

**Bylaws of  
Berryessa Homeowners Association, Inc**

ARTICLE 1

Name and Location

The name of the homeowner's association is BERRYESSA HOMEOWNERS ASSOCIATION, INC (the "Association"). The principal office of the Association shall be located at 4647 N 32<sup>nd</sup> Street, Suite 100, Maricopa County, Phoenix, Arizona.

ARTICLE 2

Definitions

2.1 "Declaration" shall mean and refer to the Declaration of Conditions, Covenants and Restrictions applicable to the Property recorded on August 31, 1984 at Recording NO. 84 382530 In the office of the County Recorder for Maricopa County, Arizona.

2.2 The definitions contained the Declaration are incorporated in these Bylaws by reference.

ARTICLE 3

Meeting of Members and Voting Rights

3.1 Annual Meetings

Regular annual meetings of members of the Association shall be held annually on the Property or such other suitable place convenient to the members of the Association as may be designated by the Board. Th first meeting of the Association shall be held within one (1) year after the close of escrow for the sale of the first Lot.

3.2 Special Meetings

A special meeting of members of the Association shall be promptly called by the Board upon the vote for such a meeting by a majority of a quorum of the Board, or upon receipt of a written request therefor signed by members of the Association representing fifty percent (50%) of the total voting power of the Association.

### 3.3 Notice of Meetings

Written notice of regular and special meetings shall be given to members of the Association by the Board by mailing a notice to each member of the Association which 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. Except in the case of an emergency, notice shall be emailed to each member of the Association at least ten (10) days prior to the meeting and shall be posted in a conspicuous place on the Common Element.

### 3.4 Quorum

The presence in person or by proxy of at least twenty five percent (25%) of the total voting power of the Association shall constitute a quorum, except as specifically provided to the contrary in the Declaration, the Articles or these Bylaws. The members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members of the Association to leave less than a quorum.

### 3.5 Action Without a Meeting

Any action that, under the provisions of the General Corporation Law of Arizona, may be taken at a meeting of the members, may be taken without a meeting if authorized by a written authorization signed by all of the persons who would be entitled to vote upon such an action at a meeting. Such written authorization shall be filed with the secretary of the Association.

### 3.6 Proxies

At all meetings of members of the Association, each member of the Association may vote in person or by proxy. All proxies shall be in writing and filed with the secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of the Association of his Lot, or upon receipt of notice by the secretary of the Board, of the death or judicially declared incompetence of such member.

### 3.7. Adjournment

In the absence of a quorum at a meeting, a majority of those present in person or by proxy may adjourn the meeting to another time, but may not transact any other business. Any 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. The quorum for such a reconvened meeting shall be fifteen percent (15%) of the total voting power of the Association.

### 3.8 Classes of Membership

The association shall have two (2) classes of voting membership established according to the Declaration.

### 3.9 Voting Requirements

While there are two (2) outstanding classes of membership, any action by the Association which must have the approval of the Association membership before being undertaken shall require the vote or written assent of the prescribed percentage of each class of membership,

### 3.10 Commencement of Voting Rights

Voting rights attributable to each Lot shall vest in accordance with the terms and provisions of the Declaration.

### 3.11 Record Date

For any meeting of the members of the Association the Board may fix in advance a date, not more than sixty (60) days nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action, as a record date for the determination of the members of the Association of record entitled to notice of, and to vote at, such meeting. The members entitled to vote at any meeting of the members of the Association will be determined as of the applicable record date if one has been fixed as aforesaid; otherwise, as of the time the meeting is convened.

### 3.12 Organization and Conduct of Meetings

All meetings of members of the Association will be called to order and thereafter chaired by the Chairman of the Board if there is one; or, if not, or if the Chairman of the board is absent or so requests, then by the President; or if both the Chairman of the Board and the President are unavailable, then by such other office of the Association or such member of the Association as may be appointed by the Board. The Association's Secretary will act as secretary of each membership meeting; in his absence the chairman of the meeting may appoint any person to act as secretary thereat. After calling a meeting to order, the chairman thereof may require the registration of all members of the Association intending to vote in person, and the filing of all proxies, with the election inspector or inspectors, if one or more has been appointed (or, if not, with the secretary of the meeting). After the announced time for such filing of all proxies has ended, no further proxies or changes, substitutions or revocation of proxies will be accepted. If directors agree to be elected, a tabulation of the proxies so filed will, if any person entitled to vote in such election so requests, be announced at the meeting (or adjournment thereof) prior to the closing of the election polls. Absent a showing of bad faith on his part, the chairman of the meeting will, among other things, have absolute authority to fix the period of time allowed for the registration of members of the Association and the filing of proxies, to determine the order of the business to be conducted at such meeting and to establish reasonable rules for expediting the business of the meeting (including any formal or questions-and-answer portion thereof.)

