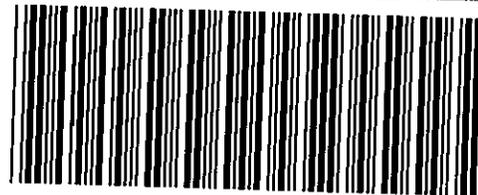


Upon recording return to:
DEL WEBB CORPORATION
6001 North 24th Street
Phoenix, AZ 85016
Attn: Beth Jo Zeitzer



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

99-0042710 01/15/99 03:38

IRENE 2 OF 3

DECLARATION OF COVENANTS AND EASEMENTS



HYATT & STUBBLEFIELD, P.C.
Attorneys and Counselors
1200 Peachtree Center, South Tower
225 Peachtree Street, N.E.
Atlanta, Georgia 30303

- TABLE OF CONTENTS -

| | <u>Page</u> |
|--------------------------------------------------------------------|-------------|
| I. DEFINITIONS | 2 |
| 1.1. Annual Assessment | 2 |
| 1.2. Anthem | 2 |
| 1.3. Apartment Tenant | 2 |
| 1.4. Areas of Council Responsibility | 2 |
| 1.5. Assessment Unit | 2 |
| 1.6. Association | 2 |
| 1.7. Association Declaration(s) | 3 |
| 1.8. Association Property | 3 |
| 1.9. Benefited Assessments | 3 |
| 1.10. Community Center | 3 |
| 1.11. Community Developer | 3 |
| 1.12. Community Enhancement Fee | 3 |
| 1.13. Community Guidelines | 3 |
| 1.14. Conceptual Plan | 3 |
| 1.15. Council Articles | 4 |
| 1.16. Council Board of Directors or Council Board | 4 |
| 1.17. Council By-Laws | 4 |
| 1.18. Council Documents | 4 |
| 1.19. Council Expenses | 4 |
| 1.20. Council Property | 4 |
| 1.21. Lot | 4 |
| 1.22. Mortgage | 4 |
| 1.23. Owner | 5 |
| 1.24. Person | 5 |
| 1.25. Record or Recording or Recorded | 5 |
| 1.26. Special Assessments | 5 |
| 1.27. Supplemental Declaration | 5 |
| II. COUNCIL JURISDICTION | 5 |
| 2.1. Council Jurisdiction | 5 |
| 2.2. Submission of Property by the Community Developer | 5 |
| 2.3. Submission of Property by Council | 6 |
| 2.4. Rights to Approve Additional Covenants | 6 |
| III. COUNCIL POWERS | 7 |
| 3.1. Express and Implied Powers | 7 |
| 3.2. Authorized Community Activities, Services, and Programs | 7 |
| 3.3. Relationship with Other Entities | 8 |

| | | |
|-------------|---------------------------------------------------------------------------------|-----------|
| 3.4. | Community Design - Standards and Review | 10 |
| 3.5. | Capacity Reservation Charge..... | 11 |
| 3.6. | Enforcement Rights | 11 |
| 3.7. | Dispute Resolution..... | 12 |
| IV. | COUNCIL PROPERTY..... | 13 |
| 4.1. | Powers and Duties of the Council over the Areas of Council Responsibility | 13 |
| 4.2. | Conveyance of Council Property by the Community Developer | 14 |
| 4.3. | Conveyance of Council Property from Associations or Other Persons | 14 |
| 4.4. | Dedication of Council Property | 14 |
| 4.5. | Easements in Favor of the Council | 14 |
| 4.6. | Easements Reserved to the Community Developer | 15 |
| 4.7. | Conservation Easement..... | 15 |
| 4.8. | Preservation Areas | 15 |
| 4.9. | Trails | 15 |
| 4.10. | Golf Carts..... | 15 |
| V. | COUNCIL GOVERNANCE..... | 16 |
| VI. | COUNCIL FUNDING..... | 16 |
| 6.1. | Budgeting and Allocating Council Expenses; Annual Assessments | 16 |
| 6.2. | Budgeting for Reserves..... | 17 |
| 6.3. | Community Developer's Obligation for Assessments | 18 |
| 6.4. | Special Assessments | 18 |
| 6.5. | Benefited Assessments..... | 18 |
| 6.6. | Community Enhancement Fee..... | 18 |
| 6.7. | Use and Consumption Fees..... | 20 |
| 6.8. | Authority to Levy Assessments and Obligation to Pay | 20 |
| 6.9. | Lien for Assessments | 21 |
| 6.10. | Council's Authority to Invoice and Collect Association Assessments | 22 |
| 6.11. | Commencement of Assessments..... | 23 |
| 6.12. | Exempt Property | 23 |
| 6.13. | Expenditure of Funds..... | 23 |
| VII. | GENERAL..... | 23 |
| 7.1. | Amendment..... | 23 |
| 7.2. | Duration | 24 |
| 7.3. | Transfer of the Community Developer's Rights | 25 |
| 7.4. | Attorneys' Fees..... | 25 |
| 7.5. | Notice..... | 25 |
| 7.6. | Applicable Law | 25 |
| 7.7. | Grammar | 25 |
| 7.8. | Severability | 25 |

7.9. Captions25
7.10. Exhibits25
7.11. Interpretation.....25

- TABLE OF EXHIBITS -

| <u>Exhibit</u> | <u>Subject Matter</u> | <u>First Page Referenced</u> |
|-----------------------|---------------------------------------------------------|-------------------------------------|
| "A" | Land Initially Submitted | 1 |
| "B" | Land Subject to Annexation | 4 |
| "C" | Formula For Allocating Votes and Assessment Obligations | 16 |
| "D" | Conceptual Plan | 3 |

DECLARATION OF COVENANTS AND EASEMENTS

FOR

ANTHEM

THIS DECLARATION OF COVENANTS AND EASEMENTS ("Community Covenant") is made this 14th day of JANUARY, 1999, by Anthem Arizona, L.L.C., an Arizona limited liability company ("Community Developer"). (The "Community Developer" shall include its successors, successors-in-title, or assigns who are designated as the Community Developer in an instrument executed and Recorded by the immediately preceding Community Developer.)

BACKGROUND STATEMENT

Anthem is a master planned community located in Maricopa County, Arizona. The Community Developer is the developer of Anthem and is the owner of the real property described in Exhibit "A" attached hereto (or, if not the owner, has the consent of the owner to subject such property to this Community Covenant). The Anthem Community Council, Inc. ("Council") is created to serve as a unifying entity for the Anthem development.

The Council shall be a catalyst for the creation of structures and opportunities both within Anthem and in the surrounding community. It will encourage inclusiveness and interaction between and among Anthem residents and generate, enhance, and preserve a genuine sense of community. It is empowered to provide mechanisms for the sharing and enrichment of diverse goals and perspectives while ensuring a common sense of place. It will be a resource of social trust, norms, and networks that people can draw upon to solve common problems and to advance common objectives.

The Council shall own and maintain real property and improvements. The Council also may maintain and operate property it does not own, provide community services benefiting all or portions of Anthem and the surrounding community, promote compliance with community regulations through education and communication programs, and engage in any other activity authorized or permitted by the Council Documents. To pay for the Council Expenses, all Owners, through an Association or directly, shall be obligated to pay assessments, fees, and other charges as set forth in this Community Covenant. In addition, the Council may charge any Person use or consumption fees for the use and enjoyment of activities, services, programs, and facilities provided by or through the Council.

The real property described on Exhibit "A" is hereby made subject to this Community Covenant. Such Exhibit "A" property and any addition real property made subject to this Community Covenant shall be owned, conveyed, and used subject to all of its provisions which shall run with the title to such property. This Community Covenant shall be binding upon all Persons having any right, title, or interest in any portion of the subjected real property, their heirs, successors, successors-in-title, and assigns.

The Council is not and is not intended to be a homeowners association, but is intended as a civic league under Section 501(c)(4) of the Internal Revenue Code (for purposes of this Section, referred to as a "501(c)(4) organization") to serve the common good and general welfare of the Anthem community. Notwithstanding the fact that the Council may be organized as a 501(c)(4) organization, should the Council Board determine that remaining so is no longer feasible for, or in the best interest of, the Council, the Council shall have the authority, in its sole discretion, to abandon its 501(c)(4) status and reorganize, as necessary, as another type of organization, which may or may not have tax-exempt status.

This document is not prepared pursuant to, and the Council is not subject to, the Arizona Planned Communities Act, A.R.S. § 33-1801, *et seq.* (1997), nor is the Council intended to be an Association as defined thereunder.

