

**WHEN RECORDED RETURN TO:**

Anthem Community Council, Inc.  
3701 W. Anthem Way, Suite 201  
2<sup>nd</sup> Floor  
Anthem, Arizona 85086

ANTHEM012AMCCR-11-1-1--  
Garcia

**SECOND AMENDMENT TO  
DECLARATION OF COVENANTS AND EASEMENTS**

This Second Amendment to Declaration of Covenants and Easements ("Second Amendment") is made as of this 27 day of Jan., 2021, by the Anthem Community Council, Inc. ("ACC") and Anthem Arizona, LLC, an Arizona limited liability company ("Community Developer").

**RECITALS**

WHEREAS, on January 15, 1999 that certain Declaration of Covenants and Easements was recorded in the official records of Maricopa County at Document No. 1999-0042710 ("Original Declaration") and amended by that certain Amendment to Declaration of Covenants and Easements recorded in the official records of Maricopa County at Document No. 2007-1158326 ("First Amendment Declaration") (collectively, "Declaration");

WHEREAS, Article VII, Section 7.1(2) of the Declaration provides that the Declaration may be amended by the affirmative vote or written consent of at least a majority of the members of the Board of Directors for the ACC and with the consent of the Community Developer;

WHEREAS, the Board of Directors for the ACC desires to amend the Declaration to remove certain rights reserved to the Community Developer and the Community Developer consents to these amendments;

WHEREAS, the ACC desires to further amend the Declaration as provided herein and the Community Developer consents to the same;

WHEREAS, at least a majority of the Board of Directors for the ACC approved the amendments as set forth in this Second Amendment;

**AMENDMENT**

**NOW, THEREFORE**, Article I, Section 1.23 of the Declaration is **amended and restated** as follows:

"Owner": One of 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. Owner shall include a purchaser under a contract for the conveyance of Property, subject to the provisions of A.R.S. § 33-741 et seq. Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and

obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of Lots the fee simple title to which is vested in a trustee pursuant to A.R.S. § 33-801, et seq., the trustor shall be deemed to be the Owner. In the case of Lots the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

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.

**NOW, THEREFORE,** Article II, of the Declaration is **amended and restated** as follows:

### **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 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.

### **2.3 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 Council. Any such instrument Recorded without such consent shall be void and of no force and effect, unless the Council subsequently consents through a written, Recorded instrument. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Council.

**NOW, THEREFORE,** Article III, Section 3.3(c) of the Declaration is **amended and restated** as follows:

(c) Tax-Exempt Organizations. 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.

**NOW, THEREFORE**, Article III, Section 3.4 of the Declaration is **amended and restated** as follows:

**3.4 Community Design – Standards to Review**

The Community Developer established the initial Community Guidelines applicable to Anthem, containing the standards applicable to all of Anthem and including provisions applicable only to particular areas within Anthem. The Community Guidelines may vary within Anthem, but the Community Developer shall be exempt from the restrictions set forth therein.

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.

**NOW, THEREFORE**, the following provision is **deleted** from Article IV, Section 4.1 in its entirety:

**NOW, THEREFORE**, Article IV, Section 4.1 of the Declaration is **amended and restated** as follows:

**4.1 Powers and Duties of the Council over the Areas of Council Responsibility**

Council Board shall operate, manage, and maintain the Areas of Council Responsibility, including the Community Center, Civic Building, 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, including, but not limited to, the posting on any websites maintained by the Council, 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.

**NOW, THEREFORE**, Article IV, Section 4.2 of the Declaration is **amended and restated** as follows:

**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 obligation 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.

**NOW, THEREFORE**, Article IV, Section 4.6 of the Declaration is **deleted** in its entirety.

**NOW, THEREFORE**, Article IV, Section 4.10 of the Declaration is **amended and restated** as follows:

#### 4.10 Golf Carts

Except as may be permitted under an Association Declaration, 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 unless properly licensed by the State of Arizona and operated in accordance with all applicable ordinances and regulations.

**NOW, THEREFORE**, Article VI, Section 6.1 of the Declaration is **amended and restated** as follows:

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 (by any reasonable means, including but not limited to posting on the Council's website or electronic mail) 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 Owners representing at least a majority of the votes cast at a meeting called for such purposes once a quorum has been established. For purposes of this Section only, the

quorum necessary to hold the meeting shall be at least five percent (5%) of the Owners entitled to vote as determined in accordance with the formula set forth in Exhibit "C".

