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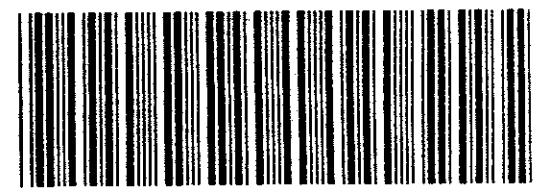
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**DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS  
FOR  
RANCHO MONTANA**

THIS DOCUMENT IS BEING RE-RECORDED  
FOR THE SOLE PURPOSE OF ATTACHING  
EXHIBIT "B".

TABLE OF CONTENTS

<b>ARTICLE 1. <u>DEFINITIONS</u></b>	1
1.1 <u>"Architectural Committee"</u>	1
1.2 <u>"Architectural Committee Rules"</u>	1
1.3 <u>"Articles"</u>	1
1.4 <u>"Assessment Lien"</u>	1
1.5 <u>"Assessments"</u>	1
1.6 <u>"Association"</u>	2
1.7 <u>"Association Rules"</u>	2
1.8 <u>"Board"</u>	2
1.9 <u>"Bylaws"</u>	2
1.10 <u>"Centennial II Limited Partnership"</u>	2
1.11 <u>"Common Area"</u>	2
1.12 <u>"Common Expenses"</u>	2
1.13 <u>"Declarant"</u>	3
1.14 <u>"Declaration"</u>	3
1.15 <u>"Eligible Insurer or Guarantor"</u>	4
1.16 <u>"Eligible Mortgage Holder"</u>	4
1.17 <u>"First Mortgage"</u>	4
1.18 <u>"First Mortgagee"</u>	4
1.19 <u>"Front Yard"</u>	4
1.20 <u>"Improvements"</u>	4
1.21 <u>"Lot" or "Lots"</u>	4
1.22 <u>"Member"</u>	4
1.23 <u>"Owner" or "Owners"</u>	4
1.24 <u>"Plat"</u>	4
1.25 <u>"Project"</u>	4
1.26 <u>"Project Documents"</u>	5
1.27 <u>"Property"</u>	5
1.28 <u>"Purchaser"</u>	5
1.29 <u>"Residential Unit"</u>	5
1.30 <u>"Single Family"</u>	5
1.31 <u>"Single-Family Residence"</u>	5
1.32 <u>"Single-Family Residential Use"</u>	5
1.33 <u>"Visible from Neighboring Property"</u>	5
<b>ARTICLE 2. <u>PLAN OF DEVELOPMENT</u></b>	5
2.1 <u>Property Initially Subject to the Declaration</u>	5
2.2 <u>Name of Project</u>	6
2.3 <u>Property Subject to Fountain Hills Committee of Architecture and Lakeside Village Committee of Architecture</u>	6
<b>ARTICLE 3. <u>THE ASSOCIATION; RIGHTS AND DUTIES, MEMBERSHIP AND VOTING RIGHTS</u></b>	7
3.1 <u>Rights, Powers and Duties</u>	7
3.2 <u>Board of Directors and Officers</u>	7
3.3 <u>Association Rules</u>	7
3.4 <u>Architectural Committee</u>	7
3.5 <u>Identity of Members</u>	8
3.6 <u>Transfer of Membership</u>	8