Article I Definitions

The words used in this Community Covenant shall generally be given their normal, commonly understood definitions unless otherwise specified. Capitalized terms shall be defined as follows:

1.1. "Annual Assessment": Assessments levied to pay for Council Expenses budgeted for the fiscal year, and as more specifically described in Section 6.1.

1.2. "Anthem": The real property described in Exhibit "A" and other real property comprising the master planned community depicted on the Conceptual Plan for Anthem, as it may be amended from time to time, or otherwise made subject to this Community Covenant.

1.3. "Apartment Tenant": One or more Persons leasing and residing in a multi-family residential apartment unit in a building owned by a Non-Residential Owner.

1.4. "Areas of Council Responsibility": Those areas, including the Council Property, for which the Council has maintenance, insurance, operating, or other responsibility.

1.5. "Assessment Unit": A numerical factor based upon a Lot's use and used to determine a particular Lot's assessment obligation and voting rights relative to all other Lots.

1.6. "Association": Any residential or non-residential community or property owners association within Anthem which is subject to the Council's jurisdiction, formed for the purpose of administering an Association Declaration, and which has the power to assess its members for common expenses, including, but not limited to, the Council Expenses. Notwithstanding the above, the term "Association" shall *not* include any "sub-association" (*e.g.*, a neighborhood or condominium association) whose jurisdiction is concurrent with, but subordinate to, that of another community or other property owners association.

An Association comprised of Owners whose property is intended for development, use, and occupancy as attached or detached single family residences is referred to as a "Residential Association." An Association comprised of Owners whose property is intended for any other purpose, including multi-family apartment rental, is referred to as a "Non-Residential Association."

1.7. "Association Declaration(s)": Each or any Recorded declaration of covenants, conditions, and restrictions (or any similarly denominated instrument) which is primarily administered by an Association (as opposed to any sub-association) and encumbers real property subject to the Council's jurisdiction.

1.8. "Association Property": All that certain real property which an Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of its Members as "common property" or "common area" according to the terms of and subject to an Association Declaration.

1.9. "Benefited Assessments": Assessments levied by the Council against one or more, but less than all, Associations or Owners for the purposes described in Section 6.5.

1.10. "Community Center": The land and improvements comprising the Anthem community and recreational center, as identified on the Conceptual Plan, and any additional land and improvements designated as part of the Community Center by the Community Developer or the Council, and conveyed to the Council as such. The initial Community Center shall include a swim facility, enclosed multi-purpose rooms, and a fitness center, but shall not include the community parks. The Community Center shall be available for the use and enjoyment of Residential Owners, the Apartment Tenants, and such other Persons as the Community Developer or the Council may designate from time to time.

1.11. "Community Developer": Anthem Arizona, L.L.C., an Arizona limited liability company, its successors and assigns.

1.12. "Community Enhancement Fee": The fee levied upon property transfers for purposes the Council Board deems beneficial to the common good and general welfare of the Anthem community, as provided for in Section 6.6.

1.13. "Community Guidelines": The architectural, design, and construction standards, guidelines, and procedures applicable to the Anthem community, as described in Section 3.4, as they may be amended.

1.14. "Conceptual Plan": The land use or site development plan for Anthem attached hereto as Exhibit "D," as it may be amended, updated, or supplemented from time to time. The identification of property and proposed uses of such property on the Conceptual Plan shall not, under any circumstances, obligate the Community Developer to subject such property to this Community Covenant or develop such property in the manner described. Omission of property from the Conceptual Plan shall not prevent its later submission by the Community Developer to

the terms of the Community Covenant or its development as a part of Anthem. Amendments to the Conceptual Plan shall not require the amendment of this Community Covenant.

1.15. "Council Articles": The Articles of Incorporation of Anthem Community Council, Inc., an Arizona nonprofit corporation, as filed with the Arizona Corporation Commission, as amended from time to time.

1.16. "Council Board of Directors" or "Council Board": The body responsible for administration of the Council, selected as provided in the Council By-Laws and serving the same role as the board of directors under Arizona corporate law.

1.17. "Council By-Laws": The By-Laws of Anthem Community Council, Inc., as amended from time to time.

1.18. "Council Documents": This Community Covenant, the Council Articles, the Council By-Laws, the Community Guidelines, and such other documents which govern the Council and the administration and operation of Anthem by the Council.

1.19. "Council Expenses": Actual and estimated expenses (including administrative costs) the Council incurs or anticipates incurring for the general benefit of Anthem, including expenses associated with operating, maintaining, and insuring the Areas of Council Responsibility, as well as actual and estimated expenses to provide programs and services.

1.20. "Council Property": All real and personal property which the Council owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of all or any portion of Anthem.

1.21. "Lot": A portion of property subject to this Community Covenant, whether improved or unimproved, which may be independently owned and conveyed. In the case of property subject to an Association Declaration, "Lot" shall mean only a portion of property which is separately assessable under the Association Declaration. The term shall not include Council Property, Association Property, or property dedicated to the public. The term shall refer to the land, if any, which is part of the Lot as well as any improvements thereon.

A Lot intended for development, use, and occupancy as an attached or detached single family residence is referred to as a "Residential Lot." A Lot intended for any other purpose is referred to as a "Non-Residential Lot." A Lot upon which an apartment building containing multiple dwellings for lease by Apartment Tenants is situated is a type of Non-Residential Lot referred to as a "Multi-family Lot."

1.22. "Mortgage": A mortgage, deed of trust, deed to secure debt, or any other form of security instrument affecting title to any Lot. A "Mortgagee" shall refer to a beneficiary or holder of a Mortgage.

1.23. "Owner": One or more Persons holding record title to a Lot, but excluding in all cases any mortgagee or other Person holding an interest merely as security for the performance of an obligation.

An Owner of a Lot intended for development, use, and occupancy as an attached or detached single family residence is referred to as a "Residential Owner." The Owner of a Lot intended for any other purpose is referred to as a "Non-Residential Owner." The Owner of an apartment building containing multiple dwellings for lease by Apartment Tenants shall be a Non-Residential Owner.

1.24. "Person": A human being, a corporation, a partnership, a trustee, or other legal entity.

1.25. "Record," "Recording," or "Recorded": To file, the filing, or filed of record a legal instrument in the Office of the County Recorder of Maricopa County, Arizona, or such other place as may be designated as the official location for recording deeds, plats, and similar documents affecting title to real estate.

1.26. "Special Assessments": Assessments levied to cover unanticipated expenses or expenses in excess of those budgeted, as described in Section 6.4.

1.27. "Supplemental Declaration": A Recorded instrument which subjects additional property to this Community Covenant pursuant to Sections 2.2 or 2.3 or which imposes additional restrictions and obligations on property within Anthem which is not subject to an Association Declaration.

Article II

Council Jurisdiction

2.1. Council Jurisdiction. In order to administer its powers and responsibilities under the Council Documents, the Council shall have jurisdiction over all property subjected to this Community Covenant. In addition, the Council may expand its jurisdictional scope by contractual agreement. Accordingly, every Owner and Association shall comply with the Council Documents and all rules and regulations governing access to and use of the Areas of Council Responsibility and Council services and programs. Except as specifically provided in this Community Covenant or an Association Declaration, the Council shall not have jurisdiction over the internal affairs or operations of any Association.

2.2. Submission of Property by the Community Developer. So long as the Community Developer owns property described on Exhibits "A" or "B," the Community Developer shall have the option to subject all or any portion of the Exhibit "B" property, with the consent of the owner(s) thereof, to this Community Covenant by Recording a Supplemental Declaration. Such annexation shall be effective upon Recording the Supplemental Declaration unless otherwise provided therein. The Community Developer's right to subject additional property to this Community Covenant shall not imply or be construed to impose any obligation to do so. Annexation by the Community Developer pursuant to this Section shall not require the

consent or approval of any Association or Owner (except the owner of the property being annexed).

2.3. Submission of Property by Council. The Council may, through the Council Board, subject all or any portion of the Exhibit "B" property to this Community Covenant by Recording a Supplemental Declaration executed by or on behalf of the Council and the owner(s) of the property being submitted. Such annexation shall be effective upon Recording the Supplemental Declaration unless otherwise provided therein. Annexation by the Council shall require the Community Developer's written consent for so long as the Community Developer owns property described on Exhibits "A" or "B."

ANTHEM COUNCIL JURISDICTION

~~Council exercises powers and responsibilities over all real property subject to the Community Covenant:~~

- Community Developer may subject property as long as Community Developer owns property described on Exhibits "A" or "B"
- Council may subject property with Community Developer's consent



Anthem

2.4. Rights to Approve Additional Covenants. No Person shall record any Association Declaration, Supplemental Declaration, or any other declaration of covenants, conditions, and restrictions or similar instrument affecting any portion of Anthem without the prior written consent of the Community Developer for so long as it owns property described on Exhibits "A" or "B," or, upon assignment of such right from the Community Developer, the Council. Any such instrument Recorded without such consent shall be void and of no force and effect, unless the Community Developer or the Council, as applicable, subsequently consent through a written, Recorded instrument.