## ARTICLE 4

### Board of Directors Selection: Term of Office

#### 4.1 Number and Term of Directors

The Board shall consist of not less than three (3) nor more than five (5) Directors, each of whom shall be a Lot owner or an agent of Declarant (while declarant remains a Lot Owner). The Directors shall serve concurrent terms of one (1) year. The incorporating Directors or their duly elected replacements, shall serve until the first meeting of the Association; Thereafter all Directors shall be elected and removed according to these Bylaws.

#### 4.2 Election of Board of Directors

##### 4.2.1 Nomination

Nominations for election to the Board of Directors may. Be made from the floor at the annual meeting of the Association. Additionally, the Board may appoint a Nominating Committee, which shall consist of a Chairman, who shall be a member of the Board of Directors, and two (2) or more members of the Association. If the Board determined to appoint a Nominating Committee, the Committee shall be appointed at least ninety (90) days prior to each annual meeting, to serve until the close of such annual meeting, and shall make as many nominations for election to the board of Directors as it shall in is discretion determine, but not less than the number of vacancies that are to be filled.

##### 4.2.2 Cumulative Voting

Elections of Board members shall be by secret written ballot. All elections in which more than two (2) positions on the Board are to e filled shall be conducted by cumulative voting.

#### 4.3 Removal

Unless the entire Board is removed from office by the vote of members of the Association, an individual Director shall not be removed prior to the expiration of his term of office unless two-thirds (2/3) of the members of the Board vote in favor of such removal.

#### 4.4 Vacancies

Vacancies in the Board caused by any reason other than the removal of a Director by a vote of the members of the Association shall be filled by vote of the majority of the remaining Directors, and each person so elected shall be a Director for the remainder of the term of the Director he replaces or until a successor is electe at a special meeting of the members of the Association called for that purpose.

ARTICLE 5  
Meetings of Directors

5.1 Regular Meetings

Regular meetings of the Board shall be conducted at least quarterly at a time and place within or near the Property, as may be fixed by the Board. Notice of the time and place of regular meetings shall be given to each Director, personally or by mail, telephone or telegraph, at least three (3) days prior to the day named for the meeting and shall also be posted at a prominent place or places within the Common Elements.

5.2 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 (2) Directors other than the President. Notice shall be provided to all Directors and Posted within the Common Elements in the manner prescribed for notice of regular meeting and shall include a description of the nature of any special business to be considered by the Board.

5.3 Waiver of Notice

Before or at any meeting of the Board, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice to that director. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him of the time and place of the meeting. Furthermore, any action to be taken by the Directors pursuant to the Articles, The Declaration or these Bylaws, may be taken without a meeting if all directors consent thereto in writing. Such consent shall have the same effect as a unanimous vote.

5.4 Quorum

The presence in person of a majority of the Directors at any meeting of the Board shall constitute a quorum.

5.5 Adjournment: Executive Session

The Board may, with the approval of a majority of a quorum of the Directors, adjourn a meeting and reconvene in executive session to discuss and vote upon personal 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.

5.6 Board Meetings Open to Members

Regular and special meetings of the Board shall be open to all members of the Association; provided, however, that members of the Association who are not on the Board may not participate in any deliberation or discussion unless expressly so authorized by the vote of the majority of a quorum of the Board.

ARTICLE 6  
Powers and Duties of the Board of Directors

6.1 Powers and Duties

The Board shall have the powers and duties necessary for the administration of the affairs of the Association. Without limitation on the generality of the foregoing powers and duties, the Board shall be vested with and responsible for, the following powers and duties:

6.1.1. To select, appoint, supervise, and remove all officers, agents and employees of the Association; to prescribe such powers and duties for them as may be consistent with law and with the Articles, the Declaration and these Bylaws; and to fix their compensation (if not prohibited under these Bylaws) and to require from them security for faithful service when deemed advisable by the Board.

6.1.2 To enforce the applicable provisions of the Declaration, Articles, these Bylaws, and other instruments relating to the ownership, management and control of the Project.

6.1.3 To adopt and publish rules and regulations governing the use of the Common Elements and facilities, and the personal conduct of the members of the Association and their guests thereon, and to establish procedures and penalties for the infraction thereof, subject to approval of the membership.

6.1.4 To adopt and publish rules and regulations governing the keeping of animals on the Property.

6.1.5 To pay all taxes and assessments which are or could become, a lien on the Common Elements or a portion \_\_\_\_\_.

6.1.6 To contract for casualty liability and other insurance on behalf of the Association as provided in the Declaration.