3.7	<u>Classes of Members</u>	8
3.8	<u>Joint Ownership</u>	9
3.9	<u>Corporate Ownership</u>	9
3.10	<u>Suspension of Voting Rights</u>	9
3.11	<u>Termination of Contracts and Leases</u>	9
3.12	<u>Fines</u>	9
<b>ARTICLE 4.</b>	<b><u>COVENANT FOR MAINTENANCE ASSESSMENTS</u></b>	<b>10</b>
4.1	<u>Creation of the Lien and Personal Obligation of Assessments</u>	10
4.2	<u>Purpose of the Assessments</u>	10
4.3	<u>Annual Assessment</u>	10
4.4	<u>Special Assessments</u>	13
4.5	<u>Notice and Quorum for Any Action Authorized Under Section 4.3 or 4.4</u>	13
4.6	<u>Date of Commencement of Annual Assessments; Due Dates</u>	14
4.7	<u>Effect of Non-Payment of Assessments; Remedies of the Association</u>	14
4.8	<u>Subordination of the Lien to Mortgages</u>	15
4.9	<u>Exemption of Owner</u>	15
4.10	<u>Maintenance of Reserve Fund</u>	15
4.11	<u>No Offsets</u>	16
<b>ARTICLE 5.</b>	<b><u>USE RESTRICTIONS</u></b>	<b>16</b>
5.1	<u>Residential Use</u>	16
5.2	<u>Building Type and Size</u>	16
5.3	<u>Signs</u>	16
5.4	<u>Noxious and Offensive Activity</u>	17
5.5	<u>Motor Vehicles</u>	17
5.6	<u>Parking</u>	17
5.7	<u>Towing of Vehicles</u>	18
5.8	<u>Machinery and Equipment</u>	18
5.9	<u>Restrictions and Further Subdivision</u>	18
5.10	<u>Windows</u>	18
5.11	<u>HVAC and Solar Panels</u>	18
5.12	<u>Garages and Driveways</u>	18
5.13	<u>Exemption</u>	19
5.14	<u>Leasing Restrictions</u>	19
5.15	<u>Animals</u>	19
5.16	<u>Drilling and Mining</u>	19
5.17	<u>Refuse</u>	19
5.18	<u>Antennas and Satellite Dishes</u>	19
5.19	<u>Utility Services</u>	20
5.20	<u>Diseases and Insects</u>	20
5.21	<u>Playground and Sports Equipment</u>	20
5.22	<u>Architectural Control</u>	20
<b>ARTICLE 6.</b>	<b><u>RESERVATION OF RIGHT TO RESUBDIVIDE AND REPLAT</u></b>	<b>22</b>
<b>ARTICLE 7.</b>	<b><u>YARD WALLS, RETAINING WALLS AND PARTY WALLS</u></b>	<b>22</b>
7.2	<u>Disclosure</u>	22

7.3	<u>Sharing Repair and Maintenance</u>	22
7.4	<u>Damage by One Owner</u>	23
7.5	<u>Other Damages</u>	23
7.6	<u>Right of Entry</u>	23
7.7	<u>Right of Contribution</u>	24
7.8	<u>Consent of Adjoining Owner</u>	24
<b>ARTICLE 8.</b>	<b><u>MAINTENANCE BY ASSOCIATION</u></b>	24
8.1	<u>Maintenance of Common Area and Front Yards By Association</u>	24
8.2	<u>Maintenance of Residences by Owners</u>	25
8.3	<u>Damage or Destruction by Owners</u>	25
8.4	<u>Non-performance by Owners</u>	25
8.5	<u>Total or Partial Destruction</u>	26
<b>ARTICLE 9.</b>	<b><u>EASEMENTS</u></b>	26
9.1	<u>Owner's Easements of Enjoyment</u>	26
9.2	<u>Drainage Easements</u>	27
9.3	<u>Utility Easements</u>	27
9.4	<u>Reservation of Utility Easement</u>	28
9.5	<u>Maintenance Easement</u>	28
9.6	<u>Encroachments</u>	28
<b>ARTICLE 10.</b>	<b><u>INSURANCE</u></b>	28
10.2	<u>Certificates of Insurance</u>	30
10.3	<u>Fidelity Bonds</u>	30
10.4	<u>Payment of Premiums</u>	31
10.5	<u>Insurance Obtained by Owners</u>	31
10.6	<u>Payment of Insurance Proceeds</u>	31
10.7	<u>Repair and Replacement of Damaged or Destroyed Property</u>	31
<b>ARTICLE 11.</b>	<b><u>RIGHTS OF FIRST MORTGAGEES</u></b>	31
11.1	<u>Notification to First Mortgagees</u>	31
11.2	<u>Approval Required to Terminate Project</u>	32
11.3	<u>Approval Required for Amendment to Declaration, Articles or Bylaws</u>	32
11.4	<u>First Mortgagee Not Liable for Prior Assessments</u>	33
11.5	<u>First Mortgagee's Right of Inspection of Records</u>	34
11.6	<u>Limitation on Partition and Subdivision</u>	34
11.7	<u>Prior Written Approval of First Mortgagees</u>	34
11.8	<u>Conflicting Provisions</u>	35
<b>ARTICLE 12.</b>	<b><u>TERM AND ENFORCEMENT</u></b>	35
12.1	<u>Enforcement</u>	35
12.2	<u>Term</u>	35
12.3	<u>Amendment</u>	35
<b>ARTICLE 13.</b>	<b><u>GENERAL PROVISIONS</u></b>	35
13.1	<u>Severability</u>	35
13.2	<u>Construction</u>	36
13.3	<u>Notices</u>	36

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13.4	<u>No Waiver</u>	36
13.5	<u>Joint and Several Liability</u>	36
13.6	<u>Attorneys' Fees</u>	36
13.7	<u>Non-liability of Officials</u>	36
13.8	<u>Gender</u>	37

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
RANCHO MONTANA**

THIS DECLARATION is made on the date hereinafter set forth by MCO Properties L.P., a Delaware limited partnership ("Declarant").