Article III
Council Powers

3.1. Express and Implied Powers. The Council shall have such express or implied powers as are reasonably necessary to foster and promote the common good and general welfare of Anthem, its Owners, residents, tenants, and the surrounding community. Such powers shall include the right to enforce the Council Documents and sanction violating Owners in the manner provided in Section 3.6 and in the Council By-Laws. The Council shall act in accordance with, and subject to any limitations imposed by, the Council Documents and Arizona law.

The Council's powers shall include ownership, maintenance, management, and operation of property and facilities as well as service provision and creation. The Council may create and delegate authority to for-profit and nonprofit subsidiaries which may be tax exempt organizations.

It is expressly intended that the Council may engage in activities that benefit Persons other than Owners and residents in Anthem, and such activities are specifically authorized.

The Council may operate, manage, and maintain additional property which it does not own including, without limitation, property dedicated to public use, if the Council Board determines in its discretion that such action confers some benefit upon Anthem.

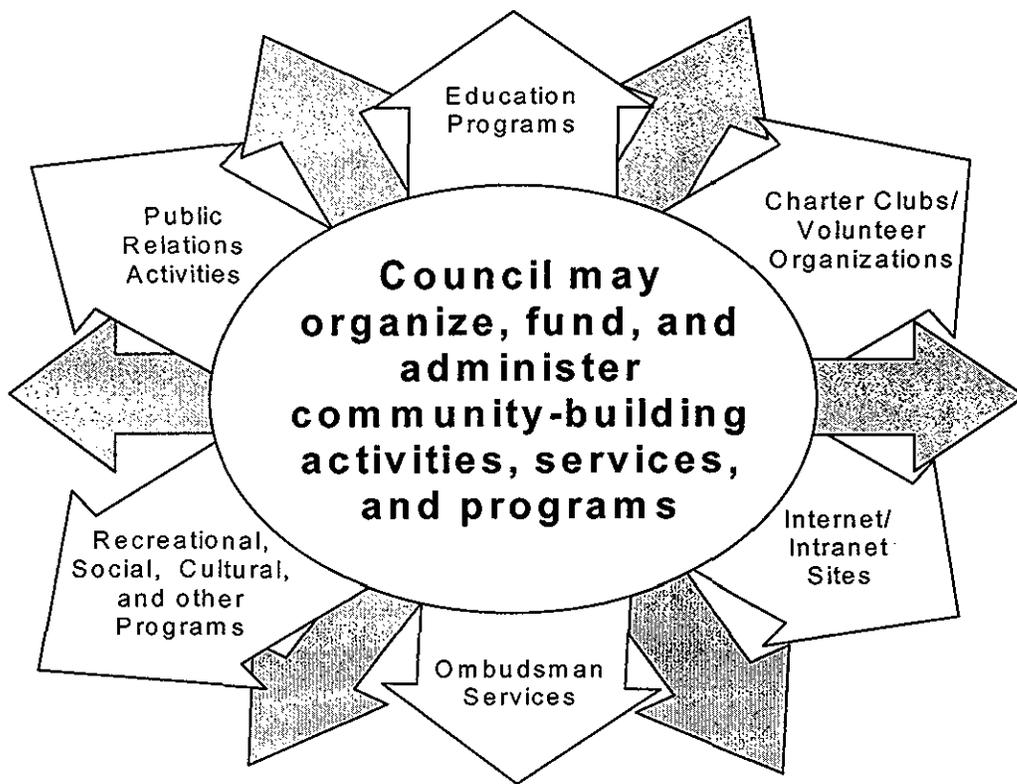
3.2. Authorized Community Activities, Services, and Programs. In order for the Council to fulfill its mission and to carry out its responsibilities and duties, the Council may organize, fund, and administer community-building activities, services, and programs as the Council Board deems necessary, desirable, or appropriate. Examples of such activities, services, and programs include, but are not limited to, the following:

- (a) operation and management of the Areas of Council Responsibility, including the Community Center (which duties may be delegated to an outside managing agent or manager, as provided in the Council By-Laws);
- (b) primary and adult education programs;
- (c) recreational and social programs;
- (d) activities designed to promote compliance with community regulations through education, communication, and grass roots support;
- (e) public relations activities on behalf of the Anthem community;
- (f) cultural, arts, environmental, and wellness programs;
- (g) community service activities for the benefit of residents within Anthem and the surrounding community;

- (h) computer Internet or intranet sites;
- (i) charter clubs and other volunteer organizations and activities;
- (j) other services, activities, and programs which advance the Council's mission to enhance the sense of community at Anthem; and
- (k) ombudsman service.

The Council shall sponsor or offer such ecological, environmental, and other instruction and education for Anthem residents and businesses as required by Maricopa County, including, without limitation, desert botanical instruction for new Anthem residents to educate them in the conservation of desert environment and wildlife habitats.

ANTHEM COUNCIL POWERS



3.3. Relationship with Other Entities.

(a) General. The Council may enter into cooperative agreements and expend funds for facilities use, shared services, development of projects, activities, and procedures which benefit Anthem and the surrounding community. The Council's authority shall include entering into agreements with and granting easements to public utilities for the generation and/or distribution of utility services.

(b) Service Providers. The Council may provide, or provide for, services and facilities for all or any of the Owners and their Lots, and is authorized to enter into and terminate contracts or agreements with other entities, including the Community Developer or its affiliates, to provide such services and facilities. The Board may charge use or service fees for any such services and facilities provided, or may include the costs thereof in the Council's budget as a Council Expense and assess it as part of the Annual Assessment if provided to all Lots.

In any contracts or agreements with third parties for the provision of services within Anthem, the Council may assign to the service provider the right to bill Owners directly and to pursue all legal or equitable remedies otherwise available to the Council in the collection of such bills. Any charge billed directly to an Owner in accordance with such a contract between the Council and the service provider shall be a charge and continuing lien in favor of the service provider against each Owner's Lot, enforceable by the service provider or the Council (as per the agreement between the Council and the service provider) in the manner provided for the enforcement of liens for assessments in Article VI.

By way of example, by agreement with Rural/Metro Corporation, an Arizona corporation ("Rural/Metro"), each Lot shall be provided fire protection services through the Rural/Metro fire subscription program and each Owner shall be subject to Rural/Metro's direct invoice, collection, and lien rights assigned to it by the Council as described above. In addition, other such services and facilities might include landscape maintenance, trash collection, pest control service, cable television service, security, caretaker, transportation, utilities, recycling, any services required by the City of Phoenix, Maricopa County, or other governmental authorities, and similar services and facilities.

Nothing in this Section shall be construed as a representation by the Community Developer or the Council as to what, if any, services shall be provided. In addition, the Council Board may modify or cancel existing contracts for services in its discretion, unless the provision of such services is otherwise required by the Council Documents. Non-use of services provided to all Owners or Lots as a Council Expense shall not exempt any Owner from the obligation to pay assessments for such services.

(c) Tax-Exempt Organizations. The Community Developer or the Council may create, enter into agreements or contracts with, or grant exclusive and/or nonexclusive easements over the Areas of Council Responsibility to non-profit, tax-exempt organizations, the operation of which confers some benefit upon Anthem. The Council may contribute money, real or personal property, or services to such entities, so long as such contributions benefit, as determined in the Council's sole discretion, Anthem, its residents, or the surrounding community. Any such contribution shall be a Council Expense. A "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code ("Code"), including, particularly, Code Sections 501(c)(3) or 501(c)(4), as amended from time to time.

The Council may maintain multiple use facilities within Anthem for temporary use by tax-exempt organizations. Such use may be on a scheduled or "first-come, first-served" basis. A reasonable maintenance and use fee may be charged for such use.

(d) Other Third Parties. The Council Property is private property and, in general, is not available for use by Persons other than Owners, occupants, and residents of Lots within Anthem. However, in the Council Board's discretion, and pursuant to such rules and regulations as the Council Board may adopt, the Council may provide services to or permit facilities use by other third parties, including the general public. The Council may, but is not required to, charge and collect use and consumption fees from third parties, as provided for in Section 6.7. Such services and fees may vary among such parties. The Council also may enter into agreements with third parties to provide such facilities and services in exchange for financial or other consideration.