6.1.7 To cause the Common Elements to be maintained and to contract for goods and/or services for the Common Elements for the Association, subject to the limitations set forth in this Article.

6.1.8 To delegate its powers to committees, officers or employees of the Association, or to a management company pursuant to a written contract, as expressly authorized by the Articles, Declaration and these Bylaws.

6.1.9 To prepare budgets and financial statements for the Association as prescribed in these Bylaws.

6.1.10 To initiate and execute disciplinary proceedings against members of the Association for violations of the provisions of the Articles, Declaration, these Bylaws and such rules as may be promulgated by the Board, in accordance with procedures set forth in these Bylaws.

6.1.11 Upon the giving of reasonable notice, to enter upon any privately owned Lot as necessary in connection with construction, maintenance or emergency repair for the benefit of the Common Elements or the Owners.

6.1.12 To borrow money and incur indebtedness for purposes of the Association, and to cause to be executed and delivered therefore, in the Association's name promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations or other evidences of debt and securities, therefore.

6.1.13 To fix and collect regular and special assessments according to the Declaration and these Bylaws, and, if necessary, to record a notice of assessment and foreclose the lien against any Unit Lot for which an assessment is not paid within thirty (30) days after the due date or bring an action at law against the Owner personally obligated to pay such assessment. All reserves for capital expansion, repair and maintenance shall be transferred to and held in a trust fund or funds for such purpose, established by vote of a majority of Members, and shall be expended only in the trust manner prescribed.

6.1.14 To prepare and file annual tax returns with the federal government and the State of Arizona and to make such elections as may be necessary to reduce or eliminate the tax liability of the Association.

## 6.2 Limitations on Board's Power

Except with the vote or written assent of a majority of the voting power of the Association residing in members of the Association other than Declarant, the Board shall be prohibited from taking any of the following actions:

6.2.1 Incurring aggregate expenditures for capital improvements to the Common Elements in any fiscal year in excess of ten percent (10%) of the budgeted gross expenses of the Association for that fiscal year.

6.2.2 Selling during any fiscal year property of the Association having an aggregate fair market value greater than ten percent (10%) of the budgeted gross expenses of the Association for that fiscal year.

6.2.3 Paying compensation to Directors or to Officers of the Association for services performed in the conduct of the Association's business provided, however, that the Board may cause a Director or Officer to be reimbursed for expenses incurred in carrying on the business of the Association.

6.2.4 Entering into a contract with a third person wherein the third person will furnish goods or services for the Common Elements or the Association for a term longer than one (1) year with the following exceptions:

6.2.4.1 A management contract, the terms of which have been approved by the Federal Housing Administration or Veteran's administration;

6.2.4.2 A contract 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 the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate;

6.2.4.3 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;

Any agreement for professional management of the Project, or any other contract providing for services by Declarant, shall provide for termination by either party without cause or payment of a termination fee of thirty (30) days or less written notice and shall provide for a maximum contract term of one (1) year.

ARTICLE 7  
Officers and Duties

7.1 Enumeration and Term

The officers of this Association shall be a President and Vice-President, who shall at all times be members of the Board, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create. The officers shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

7.2 Election of Officers

The election of officers shall take place at the first meeting of the Board following each annual meeting of the members of the Association.

7.3 Resignation and Removal

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

7.4 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. If, however, the office of President becomes vacant, the Vice President (or secretary if no Vice President exists) shall automatically fill the office of President and shall serve the remainder of the term. The Board shall then fill by appointment the vacant position of Vice President (or Secretary).

7.5 Multiple Offices

The office 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 a special offices created pursuant to this Article.

7.6 Duties

The duties of the officers are as follows:

7.6.1 President

The President shall preside at all meetings of the Board; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks (unless the authority to sign checks in the ordinary course of Association business has been delegated to a management company as provided in these Bylaws) and promissory notes.

7.6.2 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.

#### 7.6.3 Secretary

The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members of the Association; serve notice of meetings of the Board and of the members of the Association; keep appropriate current records showing the members of the Association together with their addresses and shall perform such other duties as required by the board.

#### 7.6.4 Treasurer

The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board shall co-sign all checks and promissory notes of the Association; and shall keep proper books of account and prepare or have prepared financial statements as required in these Bylaws. The duty of the treasurer to receive and deposit funds and to sign checks in the ordinary course of Association business may be delegated to a management company as provided in these Bylaws.