**WITNESSETH:**

WHEREAS Declarant is the owner of certain real property ("Property") located in the Town of Fountain Hills, Maricopa County, Arizona, described as follows:

SEE ATTACHED EXHIBIT "A"

WHEREAS, Declarant desires to provide for the development of the Property as detached single-family residences:

NOW, THEREFORE, Declarant hereby declares that the Property described above shall be subject to the following reservations, easements, limitations, restrictions, services, covenants, conditions, charges and liens (hereinafter sometimes collectively termed "Covenants and Restrictions") which are for the purpose of protecting the value and desirability of, and shall run with, the real Property and be binding on all parties having any right, title or interest in the described Lots or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereafter.

**ARTICLE 1. DEFINITIONS**

1.1 "Architectural Committee" means the committee established by the Board pursuant to Section 3.4 of this Declaration.

1.2 "Architectural Committee Rules" means the rules adopted by the Architectural Committee.

1.3 "Articles" means the Articles of Incorporation of the Association which have been or will be filed in the office of the Corporation Commission of the State of Arizona, as said Articles may be amended from time to time.

1.4 "Assessment Lien" means the lien granted to the Association by this Declaration to secure the payment of Assessments and all other amounts payable under the Project Documents.

1.5 "Assessments" means the annual and special assessments levied and assessed against each lot pursuant to Article IV of this Declaration.

1.6 "Association" means the Arizona non-profit corporation to be organized by the Declarant to administer and enforce the Project Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns. Declarant intends to organize the Association under the name of "RANCHO MONTANA HOMEOWNERS'S ASSOCIATION, INC., an Arizona non-profit corporation", but if such name is not available, Declarant may organize the Association under such other name as the Declarant deems appropriate.

1.7 "Association Rules" means the rule and regulations adopted by the Association, as the same may be amended from time to time.

1.8 "Board" means the Board of Directors of the Association.

1.9 "Bylaws" means the Bylaws of the Association, as such Bylaws may be amended from time to time.

1.10 "Centennial II Limited Partnership" means Centennial II Limited Partnership, an Arizona limited partnership, that, following the recordation hereof, shall acquire the real Property from Declarant and construct Residences and Improvements on the Lots and Common Area.

1.11 "Common Area" means all real property, and the Improvements thereon, owned or leased from time to time by the Association for the common use and enjoyment of the Owners, including without limitation, any of the following: private storm drains, walkways, easements, the parking areas, certain landscaped areas and any common facilities within the Project. On or before the date of the first conveyance of a Residence to an Owner other than Centennial II Limited Partnership, Centennial II Limited Partnership shall convey to the Association the Common Area described on Exhibit "B". Centennial II Limited Partnership shall convey the Common Area to the Association free of all monetary liens and encumbrances except current real property taxes (which taxes shall be prorated as of the date of conveyance), title exceptions of record and the covenants, conditions, reservations and restrictions contained in this Declaration and the instrument which conveys the Common Area to the Association.

1.12 "Common Expenses" means the actual and estimated costs incurred by the Association in administering, maintaining and operating the Project, including but not limited to, the following:

(a) maintenance, management, operation, repair and replacement of the Common Area, and all other areas of the Property which are maintained by the Association, including but not limited to, Front Yards and Retaining Walls, as applicable;

(b) unpaid Assessments;

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(c) costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;

(d) the costs of utilities, trash pickup and disposal, gardening and other services which generally benefit and enhance the value and desirability of the Property;

(e) the costs of fire, casualty, liability, workmen's compensation and other insurance covering the Common Area and other areas of the Property being maintained by the Association;

(f) the costs of any other insurance obtained by the Association;

(g) reasonable reserves, as deemed appropriate by the Board;

(h) any costs of bonding of the members of the Board, the President, any professional managing agent or any other person handling the funds of the Association;

(i) taxes paid by the Association;

(j) amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Area or portions thereof;

(k) costs incurred by committees established by the Board; and

(l) other expenses incurred by the Association for any reason whatsoever in connection with the Common Area (excepting reconstruction costs and capital improvements as otherwise provided for by Special Assessments), or the costs of any other item or items designated by this Declaration, the Articles, Bylaws, Association Rules or requirements of the Lakeside Village Committee of Architecture or the Fountain Hills Committee of Architecture or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association.