(e) Associations. The Council shall have oversight authority over any action taken or proposed by an Association and may, in its discretion, veto Association actions or decisions determined to be contrary to the general scheme of development for Anthem. In addition, although each Association will be primarily responsible for enforcement and design review within its boundaries, the Council shall have the power to take action against, or require that specific action be taken by, an Owner or an Association, and to enforce the terms of this Community Covenant or any Association Declaration. Such actions may include requiring specific maintenance or repairs or aesthetic changes to be effectuated and requiring that a proposed budget include certain items and that expenditures be made therefor.

The Association or Owner shall take appropriate action required by the Council in a written notice within the reasonable time frame set by the Council in the notice. If the Association or Owner fails to comply, the Council shall have the right and easement to effect such action and may levy Benefited Assessments to cover its costs, as well as an administrative charge and sanctions.

If set forth in an Association Declaration, the Council Board shall appoint one or more representatives to serve on such Association's board of directors.

For those portions of Anthem not subject to an Association Declaration, the Council shall be primarily responsible for the enforcement of this Community Covenant and any other covenants, conditions, and restrictions separately Recorded against such property.

3.4 Community Design - Standards and Review. The Community Developer shall establish the initial Community Guidelines applicable to Anthem. The Community Guidelines shall contain standards applicable to all of Anthem and may include provisions applicable only to particular areas within Anthem. The Community Guidelines may vary within Anthem.

For so long as it owns property described on Exhibits "A" or "B," the Community Developer may amend the Community Guidelines. Thereafter, or upon assignment from the Community Developer, the Council may amend the Community Guidelines. The Council may directly administer and enforce the Community Guidelines or, in the case of property subject to an Association Declaration, may assign its rights to the Association having jurisdiction over such property, subject to the Council's oversight and veto authority described in Section 3.3(e).

In addition, the Council shall have the power to review design standards and guidelines, and any changes thereto, proposed by any Association. The Council Board may veto any such standards or guidelines which it reasonably determines to be objectionable, inconsistent with the established standards for Anthem, or in conflict with the Community Guidelines. However, nothing herein shall prohibit an Association from adopting and enforcing design standards or guidelines which are consistent with, but more stringent than, the Community Guidelines.

3.5. Capacity Reservation Charge. To the extent required, a Capacity Reservation Charge (as defined in the Agreement for The Villages at Desert Hills Water/Wastewater Infrastructure between Del Webb Corporation and Citizens Utilities Company, dated as of September 27, 1997 (the "Agreement")) shall be paid by a builder at the time of issuance of a building permit, and in accordance with the Agreement, for each Lot or other portion of Anthem that will use water.

3.6. Enforcement Rights. On its own initiative or upon the filing of a signed, written complaint by any Owner with the Council Board, the Council Board may investigate the facts and circumstances surrounding any matter which the Council Board determines to be in the general interest of Anthem. If the Council Board determines that an Owner or occupant or an Association has violated the Council Documents or Council rules, the Council Board may, but shall not be obligated to, take action to enforce the provision of the Council Documents or rules being violated. In addition, the Council shall have the right, but not the obligation, to enforce any provision of an Association Declaration or exercise the enforcement powers of an Association if the Council Board determines that the Association has failed or refused to fulfill its obligations. The Council may also enforce any collection and lien rights relating to Association assessments assigned to it by an Association pursuant to an Association Declaration.

Subject to the enforcement procedures set forth in the Council By-Laws, the Council Board shall have the power to impose sanctions, including, but not limited to the following:

- (a) reasonable monetary fines which shall constitute a lien upon the violator's property;
- (b) suspension of any Person's right to use the Community Center or other portions of the Areas of Council Responsibility; provided, nothing herein shall authorize the Council Board to limit an Owner's ingress or egress to or from his or her property; and
- (c) suspension of any services provided by the Council to a violator.

In addition, the Council Board may elect to enforce by abatement, the exercise of self-help (specifically including, but not limited to, towing vehicles), or by suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessity of compliance with the procedures set forth in the Council By-Laws. All remedies are cumulative of any remedies available at law or in equity. In any legal action, if the Council prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

The decision to pursue enforcement action in any particular case shall be left to the Council Board's discretion, except that the Council Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Council Board may determine that, under the circumstances of a particular case:

- (a) the Council's position is not strong enough to justify taking any or further action;
- (b) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;
- (c) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Council's resources; or
- (d) that it is not in the Council's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed a waiver of the Council's right to enforce such provision at a later time under other circumstances or preclude the Council from enforcing any other covenant, restriction, or rule.

The Council, by contract or other agreement, may enforce city and county ordinances, if applicable, and the City of Phoenix and Maricopa County may enforce their ordinances within Anthem for the benefit of the Council and the community.

3.7. Dispute Resolution. The Community Developer, each Association, and each Owner agree that it is in the best interest of all concerned to resolve disputes among and between Associations and among and between any Association or Owner and the Council without the emotional and financial costs of litigation. Accordingly, the Council is empowered to impose and enforce procedures and rules designed to encourage the resolution of disputes, including requiring written notice of claims and the structured negotiation or mediation of disputes.

Prior to the initiation of any administrative or judicial proceeding by one Association against another or by an Association or any Owner against the Council, the party initiating such action shall comply with the Council's procedures and rules. This Section shall serve as an agreement by the Associations and the Owners to submit their claims to such procedures or rules and the failure to abide by such requirements shall serve as a defense to any such action. The requirements of this Section shall not apply to any action by the Council to collect assessments or other fees or charges authorized by this Community Covenant or an Association Declaration, which actions may proceed in the Council's discretion directly without any prior procedure for claims resolution.

Article IV
Council Property

4.1. Powers and Duties of the Council over the Areas of Council Responsibility. The Council Board shall operate, manage, and maintain the Areas of Council Responsibility, including the Community Center, community and certain neighborhood parks, entry features and median landscaping for designated thoroughfares serving the entire Anthem community (*i.e.*, not including private streets, medians, or entry features serving only the members of an Association), designated walls and fences, conservancy areas, "washes," habitat mitigation areas, and trails, subject to and in accordance with the Council Documents, and any terms, conditions, covenants, or restrictions set forth in the instrument conveying title or granting an interest in such property to the Council.

Any Person's use and enjoyment of the Areas of Council Responsibility is subject to the Council Board's authority to promulgate and enforce reasonable rules and regulations governing such use and to charge use, consumption, or membership fees as it deems reasonable and appropriate. The rules and regulations and fees may be different for different classifications of users, including, but not limited to, Residential Owners, Non-Residential Owners, Apartment Tenants, employees or affiliates of the Community Developer, guests or social invitees, or otherwise. The posting of rules and regulations and fees in a conspicuous manner and location within Anthem or the publication in a community newsletter of general circulation within Anthem shall be deemed sufficient notice to all permitted users. The Board, in its discretion, may provide notice of rules, regulations, and fees by other means or methods.

Notwithstanding the above, there is hereby granted to each Residential Owner and to each Non-Residential Owner of an apartment building, for the benefit of its Apartment Tenants, a right and nonexclusive easement to use and enjoy the Community Center, subject to the Council Board's ability to charge use or consumption fees for such use and to promulgate and enforce reasonable rules and regulations governing such use. Other Non-Residential Owners, and their tenants and employees, shall not have a right and easement to use and enjoy the Community Center which is derived from ownership of property within Anthem. However, in its discretion, the Council Board may permit such use conditioned upon the payment of such use, consumption, or membership fees as it deems reasonable and appropriate.

Any Residential Owner or Apartment Tenant may extend his or her rights to use and enjoy Council Property to the members of his or her household, lessees, and social invitees, as applicable, subject to any rules and regulations governing use by guests, including limitations on the number of guests permitted, or applicable guest fees, as the Council Board may adopt. A Residential Owner who leases his or her Lot or an Apartment Tenant who subleases his or her apartment (if subleasing is permitted under the terms of the applicable lease) shall be deemed to have assigned all such rights to the lessee or sublessee of such Lot or apartment for the period of the lease.

The Community Developer hereby reserves for itself, its affiliates, sales agents, employees, and other designees (including, without limitation, prospective Lot purchasers), a right and nonexclusive easement of access to and the use and enjoyment of the Community

Center for sales and marketing, recreational use, and other purposes generally permitted for other users. Such use shall be subject to the operational rules and regulations pertaining to all other users but shall not be subject to the payment of use, consumption, or membership fees.

The Council shall make appropriate portions of the Community Center available for use by the community elementary school and for organized after-school programs in accordance with applicable Maricopa County development requirements and such terms and conditions as the Council Board, in cooperation with Maricopa County, shall establish.

