

anthem

community council

DECLARATION OF RESTRICTIVE COVENANTS

(Anthem Arizona L.L.C. / Active Mitigation Areas)

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This DECLARATION OF RESTRICTIVE COVENANTS ("Restrictive Covenant") is made this 31st day of March, 2005 by Anthem Arizona L.L.C., an Arizona limited liability company (hereinafter "Declarant").

Recitals

1. Declarant is the developer of certain real property in Maricopa County, State of Arizona, commonly referred to as "Anthem" (formerly known as the Villages at Desert Hills) (the "Project").
2. Declarant is the sole owner in fee simple of those portions of the Project legally described on Exhibit "A" and depicted on Exhibit "B" attached hereto and incorporated by this reference (the "Restricted Property"), which consists of approximately 34.7759 acres.
3. This Restrictive Covenant provides mitigation for certain impacts of the Project by Declarant pursuant to requirements of the United States Army Corps of Engineers' ("ACOE") Section 404 Permit No. 974-0065-RJD effective February 11, 1998 and any amendments thereto ("Section 404 Permit"). Special Condition (g) of the Section 404 Permit requires Declarant to record a Restrictive Covenant for all Natural Area Open Space ("NAOS"). This Restrictive Covenant is intended and shall be deemed to satisfy such part of Special Condition (g) as to the Restricted Property. The Restricted Property is and will remain in a natural condition as defined herein and is intended to be preserved in its natural, scenic, open condition to maintain its ecological, historical, visual and educational values (collectively, "Conservation Values").
4. Declarant is the present owner of the Restricted Property and is responsible for development of the Project. Declarant has the responsibility to fulfill mitigation obligations associated with the Project. In accordance with a phasing schedule, Declarant will withdraw as owner of the Restricted Property by transferring ownership in fee to one of the Associations formed for the Project ("Association"). Association will assume the roles and responsibilities of Declarant and carry out the duties and responsibilities of the owner of the Restricted Property.
5. The ACOE is the Federal agency charged with regulatory authority over discharges of dredged and fill material in waters of the United States pursuant to Section 404 of the Clean Water Act.

Covenants, Terms, Conditions and Restrictions

NOW THEREFORE, Declarant hereby declares the Restricted Property shall be held, transferred, conveyed, leased, occupied or otherwise disposed of and used subject to the following restrictive covenants, which shall run with the land and be binding on Declarant's heirs, successors in interest, administrators, assigns, lessees, or other occupiers and users of the Restricted Property or any portion of it:

1. Purpose

- a) The purpose of this Restrictive Covenant is to ensure the Restricted Property will be retained in perpetuity in a Natural Condition, defined below, and to prevent any use of the Restricted Property that will impair or interfere with the Conservation Values of the Restricted Property (the "Purpose"). Declarant intends that this Restrictive Covenant will confine the use of the Restricted Property to such activities, including without limitation, those involving the preservation and enhancement of native species and their habitat in a manner consistent with the habitat conservation Purpose of this Restrictive Covenant.
- b) The term "Natural Condition," as referenced in the preceding paragraph and other portions of this Restrictive Covenant, shall mean the condition of the Restricted Property as it exists at the time this Restrictive Covenant is executed, as well as future enhancements or changes to the Restricted Property that occur directly as a result of the following activities:
 - i. Compensatory mitigation measures required by the Section 404 Permit, and as described in the Final Mitigation Plan dated February 4, 1998 and amendments thereto ("Mitigation Plan"), the cover page and Introduction of which are attached as Exhibit "C," including implementation, maintenance and monitoring activities for a five-year period (collectively, "Compensatory Mitigation"); or
 - ii. Activities described in Section 5 herein; or
 - iii. In-perpetuity maintenance obligations ("Long-Term Maintenance") that occurs on the Restricted Property as described in Section 13 herein.
- c) Declarant certifies to the ACOE that, to Declarant's actual knowledge, there are no structures or other man-made improvements existing on the Restricted Property other than expressly permitted under this Restrictive Covenant (e.g., utility lines, etc.). Declarant further certifies to the ACOE that, to Declarant's actual knowledge, based on one or more title reports prepared for the Anthem property and submitted to the ACOE (collectively, the "Title Report"), there are no previously granted easements existing on the Restricted Property that interfere or conflict with the Purpose of this Restrictive Covenant. Declarant has delivered evidence of the Natural Condition to the ACOE consisting of (1) depiction of the Restricted Property showing all relevant and plottable property lines and casements; (2) an aerial photograph of the Restricted Property at an appropriate scale taken as close in time as possible to the date this Restrictive Covenant is executed; (3) an overlay of the Restricted Property boundaries on such aerial photograph; and (4) on-site photographs showing the natural features of the Restricted Property.
- d) If a controversy arises with respect to the Natural Condition of the Restricted Property, the ACOE shall not be foreclosed from utilizing any and all other relevant documents, surveys, photographs or other evidence or information to assist in the resolution of the controversy.
- e) The term "Biological Monitor" shall mean an independent third-party consultant with knowledge of ephemeral wash aquatic resources in the Maricopa County area and expertise in the field of biology.