1.13 "Declarant" shall mean MCO Properties L.P., a Delaware limited partnership, and its successors and assigns if such successors or assigns should acquire two or more undeveloped lots from the Declarant for the purpose of development and resale and such acquisition includes a transfer of the Declarant's rights herein. No successor Declarant shall have any liability resulting from any actions or inactions of any preceding Declarant unless expressly assumed by a successive Declarant, in which event the preceding declarant shall be released from liability.

1.14 "Declaration" shall mean the provisions of this document

and any amendments thereto.

1.15 "Eligible Insurer or Guarantor" means an insurer or governmental guarantor of a First Mortgage who has requested notice of certain matters from the Association in accordance with Article 11 of this Declaration.

1.16 "Eligible Mortgage Holder" means a First Mortgage who has requested notice of certain matters from the Association in accordance with Article XI of this Declaration.

1.17 "First Mortgage" means any mortgage or deed of trust on a lot which has priority over all other mortgages or deeds of trust on the same lot.

1.18 "First Mortgagee" means the holder of any First Mortgage.

1.19 "Front Yard" means the land between any public street, and side fences, Yard Walls or residential improvements as to each Residence and Lot.

1.20 "Improvements" means buildings, roads, driveways, parking areas, private storm drains, fences, walls, rocks, hedges, plantings, planted trees and shrubs, and all other structures or landscaping improvements of every type and kind.

1.21 "Lot" or "Lots" shall mean any one of Lots 1 through 48 per the Plat.

1.22 "Member" means any person, corporation, partnership, joint venture or other legal entity who or which is a member of the Association.

1.23 "Owner" or "Owners" shall mean the record owner, except as provided below, whether one or more persons or entities, of fee simple title of any Lot, including without limitation, one who is buying a Lot under a recorded contract, but excluding others having an interest merely as security for the performance of an obligation. In the case of a Lot wherein the fee simple title is vested of record in a trustee pursuant to Arizona Revised Statutes, Section 33-801 et seq., legal title shall be deemed to be in the trustor. In the case of a Lot, the fee simple title to which is vested in a trustee pursuant to a trust agreement, the beneficiary entitled to possession shall be deemed to be the Owner.

1.24 "Plat" shall mean the plat of subdivision of the Property as recorded in the records of Maricopa County, Arizona and all amendments thereto.

1.25 "Project" means the Property, including Lots one (1) through forty-eight (48) and the Common Area, together with all buildings and other improvements located thereon and all easements,

rights and privileges appurtenant thereto.

1.26 "Project Documents" means this Declaration and the Articles, Bylaws, Association Rules and Architectural Committee Rules.

1.27 "Property" means all the real property described on attached Exhibit "A".

1.28 "Purchaser" means any person other than the Declarant and Centennial II Limited Partnership, who by means of voluntary transfer becomes the owner of a Lot except for (i) an Owner who purchases a Lot and then leases it to the Declarant or Centennial II Limited Partnership for use as a model in connection with the sale of other Lots or (ii) an Owner who, in addition to purchasing a Lot, is assigned any or all of the Declarant's rights under this Declaration.

1.29 "Residential Unit" means any building situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence by a single family.

1.30 "Single Family" shall mean an individual living alone, a group of two or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three persons not all so related, together with their domestic servants, who maintain a common household in a dwelling.

1.31 "Single-Family Residence" shall mean a building, house or dwelling unit used as a residence for a single family, including any appurtenant garage or storage area.

1.32 "Single-Family Residential Use" shall mean the occupation or use of a single-family residence in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state, county or municipal rules and regulations.

1.33 "Visible from Neighboring Property" shall mean that an object is or would be visible to a person six feet (6') tall standing on a neighboring lot or street at an elevation not greater than the elevation of the base of the object being viewed.

## **ARTICLE 2. PLAN OF DEVELOPMENT**

2.1 Property Initially Subject to the Declaration. This Declaration is being recorded to establish a general plan for the development and use of the Project in order to protect and enhance the value and desirability of the Project. All of the Property within the Project shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the Property subject to this Declaration, each Person or

entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the development and use of the Property and hereby evidences his intent that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by Declarant, the Association and all Owners. Declarant, its successors, assigns and grantees, covenants and agrees that each shall not separate or separately convey the Lots, and the membership in the Association and the other rights created by this Declaration, and such shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot. Upon conveyance of a Residential Unit to an Owner, each Owner shall also receive a non-exclusive right to use the Common Area.

2.2 Name of Project. The Project may be referred to as "Rancho Montana", or such other name as Centennial II Limited Partnership reasonably determines, provided that Centennial II Limited Partnership's power to change the name of the Project shall not be unreasonably exercised.