4.2. Conveyance of Council Property by the Community Developer. The Community Developer may convey to the Council improved or unimproved real estate located within Anthem, personal property, and leasehold or other property interests. The Council shall accept and thereafter maintain such property as Council Property. The Council also shall perform such obligations and responsibilities with respect to such property as the Community Developer may assign in writing. Such obligations and responsibilities shall be undertaken as a Council Expense or, if benefiting less than all Owners, may be charged as a Benefited Assessment.

In recognition of the fact that the Community Developer conveys Council Property to the Council at no cost to the Council, if conveyed in error or needed to make minor adjustments in property lines, the Community Developer shall have the right unilaterally to amend this Community Covenant to make the appropriate adjustments to the property lines and may require the Council to reconvey to the Community Developer or to other Persons, any unimproved Council Property.

4.3. Conveyance of Council Property from Associations or Other Persons. The Council may acquire from the Associations or other Persons, under negotiated terms, and maintain improved or unimproved real estate, personal property, easements, and leasehold or other property interests. If the Council determines at the time of conveyance that such property benefits less than all of the Associations or the Owners, then the Council Board shall determine an equitable allocation of expenses in accordance with the benefits received and shall levy Benefited Assessments in accordance with Section 6.5 of this Community Covenant.

4.4. Dedication of Council Property. Subject to the approval of and acceptance by such entity, the Council may dedicate portions of the Council Property to any local, state, or federal governmental or quasi-governmental entity or public utility, provided the Council Board has determined, in its reasonable discretion, that such entity has the funding source and commitment to maintain properly the dedicated property.

4.5. Easements in Favor of the Council. There are hereby reserved and granted to the Council perpetual, nonexclusive blanket easements over, under, and across Association Property and the Lots (but not through a structure) as necessary for access, ingress, and egress to and from the Areas of Council Responsibility, and to enable the Council to fulfill its responsibilities under the Council Documents. The exercise of such easements shall not unreasonably interfere with the use and enjoyment of the burdened property and, upon completion of work, the Council shall restore the underlying property to its condition prior to the exercise of such easement, to the

extent reasonably possible. The Association Declarations may grant additional easements to the Council as provided therein.

4.6. Easements Reserved to the Community Developer. There is hereby reserved to the Community Developer and granted to its duly authorized agents, representatives, successors, assigns, licensees, and mortgagees, a perpetual, nonexclusive easement over the Council Property, including all facilities on the Council Property, for the use, access, development, sale, and marketing of property shown or described on Exhibits "A" or "B." This easement includes, but is not limited to, a right of ingress and egress over the Council Property for construction of roads and for tying in and installation of utilities on such property or other activities incidental to the marketing and sale of property within Anthem. The Community Developer also reserves for itself the nonexclusive right and power to grant and Record such specific easements as may be necessary, in the Community Developer's sole discretion, in connection with the orderly development of such property.

4.7. Conservation Easement. Portions of the Council Property are reserved and dedicated as areas which are protected from development and other interference by that certain Deed of Conservation Easement Between The Villages at Desert Hills, Inc., and Del E. Webb Land Conservancy, Recorded on February 16, 1996, as Document Number 96-0105850, as it may be amended from time to time ("Conservation Easement"). The grantee under the Conservation Easement has easement rights over all of Anthem as necessary to accomplish the purpose of the Conservation Easement. Council and all Owners are obligated to abide by the terms of the Conservation Easement, as applicable.

4.8. Preservation Areas. Portions of Anthem have been reserved or dedicated as habitat mitigation areas pursuant to The Villages at Desert Hills Habitat Mitigation Plan for Impacts to 404 Jurisdictional Areas, Case No. 97-400-65-00CAP, dated February 4, 1998 ("Mitigation Plan"). Additionally, portions of Anthem may be reserved or dedicated for the protection of cultural resources and other such natural amenities or for county-required trails and other natural amenities. The Council shall maintain such areas, and Owners, occupants, and residents shall comply with the Mitigation Plan, all county, state, or local laws, and all rules regarding such areas imposed by the Council Board from time to time. The Council may enter into agreements or contracts with non-profit, tax-exempt organizations for the operation and maintenance of these and other areas (including trails) and may grant such exclusive and/or nonexclusive easements as are necessary to the performance of the entity's contractual obligations.

4.9. Trails. The Council Property shall contain a multi-use trail system which the Council shall maintain. All or portions of such trail system shall be open for the use and enjoyment of the general public as required by Maricopa County or as otherwise determined in the Council Board's discretion. The extent of the trail system, as well as which portions of the trail system are made available for use by the general public, is subject to change from time to time in the Council Board's discretion. Use and enjoyment of the trail system by any Person is subject to Council rules and regulations.

4.10. Golf Carts. Except as may be permitted under an Association Declaration as initially Recorded, or on a golf course, golf carts shall not be used for transportation or other purposes within Anthem, including on public streets and Council Property.

Article V **Council Governance**

Except as specifically provided by this Community Covenant, all matters affecting Council governance shall be controlled by the Council Articles and the Council By-Laws. The Council shall be organized as a nonprofit corporation under Arizona law and shall have no members. For any matter requiring a vote of the Owners under the Council Documents, Owner votes shall be allocated in the same manner provided for the allocation of assessments, as described in Exhibit "C" to this Community Covenant. The Council Board shall be selected in accordance with the Council Articles and the Council By-Laws.

The "Council Liaison Committee," if established, will act as a liaison for the exchange of ideas between the Council and the Owners and Apartment Tenants, as more particularly described in the Council By-Laws. The Council Board shall meet with the Council Liaison Committee as deemed appropriate in the Council Board's discretion.

Article VI **Council Funding**

ANTHEM COUNCIL FUNDING SOURCES

- Annual Assessments
- Special Assessments
- Benefited Assessments
- Community Enhancement Fees
- Use and Consumption Fees
- Voluntary Community Developer Subsidies (funds and/or personnel)
- Voluntary Association Subsidies



6.1. Budgeting and Allocating Council Expenses: Annual Assessments. At least 75 days before the beginning of each fiscal year, the Council Board shall prepare a budget of the estimated Council Expenses for the coming year, including reserve contributions made pursuant to Section 6.2. The budget shall reflect sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments (*e.g.*, Community Enhancement Fees, user fees, subsidies, etc.), and the amount to be generated through assessments authorized in this Community Covenant.

Subject to Section 6.5, any costs associated with the maintenance and operation of the Areas of Council Responsibility shall be included in the budget of Council Expenses and allocated as part of the Annual Assessment. Under no circumstances may the Council Board designate such costs for allocation to a particular Association to the exclusion of other Associations without the prior written consent of the Association to which the costs are allocated; provided, costs associated with the maintenance and operation of any portion of the Areas of Council Responsibility which is designated as "Limited Common Area" (*i.e.*, for use by particular persons) pursuant to an Association Declaration may be assessed as provided in such Association Declaration.

Subject to Section 6.3, the Council shall levy an Annual Assessment against each Association, based upon the number of Lots within such Association, and each Lot which is not subject to the jurisdiction of an Association to fund Council Expenses. The amount of the Annual Assessment shall be allocated to individual "Assessment Units" in the manner set forth in Exhibit "C" and may be collected on an annual, quarterly, or monthly basis, as determined by Council Board resolution.

The Community Developer may, but shall not be obligated to, reduce the Annual Assessment for any fiscal year by payment of a subsidy. Any such subsidy shall be disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate the Community Developer to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Council and the Community Developer.

Within 30 days after the Council Board adopts a final budget, it shall send a copy to each Association and each Owner of a Lot not subject to the jurisdiction of an Association, along with a notice of the amount of the Annual Assessment and a summary of the allocations. The budget and assessment are effective upon the Council Board's adoption; provided, the Council may not impose an Annual Assessment that is more than 20% greater per "Assessment Unit" than the immediately preceding fiscal year's Annual Assessment without the affirmative vote or written consent of Owners representing at least a majority of the total votes within Anthem as determined in accordance with the formula set forth in Exhibit "C."

6.2. Budgeting for Reserves. The Council Board may, in its discretion, include in the budget amounts for capital and operating reserves. Reserves calculations shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. Reserves shall be funded as the Council Board, in the exercise of its business judgment, deems appropriate. The Council Board may enter into agreements with the

Community Developer, on negotiated terms, under which the Community Developer may obligate itself (by bond, contract, etc.) to provide reserve funds as needed on a "cash basis" in lieu of the Council funding reserves on an accrual basis. So long as the Council Board exercises business judgment in determining an adequate amount of reserves, the amount of the reserve fund, if any, shall be considered adequate.