2. ACOE's Rights

To accomplish the Purpose of this Restrictive Covenant, Declarant hereby grants and conveys the following rights to ACOE or its designees, but without obligation of the ACOE:

- a) A non-exclusive easement to preserve and protect the Conservation Values of the Restricted Property;
- b) A non-exclusive easement to enter upon the Restricted Property at reasonable times after twenty-four (24) hours' notice to Declarant in order to monitor Declarant's compliance with and to otherwise enforce the terms of this Restrictive Covenant, provided that ACOE or its designee shall not unreasonably interfere with Declarant's use and quiet enjoyment of the Parcel (other than the Restricted Property). In the event of an emergency or if there is a current violation of this Restrictive Covenant, no prior notice is required in order for ACOE to enter upon the Restricted Property;
- c) A non-exclusive easement to prevent any activity on or use of the Restricted Property that is inconsistent with the Purpose of this Restrictive Covenant and to require the restoration of such areas or features of the Restricted Property that may be damaged by any act, failure to act, or any use that is inconsistent with the Purpose of this Restrictive Covenant;
- d) All present and future development rights, except for making the land available for restoration and other purposes set forth herein, and provided any exercise of such rights must preserve the Restricted Property in its Natural Condition as that is defined in Section 1(b) of this Restrictive Covenant. Any exercise of present and future development rights by the ACOE shall not be in conflict with the Conservation Values of the Restricted Property; and
- e) The right to enforce by means, including, without limitation, injunctive relief, the terms and conditions of this Restrictive Covenant.

3. Declarant's Duties

Declarant, its successors and assigns shall:

- a) Undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities would be inconsistent with the Conservation Values and would violate the permitted uses of the Restricted Property set forth in this Restrictive Covenant;
- b) Comply with the terms of this Restrictive Covenant and cooperate with the ACOE in the protection of the Conservation Values;
- c) Repair and restore damage to the Restricted Property directly caused by Declarant, Declarant's guests, representatives or agents and third parties; provided, however, Declarant, its successors or assigns shall not engage in any repair or restoration work in the Restricted Property without first consulting with the ACOE;
- d) Obtain any applicable governmental permits and approvals for any activity or use permitted by this Restrictive Covenant, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders or requirements;

- e) Undertake construction, maintenance and monitoring of mitigated areas pursuant to the Mitigation Plan until receipt of final approval of the success of the Compensatory Mitigation from the ACOE ("ACOE .Final Approval");
- f) Perform in-perpetuity Long-Term Maintenance set forth in Section 13 below;
- g) Install signs set forth in Section 5(d) below;
- h) Ensure, before conveyance of the Restricted Property to Association as contemplated herein, that as of the date of such conveyance, the Declarant is in full compliance with all of its obligations contained in this Section 3;
- i) Perform an annual compliance inspection of the Restricted Property, prepare a brief summary of the findings, and shall make summary available to the ACOE upon request;
- j) Prepare a summary of monitoring and maintenance when activities are performed as set forth in Sections 13(a), (b) and (d) herein, and shall make summaries available to the ACOE upon request; and
- k) Retain a Biological Monitor to prepare a detailed Restoration Plan and oversee/monitor Long-Term Maintenance activities performed pursuant to Section 13(c). Declarant shall have its Biological Monitor submit the draft Restoration Plan to the ACOE for review and written approval prior to its implementation. Upon completion of restoration as specified in the ACOE-approved Restoration Plan, the Declarant shall have its Biological Monitor prepare a detailed monitoring and maintenance report and shall forward the report to the ACOE within thirty (30) days of completion of restoration activities. Said report shall be signed by Declarant, its successor or assign and the Biological Monitor, and the report shall document the Biological Monitor's name and affiliation, dates the Biological Monitor was present on-site, activities observed and their location, the Biological Monitor's observations regarding the adequacy of maintenance performance by the Declarant or its contractor in accordance with the approved Restoration Plan, corrections recommended and implemented.