**NOW, THEREFORE,** Article VI, Section 6.6 of the Declaration is **amended and restated** as follows:

**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 at least seven days prior to the scheduled transfer. Such notice shall include the name of the buyer, the date of the 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 ¼% 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) operation and maintenance costs.

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

(i) by a co-owner to any Person who was a co-owner immediately prior to such transfer;

(ii) to the Owner's estate, surviving spouse, or heirs at law upon the death of the Owner;

(iii) 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

(iv) 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 celebrations
    - Community intranet

**NOW, THEREFORE**, Article VI, Section 6.10 of the Declaration is **amended and restated** as follows:

In an effort to minimize administrative costs and create an efficient assessment collection process for Anthem, the Council, upon assignment from an Association, 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. 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.

**NOW, THEREFORE**, Article VI, Section 6.12 of the Declaration is **amended and restated** as follows:

**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 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 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).

**NOW, THEREFORE**, Article VI, Section 6.13 of the Declaration is **amended and restated** as follows:

The assessment funds collected by the Council (other than those funds collected solely for the benefit on as 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 exercise in good faith, and the Council, any director, officer, or Council employee shall not be liable to any Person or entity for any error in judgment, or any action or inaction of the Council, the directors, officers, and Council employees 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.

**NOW, THEREFORE**, Article VII, Section 7.1 of the Declaration is **amended and restated** as follows:

**7.1 Amendment.**

Except as otherwise specifically provided 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. 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. If more than five percent (5%) of Owners disapprove of such amendment in writing within thirty (30) days of Council’s notice of its intention to amend this Community Covenant, the Council’s proposed amendment shall not be effective unless approved, by affirmative vote or written consent, or any combination thereof, by a majority of the Owners.



Amendments to this Community Covenant are effective upon Recordation unless a later effective date is specified. In no event shall a change of conditions or circumstances operate to amend any provision of this Community Covenant.

**NOW, THEREFORE**, Article VII, Section 7.2 of the Declaration is **amended and restated** as follows:

**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 or 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. Any such instrument shall set forth the intent to terminate this Community Covenant and shall be Recorded.

**NOW, THEREFORE**, Article VII, Section 7.3 of the Declaration is **amended and restated** as follows:

**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 only to the Council. 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.

**NOW, THEREFORE**, the Community Developer's rights to determine the proper classification for a Lot for assessment and votes as set forth in Exhibit "C" of the Declaration is hereby **assigned** to the Council.

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Except as expressly amended by this Second Amendment, the Declaration shall remain in full force and effect. In the event of any conflict or inconsistency between this Second Amendment and the Declaration, this Second Amendment shall prevail. Unless otherwise defined herein, each capitalized term used in this Second Amendment shall have the meaning given to such term in the Declaration.

**SIGNATURES PAGE(S) TO FOLLOWS**

IN WITNESS WHEREOF, the Anthem Community Council, Inc., an Arizona nonprofit corporation, has executed this Second Amendment as of the day and year first written above.

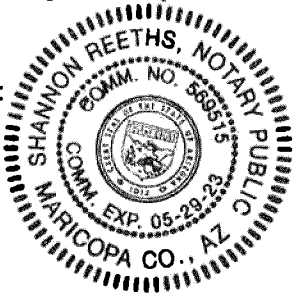
ANTHEM COMMUNITY COUNCIL,  
an Arizona nonprofit corporation

By: *[Signature]*  
Its: President

State of Arizona            )  
  ) ss.  
County of Maricopa )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 27 day of Jan, 2021, by Bob McKenzie, the President of the Anthem Community Council, Inc., an Arizona nonprofit corporation, for and on behalf of the corporation.

My Commission Expires:



*[Signature]*  
Notary Public

ACKNOWLEDGMENT AND CONSENT  
OF  
COMMUNITY DEVELOPER

IN WITNESS WHEREOF, Anthem Arizona, LLC, an Arizona limited liability company, has acknowledged and consented to this Second Amendment as of the day and year first written above.

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

By: Christopher Ward

Its: Vice President

State of Arizona  
County of Maricopa ss.

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 14th day of February 2021, by Christopher Ward, the Vice President of Anthem Arizona, L.L.C., an Arizona limited liability company, for and on behalf of the company.

My Commission Expires: 1/23/25 Kymberly Ann Childers  
Notary Public