6.3. Community Developer's Obligation for Assessments. The Community Developer is not obligated to pay assessments on Lots it owns. However, for a period of 10 years from the date of Recording of this Community Covenant, the Community Developer shall be obligated to pay the "shortage" (*i.e.*, operating deficit) for each fiscal year. A "shortage" shall exist if Income and Revenues (as defined below) for a particular fiscal year are less than Expenditures (as defined below) incurred for the same fiscal year. Income and Revenues and Expenditures are to be calculated using the accrual basis of accounting.

(a) Income and Revenues are: the amount of all income and revenue of any kind earned by the Community Council during the subject fiscal year, including, but not limited to, assessments, use fees, subsidies (if any) provided by the Community Developer, and income from all other sources.

(b) Expenditures are: the amount of all actual operating expenses incurred, or obligated for, by the Community Council during the subject fiscal year, including without limitation (i) any reserve contributions for such year, and (ii) any budgeted or approved non-budgeted capital assets acquired during the fiscal year, but excluding (i) all non-cash expenses such as depreciation or amortization, (ii) expenditures for or purchase of non-budgeted, non-approved items, and (iii) all expenditures made from reserve funds. For purposes of this paragraph, "approved" shall mean prior written approval of the Community Developer.

The Community Developer's obligations may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

6.4. Special Assessments. In addition to other authorized assessments, the Council may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment shall be allocated in the same manner as provided for the allocation of Annual Assessments. Special Assessments shall be payable in such manner and at such times as the Council Board determines, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

6.5. Benefited Assessments. The Council Board shall have the power to levy Benefited Assessments against particular Owners or a particular Association, as appropriate, for benefits, items, or services not provided to all Owners or Associations, or for costs incurred in taking action to enforce this Community Covenant or any Association Declaration as authorized herein.

6.6. Community Enhancement Fee.

(a) Authority. As an additional funding source, the Council shall establish and collect a fee upon each transfer of title to a Lot. Such fee shall be charged to the grantor of the property, shall be payable to the Council at the closing of the transfer, and shall be secured by the Council's lien for assessments. Each Owner transferring a Lot shall notify the Council's Secretary at least seven days prior to the scheduled transfer. Such notice shall include the name of the buyer, the date of title transfer, and other information the Council Board reasonably may require.

(b) Fee Limit. The Council Board shall have the sole discretion to specify the amount and method of determining the Community Enhancement Fee; provided, the Community Enhancement Fee shall not exceed 1/4% of the Gross Selling Price of the property. The fee may be based upon a sliding scale which varies in accordance with the "Gross Selling Price" of the property. In addition, the fee applicable to Residential Lot transfers may differ from that applied to Non-Residential Lot transfers based upon the relative benefit received from or through the Council. The Gross Selling Price shall be the total cost to the purchaser of the property, excluding transfer taxes and title fees imposed by Maricopa County, Arizona, or other applicable governmental authority.

(c) Purpose. Community Enhancement Fees shall be used for purposes which the Council Board deems beneficial to the general good and welfare of Anthem. By way of example and not limitation, Community Enhancement Fees might be used to assist the Council or one or more tax-exempt entities in funding:

(i) preservation and maintenance of natural areas, wildlife preserves, or similar conservation areas, and sponsorship of educational programs and activities which contribute to the overall understanding, appreciation, and preservation of the natural environment within and surrounding Anthem;

(ii) programs, services, and activities which serve to promote a sense of community within Anthem, such as recreational leagues, cultural programs, educational programs, festivals and holiday celebrations and activities, and a community computer network;

(iii) social services, community outreach programs, and other charitable causes;

(iv) Council and Association reserve accounts; and

(v) operating and maintenance costs.

(d) Exempt Transfers. Notwithstanding the above, no Community Enhancement Fee shall be levied upon transfer of title to property:

(i) by or to the Community Developer;

- and resale;
- (ii) by a builder or developer holding title solely for purposes of development and resale;
- (iii) by a co-owner to any Person who was a co-owner immediately prior to such transfer;
- (iv) to the Owner's estate, surviving spouse, or heirs at law upon the death of the Owner;
- (v) to an entity wholly owned by the grantor or to a family trust created by the grantor for the direct benefit of the grantor and his or her spouse and/or heirs at law; provided, upon any subsequent transfer of an ownership interest in such entity, the Community Enhancement Fee shall become due; or
- (vi) to an institutional lender as security for the performance of an obligation pursuant to a Mortgage.

ANTHEM COMMUNITY ENHANCEMENT FEES

- Specified percentage of sales price of each resale is collected at closing
- As an example, fees may be used for:
 - Reserve accounts
 - Environmental preservation and education
 - Operations/maintenance
 - Activities that promote sense of community:
 - Recreational leagues
 - Cultural programs
 - Educational programs
 - Festivals/holiday activities
 - Community Intranet

6.7. Use and Consumption Fees. The Council is authorized to charge use and consumption fees to any Person who uses services or facilities provided by or through the Council. The Council Board shall have the sole discretion to specify the amount of and method of determining use or consumption fees. The amount of use and consumption fees may vary among and between Owners and non-Owners.

6.8. Authority to Levy Assessments and Obligation to Pay. The Community Developer hereby establishes and the Council is hereby authorized to levy assessments, fees, and other charges as provided in this Article. All such charges shall be paid in such manner and on such dates as the Council Board may establish and as may be provided for in the Council Documents. If any Person is delinquent in paying any assessment, fee, or other charge, the Council Board may require that the outstanding balance on all such charges against it be paid in full immediately.

Each Association and each Owner of a Lot which is not subject to an Association Declaration covenants and agrees to pay all assessments, fees, and charges authorized by this Community Covenant. In addition, each Owner, by acceptance of a deed or entering into a Recorded contract of sale, covenants and agrees to pay all assessments, fees, and charges including Benefited Assessments, use and consumption fees, and Community Enhancement Fees, levied directly against his or her Lot under this Community Covenant. All assessments, together with interest (computed from the assessments' due date at a rate of 18% per annum or such other or higher rate as the Council Board may establish, subject to the limitations of Arizona law), late charges as determined by Council Board resolution, costs, and reasonable attorneys' fees, shall be the personal obligation of each obligor until paid in full. Upon a transfer of title to property, the grantee shall be jointly and severally liable for any such amounts due the Council at the time of conveyance.

Upon written request from an Owner against whom the Council has lien enforcement rights, by assignment or otherwise, a Mortgagee, or other Person designated by the Owner, the Council shall, within 15 days of its receipt of such request, furnish a statement setting forth the amount of any unpaid assessment against such Owner's Lot. Such statement shall be conclusive evidence of payment with respect to the period specified in the certificate. The Council may require the advance payment of a reasonable processing fee for the issuance of such statement.

The Council Board's failure to fix assessment amounts or rates or to deliver or mail an assessment notice shall not be deemed a waiver, modification, or a release of any Person from the obligation to pay assessments. In such event, each obligor shall continue to pay Annual Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Council may retroactively assess any shortfalls in collections.

No Association or Owner is exempt from liability for assessments by non-use of Council Property, services, programs, or any other reason, unless otherwise specifically exempt under this Community Covenant. The obligation to pay assessments is a separate and independent covenant. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Council or Council Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

6.9. Lien for Assessments. The Council shall have a lien against the real property of any obligor subject to this Community Covenant to secure payment of any delinquent assessments (Annual, Special, or Benefited), fees (including Community Enhancement Fees and

use and consumption fees), and charges, as well as interest, late charges (subject to the limitations of Arizona law), and costs of collection (including attorneys' fees), authorized by this Article. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any Recorded Mortgage with first priority over other Mortgages made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and judicial or non-judicial foreclosure.

Although no further action is required to create or perfect the lien as to any such property, the Council may, as further evidence and notice of the lien, execute and Record a document setting forth the amount of the delinquent sums due at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However, the Council's failure to execute and Record any such document shall not, to any extent, affect the validity, enforceability, perfection or priority of the lien. The lien may be foreclosed in the same manner as Mortgages are foreclosed under Arizona law.

The Council may bid for the lien property at a foreclosure sale and acquire, hold, lease, mortgage, and convey it if acquired. No assessment shall be levied on property owned by the Council following foreclosure. The Council may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of property shall not affect the lien or relieve such property from the lien for any subsequent assessments. However, sale or transfer pursuant to foreclosure of the first mortgage shall extinguish the lien as to any installments of such assessments due prior to the mortgagee's foreclosure. Subsequent to foreclosure, the Owner shall not be personally liable for assessments due prior to acquisition of title.