4. Prohibited Uses

Any activity on or use of the Restricted Property inconsistent with the Purpose of this Restrictive Covenant and not reserved as set forth in Section 5 hereof is prohibited. Without limiting the generality of the foregoing, the following uses by Declarant, and its respective guests, agents, assigns, employees, representatives, successors and third parties under Declarant's control, are expressly prohibited on the Restricted Property, except as otherwise provided herein or in the Mitigation Plan, or unless specifically provided for in the Section 404 Permit or in any easements and reservations of rights recorded in the chain of title to the Restricted Property at the time of this conveyance.

- a) Supplemental watering except for habitat enhancement activities described in Section 5(12) or the Mitigation Plan;
- b) Except as permitted by the Mitigation Plan, use of herbicides, pesticides, rodenticides, biocides, fertilizers, or other agricultural chemicals or weed abatement activities, except weed abatement activities necessary to control or remove invasive, exotic plant species;
- c) Incompatible fire protection activities, except fire prevention activities expressly reserved herein;

- d) Use of off-road vehicles and use of any other motorized vehicles except as necessary to restore native plant communities consistent with Section 5;
- e) Livestock grazing or other agricultural activity of any kind;
- f) Recreational activities except as may be specifically permitted under this Restrictive Covenant;
- g) Residential, commercial or industrial uses;
- h) Any legal or de facto division, subdivision or portioning of the Restricted Property, except transfers in accordance with Section 11 below and the platting of the Restricted Property as separate tracts designated as "Natural Area Open Space" or similar label in connection with the platting of the Project;
- i) Construction, reconstruction or placement of any building or other improvement, billboard, or sign except those signs specifically permitted under Section 3(g) and Section 5(d);
- j) Dumping of soil, trash, ashes, refuse, waste, bio-solids or any other material;
- k) Planting, introduction or dispersal of non-native or exotic plant or animal species;
- l) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extraction of minerals, loam, gravel, soil, rock, sand or other material on or below the surface of the Restricted Property other than in connection with archeological and biological scientific explorations, provided that following the completion of any such explorations, the surface shall be restored to its Natural Condition;
- m) Altering the general topography of the Restricted Property, including but not limited to building of roads and flood control work;
- n) Removing, destroying, or cutting of trees, shrubs or other vegetation, except for (1) fire breaks as required by fire safety officials as set forth in Section 5(f), (2) maintenance of existing trails or paths and maintenance of trails or paths constructed pursuant to Section 5(g), (3) control of invasive, exotic plants which threaten the integrity of the habitat, (4) prevention or treatment of disease, (5) activities described in the Mitigation Plan, or (6) activities described in Section 5; and
- o) Manipulating, impounding or altering any natural watercourse, body of water or water circulation on the Restricted Property, and activities or uses detrimental to water quality, including, but not limited to, degradation or pollution of any surface or sub-surface waters.

5. Reserved Rights

Declarant reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Restricted Property, including the right to engage in or to permit or invite others to engage in all uses of the Restricted Property that are consistent with the Purpose of this Restrictive Covenant, including the following uses:

- a) Access
Reasonable access through the Restricted Property to adjacent land over existing roads, or to perform obligations or other activities permitted by this Restrictive Covenant or that are required under the Section 404 Permit. In addition, police and other public safety organizations and their personnel may enter the Restricted Property to address any legitimate public health or safety matter. It is contemplated Declarant will ultimately convey all of the Restricted Property to the Association. The Association will assume the roles and responsibilities of Declarant under

this Restrictive Covenant, except that Declarant will remain responsible for the Compensatory Mitigation obligations of the Section 404 Permit until they are successfully completed as confirmed in writing by the ACOE. In the event Declarant conveys its interest in the Restricted Property prior to completion of Compensatory Mitigation requirements, Declarant expressly reserves the right to enter the Restricted Property to perform such work thereon as is required to meet the Compensatory Mitigation obligations of the Section 404 Permit.

b) Habitat Enhancement or Restoration Activities

Enhancement or restoration of native plant communities, including the right to plant trees and shrubs of the same type as currently existing on the Restricted Property, so long as such activities do not harm the habitat types identified in the Section 404 Permit and to place water bowls and similar features on the Restricted Property for use by the wildlife. For purposes of preventing erosion and reestablishing native vegetation, the Declarant shall have the right to revegetate areas that may be damaged by the permitted activities under this Section 5, naturally occurring events or by the acts of persons wrongfully damaging the Natural Condition of the Restricted Property. Prior to any habitat enhancement or restoration activities, the Declarant shall have its Biological Monitor submit detailed plans to the ACOE for review and written approval, which approval shall not be unreasonably withheld, conditioned or delayed, provided, however, that such approval shall be deemed to have been given by ACOE if they fail to respond to a request therefor on or prior to the date that is sixty (60) days after their receipt of request therefor. It shall be reasonable for ACOE to withhold consent of such activities that are in direct or potential conflict with the preservation of the Natural Condition of the Restricted Property.

