns for any damage, loss or
19 prejudice suffered or claimed on account of any act or omission of the Association, its
20 representatives or employees provided that such Board member has, upon the basis of such
21 information as may be possessed by him/her, acted in good faith.
22

23 **ARTICLE IX**

24 **OFFICERS AND THEIR DUTIES**

25

26 **Section 9.1 Enumeration of Offices.** The officers of this Association shall be a
27 President and Vice-President, a Secretary, and a Treasurer, who shall at all times be
28 members of the Board of Directors, and such other officers which the Board may from time
29 to time by resolution, create.
30

31 **Section 9.2 Election of Officers.** The election of officers shall take place at the first
32 meeting of the Board of Directors following each annual meeting of the Members.
33

34 **Section 9.3 Term.** The officers of this Association shall be elected annually by the
35 Board and shall hold office for one (1) year unless he/she resigns or is removed or is
36 otherwise disqualified to serve, prior to the expiration of the term of office.
37

38 **Section 9.4 Special Appointments.** The Board may elect such other officers as the
39 affairs of the Association may require, each of whom shall hold office for such period, have
40 such authority, and perform such duties as the Board may, from time to time, determine.
41

42 **Section 9.5 Resignation and Removal of Officer.** Any officer may be removed
43 from office by a majority vote of the Board. Any officer may resign at any time by giving

1 written notice to the Board, the President or the Secretary. Any resignation becomes
2 effective on the date the resignation is received by the Secretary or President, or on the date
3 specified in the notice. Unless otherwise specified in the notice, it is not necessary for the
4 Board to accept the Director's resignation to make it effective.
5

6 **Section 9.6 Vacancies.** A vacancy in any office may be filled by appointment by
7 the Board. The officer appointed to such vacancy shall serve until the next annual election.
8

9 **Section 9.7 Multiple Offices.** In the event there are three (3) members on the
10 Board, the offices of Secretary and Treasurer, or President and Treasurer, may be held by
11 the same person. Otherwise, no person shall simultaneously hold more than one of any of
12 the other offices except in the case of special offices created pursuant to Section 9.4 of this
13 Article.
14

15 **Section 9.8 Duties.** The duties of the officers are as follows:
16

17 A. **President:** The president shall preside at all meetings of the Board of
18 Directors; shall see that orders and resolutions of the Board are carried out; shall, upon
19 resolution of the Board, sign all leases, mortgages, deeds and other written instruments and
20 agreements and shall co-sign all promissory notes.
21

22 B. **Vice President:** The vice-president shall act in the place and instead of
23 the president in the event of his/her absence, inability or refusal to act, and shall exercise
24 and discharge such other duties as may be required of him/her by the Board.
25

26 C. **Secretary:** The secretary or the Board's designee shall record the votes
27 and keep the minutes of all meetings and proceedings of the Board and of the Members;
28 keep the corporate seal of the Association and affix it on all papers requiring said seal;
29 provide notice of meetings of the Board and of the Members; keep appropriate current
30 records showing the Members of the Association together with their addresses, and shall
31 perform such other duties as required by the Board.
32

33 D. **Treasurer:** The treasurer or the Board's designee shall receive and
34 deposit in appropriate bank accounts all monies of the Association and shall disburse such
35 funds as directed by resolution of the Board of Directors. In addition, the treasurer shall
36 sign all promissory notes of the Association; insure that all checks of the Association are
37 signed by two Board Members of the Association; keep proper books of account; cause an
38 annual compilation and review of the Association books to be made by an independent
39 accountant or by a committee appointed by the Board, at the completion of each fiscal
40 year; prepare an annual budget and statement of income and expenditures to be presented
41 to the Membership at its regular annual meeting, and provide a copy of each to the
42 Members.
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**ARTICLE X
COMMITTEES**

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Section 10.1. Appointment. The Board shall appoint a Nominating Committee and such other committees as required or as it deems appropriate in carrying out its purpose, as provided for in these Bylaws and the Declaration.

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Section 10.2. Composition. All committee members shall be Members of the Association or residents of Ponderosa Estates Townhouses No. 1, but need not be members of the Board. The President of the Board of Directors is precluded from membership on the Nominating Committee.

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**ARTICLE XI
BOOKS AND RECORDS**

Upon request of a Member, the books and records of the Association shall be subject to review by any Member or Member's designated agent, during reasonable business hours with notice of at least one (1) business day. Retrieval of stored files will require notice of at least three (3) business days. The Declaration, Articles of Incorporation and the Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at a reasonable cost. In the event that any member of the Association desires to have copies of the Association's books and records, the Association shall charge the Member for the cost of such copies, including a reasonable charge to compensate the Association for the time spent in copying such documents. Any request for review of books and records must be made in good faith and for a proper purpose. The records requested must be directly connected with the Member's stated purpose.

**ARTICLE XII
ASSESSMENTS**

As more fully set forth in the Declaration, each Member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. No Member may waive or otherwise escape liability for the assessment provided herein by non-use of the Common Area, abandonment of his/her Lot, or for any other reason.