6.10. Council's Authority to Invoice and Collect Association Assessments. In an effort to minimize administrative costs and create an efficient assessment collection process for Anthem, the Council, upon assignment from an Association as set forth in an Association Declaration, shall invoice and collect directly from Owners assessments and other charges provided for in any Association Declaration, including amounts to be applied towards Council Expenses. Accordingly, each Association shall provide the Council with notice of the level of assessments to be levied against each Owner subject to its jurisdiction. Such assignment may include all or any portion of the Association's collection and enforcement rights, including the Association's lien rights, but shall not include any right to prepare or approve the Association's budget. Pursuant to such assignment, the Council shall collect assessments on behalf of the assigning Association and shall allocate collected funds between Council Expenses and other Association expenses. Funds allocable to Association expenses shall be disbursed to the Association by the Council or otherwise applied directly to such Association expenses pursuant to agreement with the Association.

An Association's assignment of invoice and collection rights and authority to the Council may be revoked, in whole or in part, only with the prior written consent of the Council and, for so long as the Community Developer owns property described on Exhibits "A" or "B," the Community Developer. Following any partial or complete revocation, such rights and authority

may be reassigned by the Association, and the Council shall accept such reassignment, in any succeeding fiscal year.

Unless otherwise specified by the Council, payments received shall be applied, as between Council Expenses and other Association expenses, to the oldest outstanding balance. If no outstanding balance exists as between either Council Expenses or other Association expenses, funds shall be applied first to Council Expenses. In no event shall the Council be required to allocate assessments received in a manner specifically requested by any Owner or Association.

6.11. Commencement of Assessments. As to Lots subject to an Association Declaration, the obligation to pay Annual Assessments to the Council shall commence on the first day of the month following the month in which the Council Board first determines a budget and levies assessments pursuant to this Article, or at such time as assessments commence on the Lots pursuant to the applicable Association Declaration, whichever is later. As to Lots not subject to an Association Declaration, the obligation to pay assessments shall commence as to each such Lot on the first day of the month following: (a) the month in which the Lot is made subject to this Community Covenant, or (b) the month in which the Council Board first determines a budget and levies assessments pursuant to this Article, whichever is later.

6.12. Exempt Property.

All Council Property, Association Property, property owned by a "sub-association" or by the members of a "sub-association" as tenants-in-common, any property owned by the Community Developer, and any property dedicated to and accepted by (a) any governmental authority or (b) a public utility for generation and/or distribution of utility services shall be exempt from payment of Annual and Special Assessments.

In addition, the Community Developer and/or the Council shall have the right, but not the obligation, to grant exemptions to certain Persons qualifying for tax exempt status under Section 501(c) of the Code so long as such Persons own property subject to this Community Covenant for purposes listed in Section 501(c).

6.13. Expenditure of Funds.

The assessment funds collected by the Council (other than those funds collected solely for the benefit of an Association pursuant to an Association Declaration under Section 6.10) shall be used in such manner as the Council deems appropriate in fulfilling its responsibilities. The judgment of the Council in determining the level of assessments and the allocation and expenditure of such funds shall be final so long as such judgment is exercised in good faith, and the Council, any director, or officer shall not be liable to any Person or entity for any error in judgment, or any action or inaction of the Council, the directors, or any officer, relating to the expenditure of such funds; provided, nothing herein shall protect any Person from liability for gross negligence or willful misconduct in the handling of such funds.

Article VII
General

7.1. Amendment.

(a) By the Community Developer. This Community Covenant may be amended unilaterally at any time by the Community Developer, its successors or assigns, if such amendment is necessary (a) to bring any provision hereof into compliance with applicable governmental statutes, rule or regulation, or judicial determination; (b) to enable reputable title insurance companies to issue title insurance on any portion of the property subject to this Community Covenant; (c) to permit an institutional or governmental lender, purchaser, guarantor, or insurer of mortgage loans to make, purchase, guarantee, or insure mortgage loans; or (d) to satisfy the requirements of any governmental agency.

In addition, so long as the Community Developer owns property described on Exhibits "A" or "B" for development as part of Anthem, it may unilaterally amend this Community Covenant for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

(b) By the Council Board. Except as otherwise specifically provided above and elsewhere in this Community Covenant, this Community Covenant may be amended only by the affirmative vote or written consent, or any combination thereof, of at least a majority of the members of the Council Board, and the consent of the Community Developer, so long as the Community Developer owns property described on Exhibits "A" or "B." However, if such amendment would be materially adverse to a particular Association or to a particular class of Owners of Lots not subject to an Association Declaration, the Owners comprising such Association or class of Owners may, by a vote of Owners representing at least a majority of the total votes within such Association or class of Owners, disapprove such amendment. The Council shall notify each Association and each Owner of a Lot not subject to an Association Declaration of its intention to amend this Community Covenant within 30 days of receiving the affirmative vote or written consent, or any combination thereof, of at least a majority of the members of the Council Board and the requisite consent, if any, of the Community Developer.

Amendments to this Community Covenant are effective upon Recordation unless a later effective date is specified. Any procedural challenge to an amendment must be made within 90 days of its Recordation. Failure to challenge an amendment within the specified time period shall constitute a waiver of any Person's right to challenge the amendment. If any Owner or Association pursues a challenge after the specified time period and such challenge is unsuccessful, the amount of attorneys' fees and costs incurred by the Council in defending the challenge shall be a Benefited Assessment levied against the adverse Owner's property or the Association making the challenge. In no event shall a change of conditions or circumstances operate to amend any provision of this Community Covenant.

7.2. Duration.

(a) Unless terminated as provided in Section 7.2(b), this Community Covenant shall have perpetual duration. If Arizona law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Community Covenant shall automatically be extended at the expiration of such period for successive 20-year periods, unless terminated as provided below. Notwithstanding the above, if any provision of this Community Covenant shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provision shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

(b) Unless otherwise required by Arizona law, this Community Covenant may not be terminated except by an instrument approved by the Council Board and each Association board of directors, and with the Community Developer's consent so long as the Community Developer owns property described on Exhibits "A" or "B." Any such instrument shall set forth the intent to terminate this Community Covenant and shall be Recorded.

7.3. Transfer of the Community Developer's Rights. Any or all of the special rights reserved to the Community Developer by the Council Documents may be transferred to other Persons. No such transfer shall be effective unless it is granted in a written instrument, signed and Recorded by the Community Developer. Transfer of the Community Developer's rights may not enlarge a right beyond that contained in the Council Documents.

7.4. Attorneys' Fees. In the event of an action instituted to enforce any provision of the Council Documents, the party prevailing in such action shall be entitled to recover from the other party thereto, as part of the judgment, reasonable attorneys' fees and costs, including administrative and lien fees, of such suit. In the event the Council is a prevailing party in such action, the amount of such attorneys' fees and costs shall be a Benefited Assessment levied against the adverse Owner's property or the Association involved in the action.

7.5. Notice. Any notice provided for in this Community Covenant shall be provided in accordance with the Council By-Laws.

7.6. Applicable Law. This Community Covenant shall be governed by and construed under Arizona law.

7.7. Grammar. In this Community Covenant, the singular shall be construed to mean the plural, when applicable.

7.8. Severability. Whenever possible, each provision of this Community Covenant shall be interpreted in such manner as to be effective and valid, but if application of any provision of this Community Covenant to any Person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Community Covenant shall be severable.

7.9. Captions. The captions of each Article and Section hereof are inserted only for convenience and shall not be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

7.10. Exhibits. Exhibits "A," "B," and "C" attached to this Community Covenant are incorporated by this reference, and amendment of such exhibits shall be governed by this Article. The amendment of Exhibit "D" is not governed by this Community Covenant.

7.11. Interpretation. The terms "hereof," "herein," "hereunder," and similar terms shall be deemed to refer to this Community Covenant. The terms "include," "includes," and "including" shall be deemed to be followed by the words "without limitation."

IN WITNESS WHEREOF, the undersigned has executed this Declaration of Covenants and Easements for Anthem this 14th day of January, 1999.

COMMUNITY DEVELOPER: Anthem Arizona, L.L.C.,
an Arizona limited liability company

By: Thomas E. Lucas
Name: Thomas E. Lucas
Its: Vice president & General Manager

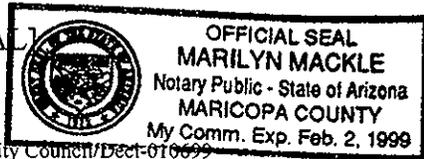
STATE OF ARIZONA)
) s.s.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 14th day of January, 1999 by Thomas E. Lucas, as the manager of Anthem Arizona, L.L.C., an Arizona limited liability company.

Marilyn Mackle
Notary Public

My Commission Expires: 02-02-99

[NOTARIAL SEAL]



509001/CADocs/Community Council/Decl-010699

EXHIBIT "A"

Land Initially Submitted

Anthem Country Club Unit 1 Amended, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 490, Page 42.