c) Vegetation, Debris, and Exotic Species Removal

Removal or trimming of vegetation downed or damaged due to natural disaster, removal of man-made debris, removal of parasitic vegetation (as it relates to the health of the host plant) and non-native or exotic plant or animal species. Vegetation, debris, and exotic species removal do not require ACOE notification. However, if after removal action has been completed Declarant determines that additional restoration or enhancement action is needed Declarant shall notify ACOE as described in Section 5(b).

d) Erection and Maintenance of Informative Signage

Erection and maintenance of signage and other notification features saying "Natural Area Open Space," "Protected Natural Area," or similar descriptions that inform persons of the nature and restrictions on the Restricted Property. Prior to erection of such signage, the Declarant shall submit detailed plans showing the location of such signs to the ACOE for review and approval. The ACOE's approval shall not be unreasonably withheld, conditioned or delayed, provided, however, such approval shall be deemed to have been given by ACOE if the agency fails to respond to a request therefor on or prior to the date that is sixty (60) days after such agency's receipt of request therefor. It shall be reasonable for ACOE to withhold consent of such structures that are in direct or potential conflict with the preservation of the Natural Condition of the Property.

e) No Interference with Development of Adjoining Property

Notwithstanding anything set forth herein to the contrary, nothing in this Restrictive Covenant is intended nor shall be applied to in any way limit Declarant or any of Declarant's successors and assigns from (1) constructing, placing, installing, and/or erecting any improvements upon the portions of the Project not constituting the Restricted Property, (2) maintaining the subsurface infrastructure improvements, utility lines, landscaping (including irrigation and runoff), landscape mitigation, and/or similar non-structural improvements within the Restricted Property, and/or (3) developing adjoining property for any purposes, except as limited by any local, state or federal permit requirements for such development and provided that for all of the above clauses (1), (2) and (3) neither such activity nor any effect resulting from such activity amounts to a use of the Restricted Property, or has an impact upon the Restricted Property, that is prohibited by Section 4 above.

f) Fire Protection

The right to maintain firebreaks, trim or remove brush, otherwise perform preventative measures required by the fire department to protect structures and other improvements from potential fires, and perform any other brush management activities in compliance with the applicable brush management programs of the local jurisdictions and consistent with the terms and conditions of the permits, entitlement and approvals issued for development of the Project of which the Restricted Property is a part.

g) Paths and Trails

The right to construct, use and maintain equestrian, bicycle, golf and pedestrian trails and paths through the Restricted Property. Prior to construction of such trails and paths, the Declarant shall submit detailed plans showing the location of such trails and paths to the ACOE for review and approval. The ACOE's approval shall not be unreasonably withheld, conditioned or delayed, provided, however, such approval shall be deemed to have been given by ACOE if the agency fails to respond to a request therefor on or prior to the date that is sixty (60) days after such agency's receipt of request therefor. It shall be reasonable for ACOE to withhold consent of such trails and paths that are in direct or potential conflict with the Purpose of this Restrictive Covenant.

h) Utilities

The right to construct, use and maintain only the subsurface infrastructure improvements, utility lines, through the Restricted Property that have been permitted by the Section 404 Permit and any amendments thereto.

6. Enforcement

a) Right to Enforce

Declarant, its successors and assigns, grant to the ACOE, the U.S. Department of Justice, and the State Attorney General a discretionary right to enforce these restrictive covenants in a judicial or administrative action against any person(s) or other entity (ies) violating or attempting to violate this Restrictive Covenant; provided, however, that no violation of this Restrictive Covenant shall result in a forfeiture or reversion of title. The U.S. Department of Justice and the State Attorney General shall have the same rights, remedies and limitations as ACOE under this Section 6. The rights under this Section are in addition to, and do not limit rights conferred in Section 2 above,

the rights of enforcement against Declarant, its successor or assigns under the Section 404 Permit, or any rights of the various documents created thereunder or referred to therein.