2.3 Property Subject to Fountain Hills Committee of Architecture and Lakeside Village Committee of Architecture. The purpose of imposing architectural control at the Project is to assure aesthetic integrity, to protect the natural environment and to prevent nuisances detrimental to other properties within the plat and Fountain Hills. The Declaration of Reservations for Fountain Hills, Arizona Final Plat 101, recorded at Docket 8821, on pages 72-120 in the office of the Maricopa County Recorder (the "Plat 101 Declaration") establishes a Committee of Architecture (referred to in this Declaration as the "Fountain Hills Committee of Architecture") for all areas of Fountain Hills having declarations which, by their language, are made subject to the Fountain Hills Committee of Architecture. The Declaration of Covenants, Conditions and Restrictions, Assessments, Charges, Servitudes, Liens, Reservations, Easements for Lakeside Village, recorded at Rec. No. 85-048746, and rerecorded at Rec. No. 89-441994 in the office of the Maricopa County Recorder (the "Lakeside Village Declaration"), establishes an Architectural Committee (referred to in this Declaration as the "Lakeside Village Committee of Architecture"). All Property in the Project is hereby made subject to the jurisdiction of the Fountain Hills Committee of

Architecture and to its rules of architecture and all Owners or users of Property in the Project shall comply with the requirements of the Fountain Hills Committee of Architecture. All Property in the Project is subject to the Lakeside Village Committee of Architecture, and this Declaration shall be a Tract Declaration as set forth in the Lakeside Village Declaration. All improvements, standards, definitions, and general land use regulations refer to those contained in this Declaration and the Plat 101 Declaration. Said provisions are hereby incorporated by this reference and made a part of these reservations affecting the Project, and are not to be confused with any general land use regulations or definitions contained in any ordinance of the Town of Fountain Hills, provided, however, in the event that any of the provisions of this Declaration conflict with any of the sections of the Fountain Hills Zoning Ordinance or Plat 101 Declaration as applicable to the Project, the most restrictive shall govern.

**ARTICLE 3. THE ASSOCIATION; RIGHTS AND DUTIES, MEMBERSHIP AND VOTING RIGHTS**

3.1 Rights, Powers and Duties. The Association shall be a non-profit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Project Documents together with such rights, powers and duties as may be reasonably necessary to effectuate the objectives and purposes of the Association as set forth in the Project Documents. Unless the Project Documents specifically require a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

3.2 Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers and committees as the Board may elect or appoint in accordance with the Articles and the Bylaws.

3.3 Association Rules. The Board may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations. The Association rules may restrict and govern the use of any area by any Owner, by the family of such Owner, or by an invitee, licensee or lessee of such Owner except that the Association Rules may not discriminate among and shall not be inconsistent with this Declaration, the Articles or Bylaws. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

3.4 Architectural Committee. The Board may establish an Architectural Committee consisting of not less than three (3) Persons, one (1) of which shall be a Member, to regulate the external design, appearance and use of the Property and to perform such other functions and duties as may be imposed upon it by this

Declaration, the Bylaws or the Board. So long as the Declarant owns any Lot, the Declarant shall have the right to appoint and remove Members of the Architectural Committee. At such time as the Declarant no longer owns any Lot, the Board shall have the right to appoint and remove individuals of the Architectural Committee. So long as Centennial II Limited Partnership owns any Lot, Centennial II Limited Partnership shall have the right to appoint and remove individuals of the Architectural Committee, subject to any rights of Declarant, if applicable.

3.5 Identity of Members. Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a member of the Association and shall remain a Member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease.

3.6 Transfer of Membership. Membership in the Association shall be appurtenant to each Lot and a membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of a Lot and then only to such Purchaser, or by intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal process. Any attempt to make a prohibited transfer shall be void and shall not be reflected upon the books and records of the Association. The Association shall have the right to charge a reasonable transfer fee to the new Owner in connection with any transfer of a Lot.

3.7 Classes of Members. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners, with the exception of the Declarant and Centennial II Limited Partnership until the termination of the Class B membership. Each Class A Member shall be entitled to one (1) vote for each Lot owned.

Class B. The Class B Members shall be the Declarant and Centennial II Limited Partnership. The Class B Members shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (i) When seventy-five percent (75%) of the Lots have been conveyed to Purchasers; or
- (ii) Five (5) years after the conveyance of the first Lot to a Purchaser; or
- (iii) When the Declarant and Centennial II Limited Partnership notify the Association in writing that they