**ARTICLE XIII
CORPORATE SEAL**

The Association may have a seal in circular form having within its circumference the words: PONDEROSA HOMEOWNERS ASSOCIATION NO. 1. A corporate seal shall not

1 be a prerequisite to the validity of any instrument executed by or on behalf of the
2 Corporation.
3

4 **ARTICLE XIV**
5 **AMENDMENTS AND CONFLICTS**
6

7 **Section 14.1 Amendment to Bylaws.** These Bylaws may be amended by a vote of
8 two-thirds (2/3) of the Members who are present in person or by proxy at any regular or
9 special meeting of the Association or who are voting by mail-in ballot. To be effective, the
10 amendment must be signed by the President and Secretary of the Association. All
11 amendments must be consistent with the recorded Declaration and Articles of
12 Incorporation of the Association.
13

14 **Section 14.2 Conflicts in Documents.** In the event of any conflict between the
15 Declaration and these Bylaws, the Declaration shall control. In the event of any conflict
16 between the Articles of Incorporation and these Bylaws, the Articles shall control.
17

18 **ARTICLE XV**
19 **MISCELLANEOUS**
20

21 **Section 15.1 Fiscal Year.** The fiscal year of the Association shall begin on the first
22 day of July and end on June 30 of every year, unless otherwise designated by the Board of
23 Directors, in its sole discretion.
24

25 **Section 15.2 Notices.**
26

27 A. Any notice required by these Bylaws to be given, shall be in
28 compliance with these Bylaws if in writing and delivered to the person intended by hand,
29 deposited in the U.S. Mail, or delivered by any other means allowed by applicable state
30 law.
31

32 B. When any notice is required to be given under the provisions of the
33 Declaration, the Articles of Incorporation or these Bylaws, a waiver of that notice, in
34 writing, signed by the person or persons entitled to that notice, whether before or after the
35 time stated therein, shall be the equivalent of delivering timely notice to such a person.
36

37 **Section 15.3 Parliamentary Rules.** At all meetings of the Association, Robert's
38 Rules of Order (latest edition) shall govern the conduct of the meeting when not in conflict
39 with the Declaration, the Articles of Incorporation or these Bylaws. The Board may
40 appoint a qualified parliamentarian to serve at each Annual or Special Meeting of
41 members.
42

**FIRST AMENDMENT TO AMENDED AND RESTATED BYLAWS
OF
PONDEROSA HOMEOWNERS ASSOCIATION NO. 1**

WHEREAS, Section 14.1 of the Amended and Restated Bylaws of PONDEROSA HOMEOWNERS ASSOCIATION NO. 1 (the "Association") provides that an amendment must be approved by two-thirds of the Members who are voting by mail-in ballot; and

WHEREAS, at least two-thirds (2/3) of the Members voting in a special Association election, approved and adopted the following amendments to the Amended and Restated Bylaws of the Association.

NOW THEREFORE, the Association's Bylaws is amended as follows:

DELETE: **Section 5.1 Number of Directors** in its entirety.

ADD: **Section 5.1 Number of Directors.** The affairs of the Association shall be managed by a Board of not less than three (3) nor more than five (5) directors, all of whom must be Members of the Association (i.e., Owners of Lots).

DELETE: **Section 5.2 Term of Office** in its entirety.

ADD: **Section 5.2 Term of Office.** The directors shall be elected at the annual meeting of the Members. The term of office for each director shall be one (1) year and until his or her successor is elected and qualifies. In order to assure staggered terms, at the first annual meeting following the adoption of this Amendment, if necessary, the Members may elect one (1) director for a term of one (1) year, two (2) directors for a term of two (2) years; and two (2) directors for a term of three (3) years (assuming that five (5) directors are elected). If a different number than five (5) directors are elected at this meeting, the Board shall determine the term of each newly-elected director to assure that staggered terms are preserved. At each annual meeting thereafter the term of newly-elected directors shall be one (1) year. If necessary to re-establish staggered terms at subsequent elections, the Board or the Members may establish varying term lengths for directors to be elected .

DELETE: **Section 9.7 Multiple Offices** in its entirety.

ADD: **Section 9.7 Multiple Offices.** In the event there are three (3) members on the Board, the offices of Secretary and Treasurer, or President and Treasurer,

may be held by the same person. Otherwise, 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 9.4 of this Article, and except if a management company is retained by the Board, in which case the offices of Secretary and Treasurer may be held by the same person.

IN WITNESS WHEREOF, the President of PONDEROSA HOMEOWNERS ASSOCIATION NO. 1 certifies that this First Amendment to the Amended and Restated By-laws of the Association, was approved by two-thirds (2/3) of the Members voting in a special election conducted by mail-in ballot.

DATED: July 19, 2005

PONDEROSA HOMEOWNERS ASSOCIATION NO. 1,
an Arizona non-profit corporation

By: [Signature], President

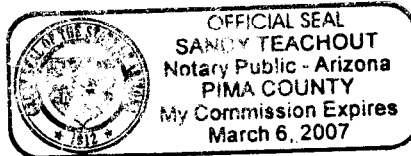
ATTEST:

[Signature] PHD CUP
Secretary

STATE OF ARIZONA)
) ss:
County of Pima)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 17th day of July, 2005, by [Signature], as President of PONDEROSA HOMEOWNERS ASSOCIATION NO. 1.

[Signature]
Notary Public



STATE OF ARIZONA)
) ss:
County of Pima)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 19th day of July, 2005, by John W. PADCLIF, as Secretary of PONDEROSA HOMEOWNERS ASSOCIATION NO. 1.

Sandy Teachout
Notary Public