b) Notice

- i. If ACOE determines Declarant, its successor or assign is in violation of the terms of this Restrictive Covenant, ACOE may demand the cure of such violation. In such a case, ACOE shall issue a written notice to Declarant, its successor or assign (hereinafter "Notice of Violation") informing Declarant, its successor or assign of the violation and demanding cure of such violation.
- ii. Declarant, its successors or assigns shall cure the noticed violation within fifteen (15) days of receipt of said written notice from ACOE. If said cure reasonably requires more than fifteen (15) days, Declarant shall, within the fifteen (15) day period submit to ACOE for review and approval a plan and time schedule to diligently complete a cure. Declarant shall complete such cure in accordance with the approved plan. If Declarant disputes the Notice of Violation, it shall issue a written notice of such dispute (hereinafter "Notice of Dispute") to the ACOE within fifteen (15) days of receipt of written notice of violation.
- iii. If Declarant, its successors or assigns fail to cure the noticed violation(s) within the time period(s) described in Section 6(b)(2) above, or Section 6(c) below, ACOE may bring an action at law or in equity in a court of competent jurisdiction to enforce compliance by Declarant, its successors or assigns, with the terms of this Restrictive Covenant. In such action, the ACOE may (1) recover any damages to which they may be entitled for violation by Declarant, its successors or assigns of the ten¹¹S of this Restrictive Covenant, (2) enjoin the violation, ex parte if necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies, or (3) pursue other equitable relief, including, but not limited to, the restoration of the Restricted Property to the condition in which it existed prior to any such violation or injury. ACOE may apply any damages recovered to the cost of undertaking any corrective action on the Restricted Property.
- iv. If Declarant, its successors or assigns provide ACOE with a Notice of Dispute, as provided herein, ACOE shall meet and confer with Declarant, its successors or assigns at a mutually agreeable place and time, not to exceed thirty (30) days from the date that ACOE receives the Notice of Dispute. ACOE shall consider all relevant information concerning the disputed violation provided by Declarant, its successors or assigns and shall determine whether a violation has in fact occurred and, if so, whether the Notice of Violation and demand for cure issued by ACOE is appropriate in light of the violation.
- v. If, after reviewing Declarant's, its successors or assign's Notice of Dispute, conferring with Declarant, its successors or assigns, and considering all relevant information related to the violation, ACOE determines that a violation has occurred, ACOE shall give Declarant, its successors or assigns notice of such determination in writing. Upon receipt of such determination, Declarant, its successors or assigns shall have fifteen (15) days to cure the violation. If said cure reasonably requires more than fifteen (15) days, Declarant shall, within the fifteen (15) day period submit to ACOB for review and

approval a plan and time schedule to diligently complete a cure. Declarant shall complete such cure in accordance with the approved plan.

c) Immediate Action

If ACOE, in its reasonable discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Restricted Property, ACOE may immediately pursue all available remedies, including injunctive relief, available pursuant to both this Restrictive Covenant and state and federal law after giving Declarant, its successors or assigns at least twenty four (24) hours written notice before pursuing such remedies. So long as such twenty four (24) hours notice is given, ACOE may immediately pursue all available remedies without waiting for the expiration of the time periods provided for cure or notice of dispute as described in Section 6(b)(2). The written notice pursuant to this paragraph may be transmitted to Declarant, its successors or assigns by facsimile. The rights of ACOE under this paragraph apply equally to actual or threatened violations of the terms of this Restrictive Covenant. Declarant, its successors or assigns agrees that the remedies at law for ACOE for any violation of the terms of this Restrictive Covenant are inadequate and that ACOE shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which ACOE may be entitled, including specific performance of the terms of this Restrictive Covenant, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The remedies described in this Section 6(c) shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

d) Costs of Enforcement

Any costs incurred by ACOE in enforcing the terms of this Restrictive Covenant against Declarant, its successors or assigns including, but not limited to, costs of suit and attorneys' fees, and any costs of restoration necessitated by Declarant's, its successors or assigns violation or negligence under the terms of this Restrictive Covenant shall be borne by Declarant, its successors or assigns subject to Arizona Revised Statutes Section 12-341.01.

e) Enforcement Discretion

Enforcement of the terms of this Restrictive Covenant shall be at the discretion of ACOE. Any forbearance by ACOE to exercise rights under this Restrictive Covenant in the event of any breach of any term of this Restrictive Covenant by Declarant, its successors or assigns shall not be deemed or construed to be a waiver by ACOE of such term or of any subsequent breach of the same or any other term of this Restrictive Covenant or of any of the rights of ACOE under this Restrictive Covenant. No delay or omission by ACOE in the exercise of any right or remedy upon any breach by Declarant shall impair such right or remedy or be construed as a waiver.

f) Acts Beyond Declarant's Control

Nothing contained in this Restrictive Covenant shall be construed to entitle ACOE to bring any action against Declarant, its successors or assigns for any injury to or change in the Restricted Property resulting from:

- i. Any natural cause beyond Declarant's, its successors or assigns control, including without limitation, fire, flood, storm, and earth movement;

- ii. Any prudent action taken by Declarant, its successor or assigns under emergency conditions to prevent, abate, or mitigate significant injury to persons and/or the Restricted Property resulting from such causes; or
- iii. Acts by third parties beyond the control of the Declarant except to the extent Declarant is obligated to repair and restore the Restricted Property pursuant to Section 3(c) above.