Anthem Country Club Unit 2 Amended, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 490, Page 23.

Anthem Country Club Unit 3 Amended, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 490, Page 24.

Anthem Country Club Unit 4 Amended, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 490, Page 25.

Anthem Country Club Unit 5 Amended, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 490, Page 26.

Anthem Country Club Unit 6 Amended, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 490, Page 22.

Anthem Club Drive, according to a Corrective Map of Tract Dedication record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 485, page 09.

Lots 1 through 61, inclusive, of **ANTHEM UNIT 1**, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 476 of Maps, Page 31;

Lots 62 through 203, inclusive, of **ANTHEM UNIT 2**, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 477 of Maps, Page 47;

Lots 204 through 335, inclusive, of **ANTHEM UNIT 3 CORRECTED FINAL PLAT**, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 484 of Maps, Page 24;

Lots 336 through 410, inclusive, of **ANTHEM UNIT 4 CORRECTED FINAL PLAT**, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 484 of Maps, Page 25; and

Lots 411 through 565, inclusive, of **ANTHEM UNIT 5**, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 482 of Maps, Page 05.

EXHIBIT "B"

Land Subject to Annexation

All real property lying and being within 25 miles from any portion of any boundary line outlining any and all Property described on Exhibit "A" attached hereto.

EXHIBIT "C"

Formula for Allocating Votes and Assessment Obligations

Determination of Assessment Units.

The allocation of assessments and votes under the Community Covenant shall be based upon "Assessment Units." Each Lot shall be assigned Assessment Units based upon the Lot's classification. In the event that the classification for a particular Lot is not apparent, the determination of the Community Developer shall be controlling. The total number of Assessment Units assigned to a Lot shall be determined as follows:

| <u>Lot Classification</u> | <u>Assessment Units</u> |
|-----------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| • Single family Residential Lots (per Lot) | |
| ⇒ Owned by a builder/developer (other than Community Developer, its subsidiaries and affiliates) prior to conveyance of title to a home owner | .25 |
| ⇒ After conveyance of title to a home owner | 1.00 |
| • Non-Residential Lots (other than Multi-family Lots) (per acre*) | 1.50 |
| • Multi-family Lots | |
| ⇒ Prior to issuance of certificate of occupancy on any building on the Lot (per acre) | 1.50 |
| ⇒ Upon issuance of certificate of occupancy on any building on the Lot (per apartment unit**) | .67 |
| • Exempt Property | 0 |

* Acres shall be rounded to the nearest 1/100 of an acre.

** The number of apartment units shall be based upon the number of actual, completed units plus the number of additional units planned and approved for the Lot.

A Lot's Classification shall initially be determined at the time of conveyance or commencement of assessments based on the intended use of the Lot in accordance with the Conceptual Plan, or an applicable Supplemental Declaration. In the event that any question or conflict arises regarding a particular Lot's Classification, the Community Developer shall determine the Lot's Classification and provide notice to the Council of such determination, which shall be final. After the Community Developer no longer owns property described in Exhibits "A" or "B" to the

Community Covenant, the Council Board shall determine the Lot's classification, which determination shall be final.

Allocation of Assessments.

The allocation of assessments shall be computed by multiplying the total amount to be assessed ("Budget") by a fraction, the numerator of which is the number of Assessment Units assigned to a Lot, and the denominator of which is the total Assessment Units assigned to all Lots subject to assessment. The result is the assessment assigned, in dollars, to the particular Lot. The formula is illustrated as follows:

$$\frac{\text{AU's Assigned to a Particular Lot}}{\text{Total AU's Assigned to All Lots}} \times \text{Budget} = \text{Assessment Assigned to a Particular Lot}$$

The per Association assessment is then determined by adding together all of the Lot assessments within such Association.

The Assessment Units shall be computed annually by the Council Board, and notice of the allocation of Assessment Units (including a summary of the computations) shall be sent to each obligor with its notice of assessment. Upon annexation of additional property into the jurisdiction of the Council, the Council Board shall recompute the assessment allocations and send a notice of recomputed percentages to each obligor; however, no adjustments of assessments previously levied or refunds of assessments paid shall be made to reflect the recomputation.

Definitions.

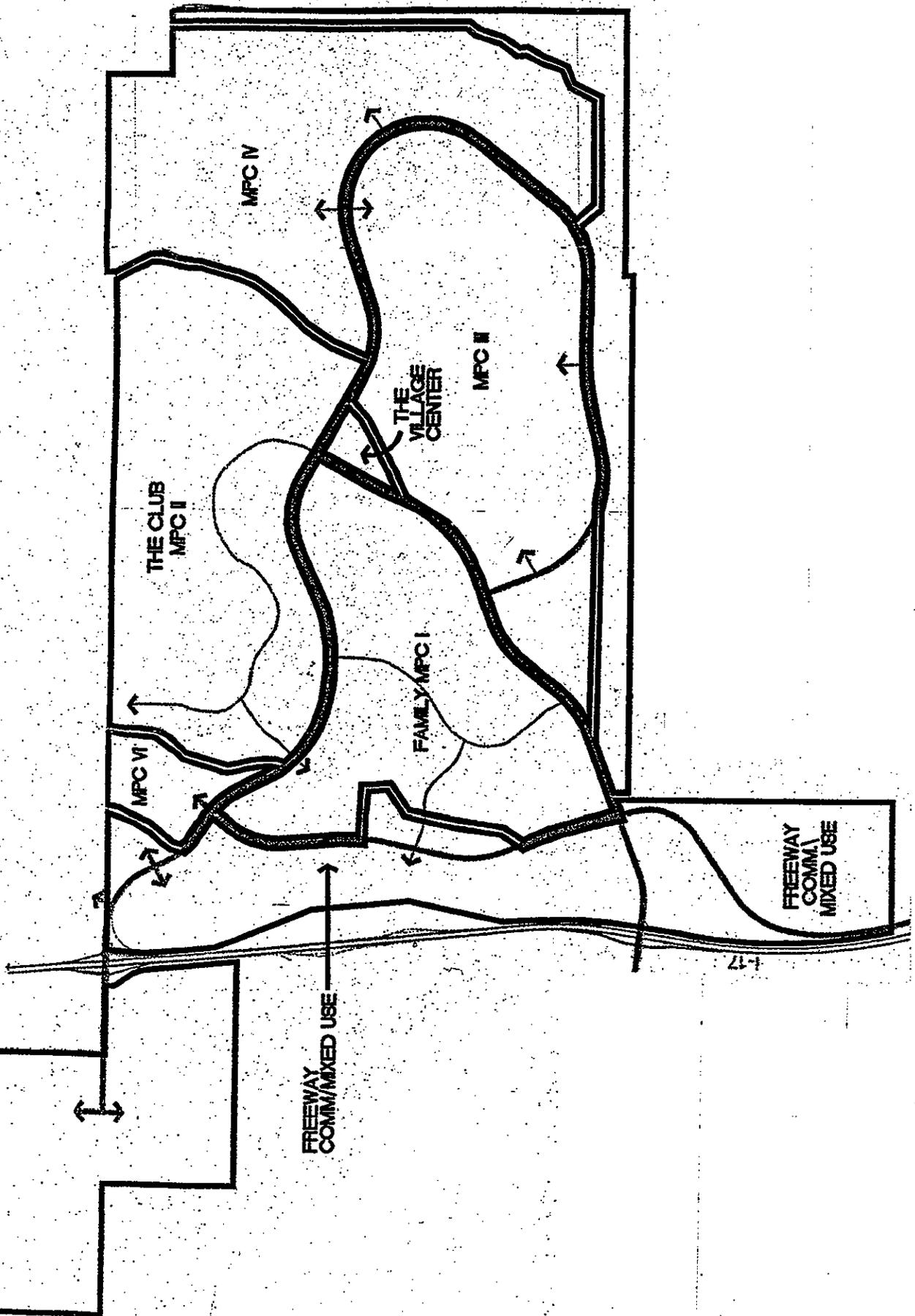
(a) A "builder" or "developer" shall be any Person who purchases one or more parcels or Lots for the purpose of development and construction of improvements for later sale to consumers in the ordinary course of such Person's business.

(b) A "certificate of occupancy" is that certificate or approval issued by the local municipality as a final condition of occupancy of a structure for its intended use.

EXHIBIT "D"

Conceptual Plan

MFC VII
WEST SIDE
(In The City of Phoenix)



19990042710
OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL



The foregoing instrument is
a full, true and correct
copy of the original record
in this office.

Attest: 03/25/2009 01:32:51 PM

By *Helen Purcell* Recorder