ARTICLE 8  
Maintenance and Assessments

Pursuant to the procedures and guidelines set forth in the Declaration, the Board shall levy, collect and enforce regular and special assessments for the operations of the Association, and for the management, maintenance, and operation of the Common Elements. The assessments shall be used exclusively to promote the recreation, health, safety, and welfare of all residents in the entire Property and for the improvement and maintenance of the Common Elements for the common good of the Property. Regular assessments shall include an adequate reserve fund for maintenance, repairs and replacement of the Common Elements.

ARTICLE 9  
Discipline of Members; Suspension of Rights

The Association shall have no power to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of his individually owned lot on account of a failure by the owner to comply with provisions of the Declaration, Articles, these Bylaws, or of duly enacted rules of operation for the Common Elements and facilities, except where the loss or forfeiture is the result of the judgment of a court or a decision arising out of arbitration or on account of a foreclosure or sale under a power of sale for failure of the Owner to pay assessments levied by the Association. Notwithstanding the foregoing, the Board shall have the power to impose reasonable monetary penalties, temporary suspensions of an Owner's rights as a member of the Association or other appropriate discipline for failure to comply with the Declaration, Articles, these Bylaws or duly enacted rules; provided that the accused shall be given reasonable notice and the opportunity to be heard by the Board with respect to the alleged violations before a decision to impose discipline is reached. In the case in which monetary penalties are to be imposed, such penalties shall be according to a schedule of penalties related to specific offenses, which schedule shall be proposed by the Board and approved by the vote or written assent of a majority of the voting power of each class of membership. Such penalties shall bear reasonable relationship to the conduct for which the penalty is imposed and may only be imposed prospectively.

ARTICLE 10  
Budgets, Financial Statements, Books and Records

10.1           Budgets and Financial Statements

Financial Statements for the Association shall be regularly prepared and copies shall be distributed to each Member of the Association as follows:

10.1.1. A pro forma operating statement (budget) for each fiscal year shall be distributed not less than sixty (60) days before the beginning of the fiscal year.

10.1.2 A balance sheet (as of an accounting date which is the last day of the month closest in time to the six (6) months from the date of close of escrow for the first sale of a Lot to an individual buyer) and an operating statement for the period from the date of the first closing to the said accounting date, shall be distributed within sixty (60) days after the accounting date. This operating statement shall include a schedule of assessments received and receivable identified by the number of the Lot and the name of the Lot Owner assessed.

10.1.3 A balance sheet as of the last day of the Association's fiscal year and an operating statement for said fiscal year shall be distributed within ninety (90) days after, the close of the fiscal year.

For any fiscal year in which the gross income to the Association exceeds Seventy-Five Thousand Dollars (75,000.00), an external audit by an individual accountant shall be required for the fiscal year financial statements (other than budgets).

10.2 Fiscal Year

The fiscal year of the Association shall be as designated by resolution of the Board. In the absence of such a resolution, the fiscal year shall be the calendar year.

10.3 Inspection of Association's Books and Records

The membership register, books of account and minutes of meetings of the members of the Association, of the Board, and of committees of the Board shall be made available for inspection and copying by any member of the Association, or by his duly appointed representative, at any reasonable time and for a purpose reasonably related to his interest as a member, at the office of the Association or at such other place within the Property as the Board shall prescribe. Such inspection may take place on weekdays during normal business hours, following at least forty-eight (48) hours written notice to the Board by the member of the Association desiring to make the inspection. Any member of the Association desiring copies of any documents shall pay the reasonable cost for reproduction. 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 11  
Amendment of Bylaws

These Bylaws may be amended by the vote or written assent of members of the Association representing fifty-one percent (51%) of a quorum of the total voting power of the Association; provided, however, that the percentage of the voting power necessary to amend a specific clause or provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. For so long as there are two (2) classes of membership in the Association, the proposed amendment must be supported by the vote or written assent of the prescribed percentage of each class of membership.

Article 12  
Miscellaneous Provisioning

12.1 Regulations

All Owners, tenants, or their employees, or any other person that might use the facilities of the Common Elements in any manner, are subject to the regulations set forth in these Bylaws and in the Declaration and to all reasonable rules enacted pursuant to the Declaration. Acquisitions, rental, or occupancy of any Lot shall constitute acceptance and ratification of the provisions of all such rules and regulations.

12.2. Compensation and Indemnity of Officers and Directors

No Director or officer shall receive any compensation for services rendered for or on behalf of the Association, except reimbursement according to Article 6 of these Bylaws. Each Director and officer shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him by judgment or settlement in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a Director or officer of the

Association, except in cases of fraud, gross negligence or bad faith of the Director of officer in the performance of his duties.