Notwithstanding the foregoing, even actions undertaken during emergency conditions must receive prior authorization from the Department of Army (through expedited procedures, if appropriate) if the action involves a discharge of dredged or fill material into jurisdictional waters of the United States and before any ground-disturbing activities occur in the Restricted Property.

7. Access

This Restrictive Covenant does not convey a general right of access to the public or a general right of access to the Restricted Property. In accordance with Section 5(d), Declarant, or its successors or assigns shall install signage at all likely points of entry informing persons of the nature and restrictions on the Restricted Property. This Restrictive Covenant will allow for access to the Restricted Property by the ACOE and third-party easement holders of record at the time of this conveyance at locations designated in easements and reservations of rights recorded in the chain of title to the Restricted Property at the time of this conveyance.

8. Costs and Liabilities

Declarant, or its successor or assign retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Restricted Property. Declarant, its successor or assign remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Restrictive Covenant, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders and requirements.

9. Taxes

Declarant, its successor or assign shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Restricted Property by competent authority, including any taxes imposed upon, or incurred as a result of, this Restrictive Covenant, and agrees to furnish ACOE with satisfactory evidence of payment upon request.

10. Condemnation

The Purpose of the Restricted Property for conservation purposes are presumed to be the best and most necessary public use as defined at Arizona Revised Statutes Section 12-1122.

11. Subsequent Transfers

- a) The terms of this Restrictive Covenant shall be deemed automatically incorporated into any deed or other legal instrument by which Declarant divests itself of any interest in all or a portion of the Restricted Property. Declarant, its successor or assign agrees to;

- a) Incorporate by reference to the title of and the recording information for this Restrictive Covenant in any deed or other legal instrument by which each divests itself of any interest in all or a portion of the Restricted Property, including, without limitation, a leasehold interest and
 - b) Give actual notice to any such transferee or lessee of the existence of this Restrictive Covenant. Declarant, its successor or assign agrees to give written notice to ACOE of the intent to transfer any interest at least thirty (30) days prior to the date of such transfer. Any subsequent transferee shall be deemed to have assumed the obligations of this Restrictive Covenant and to have accepted the restrictions contained herein. The failure of Declarant, its successor or assign to perform any act provided in this Section 11 shall not impair the validity of this Restrictive Covenant or limit its enforceability in any way.
- b) If the Restricted Property is conveyed to the Association before completion of the obligations pertaining to the Restricted Property set forth in the Mitigation Plan, the Declarant shall not be deemed to have assigned, and the Association shall not be deemed to have assumed, the obligations contained herein and in the Mitigation Plan pertaining to the Restricted Property until the ACOE has confirmed in writing that the success criteria pertaining to the Restricted Property have been satisfied. Subject to the foregoing sentence, upon conveyance of the Restricted Property to the Association, (1) the Association shall assume all duties and obligations of the Declarant hereunder, (2) ACOE shall solely look to the Association for the enforcement of this Restrictive Covenant, and (3) the Declarant named herein shall be relieved of any and all ongoing obligations hereunder.
 - c) Upon initial transfer of interest to the Association, (1) the Association shall assume all duties and obligations of the Declarant hereunder, (2) ACOE shall solely look to the Association for the enforcement of this Restrictive Covenant, and (3) Declarant shall be relieved of any and all ongoing obligations or liability hereunder.
 - d) From and after the date of any transfer of all or any portion of the Restricted Property by Declarant and each transfer thereafter, (1) the transferee shall be deemed to have assumed all of the obligations of Declarant as to the portion transferred, as set forth in this Restrictive Covenant, (2) the transferee shall be deemed to have accepted the restrictions contained herein as to the portion transferred, (3) the transferor, as applicable, shall have no further obligations hereunder, and (4) all references to Declarant in this Restrictive Covenant shall thereafter be deemed to refer to such transferee.

12. Notices

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and be served personally or sent by certified first class mail, postage prepaid and return receipt request, addressed as follows:

To Declarant: Anthem Arizona L.L.C.
 15111 N. Pima Road, Suite 100
 Scottsdale, Arizona 85260

To ACOE: U.S. Army Corps of Engineers
District Counsel
Los Angeles District
915 Wilshire Blvd, Room 1535
Los Angeles, CA 90017-3401

or to such other address as either party shall designate by written notice to the other. Notice shall be deemed effective upon delivery in the case of personal delivery or, in the case of delivery by first class mail, five (5) days after deposit into the United States mail.

13. Long-Term Maintenance

In addition to the other terms contained herein, Declarant shall be responsible for the ongoing maintenance/repair of the Restricted Property. Such long-term maintenance shall consist of the following activities: (a) annual removal of trash or man-made debris; (b) annual maintenance of signage and other notification features pursuant to Section 5(d); (c) annual restoration of the Restricted Property damaged by any activities prohibited by Section 4 herein; and (d) annual maintenance of paths and trails within the Restricted Property. In accordance with Section 11 (b), the Association shall be responsible for the foregoing long-term maintenance upon conveyance of the Restricted Property to the Association. Declarant, its successors and assigns shall prepare a monitoring and maintenance summaries documenting activities performed under subsections (a), (b) and (d) above, and shall make summaries available to the ACOE upon request. When activities are performed pursuant to subsection (c) above, Declarant, its successors and assigns, shall retain a qualified Biological Monitor to prepare a Restoration Plan and to oversee/monitor such maintenance/repair activities. Declarant shall have its Biological Monitor submit a draft Restoration Plan to the ACOE for review and written approval prior to its implementation. Upon completion of restoration as specified in the ACOE-approved Restoration Plan, Declarant shall have its Biological Monitor prepare a detailed monitoring and maintenance report and shall forward the report to the ACOE within thirty (30) days of completion of restoration activities. Declarant, its successors or assigns and the Biological Monitor shall sign the monitoring and maintenance report, and the report shall document the Biological Monitor's name and affiliation, dates Biological Monitor was present on-site, activities observed and their location, Biological Monitor's observations regarding the adequacy of maintenance performance by the Declarant, its successors or assigns, or its contractor in accordance with the ACOE-approved Restoration Plan, corrections recommended and implemented.

14. Amendment

Declarant, its successor or assign may amend this Restrictive Covenant only after written concurrence by ACOE. Any such amendment shall be consistent with the Purpose of this Restrictive Covenant and shall not affect its perpetual duration. Declarant or its successors and assigns shall record any amendments to this Restrictive Covenant approved by the ACOE in the official records of Maricopa County, Arizona and shall provide a copy of the recorded document to the ACOE.

15. Recordation

Declarant shall promptly record this instrument in the official records of Maricopa County, Arizona, and shall provide a copy of the recorded covenant to the ACOE.

16. Estoppel Certificate

Upon request, ACOE shall within fifteen (15) days execute and deliver to Declarant, its successor or assigned, any document, including estoppel certificate, which certifies compliance with any obligation of Declarant, its successor or assign contained in this Restrictive Covenant or otherwise evidences the status of this Restrictive Covenant as may be requested by Declarant, its successor or assign.

17. Controlling Law

The laws of the United States and the State of Arizona shall govern the interpretation and performance of this Restrictive Covenant.

18. Liberal Construction

Any general rule of construction to the contrary notwithstanding, this Restrictive Covenant shall be liberally construed to effect the Purpose of this Restrictive Covenant. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Restrictive Covenant that would render the provision valid shall be favored over any interpretation that would render it invalid.

19. Severability

If a court of competent jurisdiction voids or invalidates on its face any provision of this Restrictive Covenant, such action shall not affect the remainder of this Restrictive Covenant. If a court of competent jurisdiction voids or invalidates the application of any provision of this Restrictive Covenant to a person or circumstance, such action shall not affect the application of the provision to other persons or circumstances.

20. No Forfeiture

Nothing contained herein will result in a forfeiture or reversion of Declarant's title in any respect.

21. Successors

The covenants, terms, conditions, and restrictions of this Restrictive Covenant shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Restricted Property.

22. Termination of Rights and Obligations

A party's rights and obligations under this Restrictive Covenant terminate upon transfer of the party's interest in the Restricted Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

23. Captions

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

24. No Hazardous Materials Liability

- a) Declarant represents and warrants that it has no actual knowledge of any release or threatened release of Hazardous Materials (defined below) in, on, under, about or affecting the Restricted Property in violation of Environmental Laws.
- b) Despite any contrary provision of this Restrictive Covenant, the parties do not intend this Restrictive Covenant to be, and this Restrictive Covenant shall not be, construed such that it creates in or gives ACOE any of the following:
 - i. The obligations or liabilities of an "owner" or "operator," as those terms are defined and used in Environmental Laws (defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.; hereinafter, "CERCLA"); or
 - ii. The obligations or liabilities of a person described in 42 U.S.C. Section 9607(a)(3) or (4); or
 - iii. The obligations of a responsible person under any applicable Environmental Laws; or
 - iv. The right to investigate and remediate any Hazardous Materials associated with the Restricted Property; or
 - v. Any control over Declarant's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Restricted Property.
- c) The term "Hazardous Materials" includes, without limitation, (1) material that is flammable, explosive or radioactive; (2) petroleum products, including by-products and fractions thereof; and (3) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.); the Hazardous Materials Transportation Act (49 U.S.C. Section 5101 et seq.); Title 49 of Arizona Revised Statutes, and in the regulations adopted and publications promulgated pursuant to them, or any other applicable federal, state or local laws, ordinances, rules, regulations or orders now in effect or enacted after the date of this Restrictive Covenant.
- d) The term "Environmental Laws" includes, without limitation, any federal, state, local or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials. Declarant's, its successor and assigns activities upon and use of the Restricted Property shall comply with all Environmental Laws.

25. Additional Easements

Other than the Declaration of Covenants, Conditions, Restrictions, Reservations and Easements for the Project and the supplemental declarations, tract declarations and other instruments permitted thereunder, Declarant, its successors and assigns shall not grant any additional easements, rights of way or other interests in the surface or subsurface of the Restricted Property (other than a security interest

that is subordinate to this Restrictive Covenant), or grant or otherwise abandon or relinquish any water agreement relating to the Restricted Property, without first obtaining the written consent of ACOE. ACOE may withhold such consent if it determines that the proposed interest or transfer is inconsistent with the Purpose of this Restrictive Covenant or will impair or interfere with the Conservation Values of the Restricted Property. This Section shall not prohibit transfer of a fee or leasehold interest in the Restricted Property that is subject to this Restrictive Covenant and complies with Section 11. Declarant or its successors and assigns shall record any additional easements or other interests in the Restricted Property approved by the ACOE in the official records of Maricopa County, Arizona and shall provide a copy of the recorded document to the ACOE.

26. ACOE Benefited Party

The terms of this Restrictive Covenant are for the benefit of the ACOE only and are not for the benefit of any other party.

27. Boundary Adjustments

The boundaries of the Restricted Property may be adjusted by the Declarant provided that it obtains prior written approval from the ACOE and no such adjustment shall affect, modify or change the total acreage of "Natural Area Open Space" required under the Section 404 Permit.

IN WITNESS WHEREOF Declarant has executed this Restrictive Covenant the day and year first above written.

"Declarant"

ANTHEM ARIZONA L.L.C., an Arizona limited liability company

On March 30, 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared: Steve Pritulsky

Personally known to me-OR-[] Proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Ben Dutton

(SEAL) Notary Public

SECOND AMENDMENT TO DECLARATION OF COVENANTS AND EASEMENTS

This AMENDMENT TO THE DECLARATION OF COVENANTS AND EASEMENTS FOR ANTHEM (the “Amendment”) is made as of this 23 day of October, 2007, by the Anthem Community Council, Inc., an Arizona nonprofit corporation (the “Association”) and Anthem Arizona L.L.C., an Arizona limited liability company (the “Community Developer”).

WITNESSETH

WHEREAS, on January 15, 1999 that certain Declaration of Covenants and Easements for Anthem was recorded at recording number 99-0042710, records of Maricopa County Recorded, (the “Declaration”); and

WHEREAS, pursuant to the terms of Article VII, Section 7.1(a) of the Declaration, the Community Developer, so long as the Community Developer owns property located within the Association for development as part of Anthem, may unilaterally amend the Declaration for any purpose, provided the amendment has no material adverse effect upon any right of any owner; and

WHEREAS, pursuant to the terms of Article VII, Section 7.1(b) of the Declaration, at least a majority of the Council Board, with the consent of the Community Developer, so long as the Community Developer owns property located within the Association for development as part of Anthem, may unilaterally amend the Declaration for any purpose, provided the amendment has no material adverse effect upon any right of any owner; and

WHEREAS, the Community Developer owns property located within the Association for development as part of Anthem, through its Council Board, has determined that this Amendment does not adversely effect any right of any owner; and

NOW, THEREFORE, the Declaration is hereby amended as follows:

The third paragraph of Section 3.3(e) of the Declaration that provides: “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” is hereby deleted.

Except as expressly amended by this Amendment, the Declaration shall remain in full force and effect. In the event of any conflict or inconsistency between this Amendment and the Declaration, this Amendment shall prevail.

IN WITNESS WHEREOF, Anthem Community Council Inc., an Arizona nonprofit corporation and Anthem Arizona L.L.C., an Arizona limited liability company has executed this Amendment as the day and year first written above.

WITNESS my hand and official seal.

Lisa M Lichter-Lunskow
(SEAL) Notary Public