

# Unofficial Document

**When Recorded Mail To:**

Pulte Homes Corporation  
Land Department  
15111 North Pima Road, Ste 100  
Scottsdale, AZ 85260  
Attention: Rebecca Aspaas

**SUPPLEMENTAL DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR ANTHEM UNIT 101**

This Supplemental Declaration of Covenants, Conditions and Restrictions for Anthem Unit 101 (this "Supplemental Declaration") is made as of this 9<sup>th</sup> day of September, 2005 by Anthem Arizona, L.L.C., an Arizona limited liability company (the "Community Developer") and Anthem Community Council, Inc., an Arizona nonprofit corporation (the "Council").

**RECITALS**

A. A Declaration of Covenants and Easements for Anthem was recorded on January 15, 1999 at Recording No. 99-0042710 in the records of the County Recorder of Maricopa County, Arizona (the "Original Anthem Declaration") for the purpose of establishing a plan of development for the master planned community known as Anthem located in Maricopa County, Arizona. The Original Anthem Declaration was subsequently amended by the First Amendment to the Declaration of Covenants and Easements for Anthem recorded on April 24, 2000 at Recording No. 00-0306256, in the records of the County Recorder of Maricopa County, Arizona (the "First Amendment"). The Original Anthem Declaration, as amended by the First Amendment, shall be referred to in this Supplemental Declaration as the "Anthem Declaration."

B. Section 2.2 of the Anthem Declaration reserved to the Community Developer the right to subject additional property to the Anthem Declaration by the recording of a Supplemental Declaration. On July 21, 2005, the Community Developer recorded a Supplemental Declaration for Anthem at Recording No. 2005-1016998, in the records of the County Recorder of Maricopa County, Arizona (the "Anthem Unit 101 Supplemental Declaration") subjecting the real property described on Exhibit A attached to the Supplemental Declaration to the Anthem Declaration.

C. The real property subjected to the Anthem Declaration by the Unit 101 Supplemental Declaration was subdivided into Lots 1 through 160, inclusive, Tracts A through Z, inclusive and Tracts AA through KK, inclusive, Anthem Unit 101, according

to the plat recorded in Book 774 of Maps, Page 24, in the records of the County Recorder of Maricopa County, Arizona ("Unit 101").

D. A Declaration of Covenants, Conditions and Restrictions for Anthem Parkside was recorded on January 15, 1999 at Recording No. 99-0042711, in the records of the County Recorder of Maricopa County, Arizona (the "Original Anthem Parkside Declaration") to create a general plan of development for the planned community known as Anthem Parkside. The Original Anthem Parkside Declaration was subsequently amended by the Amendment to Declaration of Covenants, Conditions and Restrictions recorded on December 3, 2002 at Recording No. 2002-1288551, in the records of the County Recorder of Maricopa County, Arizona (the "Anthem Parkside First Amendment"). The Original Anthem Parkside Declaration, as amended by the Anthem Parkside First Amendment, shall be referred to in this Supplemental Declaration as the "Anthem Parkside Declaration."

E. Section 9.1 of the Anthem Parkside Declaration reserved to the Community Developer the right to subject to the provisions of the Anthem Parkside Declaration all or any part of the real property described on Exhibit B to the Anthem Parkside Declaration by the recording of a Supplemental Declaration describing the additional property to be subjected to the Anthem Parkside Declaration. On July 21, 2005, the Community Developer recorded a Supplemental Declaration for Anthem Parkside at Recording No. 2005-1016999, in the records of the County Recorder of Maricopa County, Arizona (the "Anthem Parkside Supplemental Declaration") which subjected Unit 101 to the Anthem Parkside Supplemental Declaration.

F. The Community Developer is the owner of Unit 101, and the Community Developer desires to impose certain additional covenants, conditions and restrictions upon Unit 101 to: (i) provide for the ownership and maintenance of the Tracts within Unit 101 by the Council; (ii) provide for the maintenance, repair and replacement by the Council of certain light fixtures and light bulbs to be installed on the exterior of the Dwelling Units (the "Coach Lighting") to be constructed on the Lots in Unit 101; (iii) provide for the maintenance, repair and replacement by the Council of certain landscaping on the Lots; and (iv) impose certain restrictions upon the use of the Lots and Tracts in Unit 101. The Council is willing to accept the obligations imposed on the Council by this Supplemental Declaration.

### DECLARATION

NOW THEREFORE, the Community Developer and the Council declare as follows:

1. Definitions. Unless otherwise defined in this Supplemental Declaration, each capitalized term used in this Supplemental Declaration shall have the meaning given to such term in the Anthem Declaration. All defined terms set forth in the foregoing Recitals are hereby incorporated into this Declaration. In addition, the following terms shall have the meanings set forth below:

(a) "Council Maintained Landscaping" means (i) all grass, plants, trees and other landscaping improvements situated on the Lots, except for any grass, plants, trees and other landscaping improvements within any patio or courtyard area which is fully enclosed by a fence or wall, and (ii) the sidewalk located on the Lot from the Tract adjoining the Lot to the foundation of the Dwelling Unit.

(b) "Dwelling Unit" means any building or structure, or a portion of a building or structure, situated upon a Lot and which is intended for use and occupancy as an attached or detached residence for a single family.

(c) "Irrigation System" means all time clocks, pipes, lines, sprinkler heads and other fixtures comprising the irrigation system for the irrigation of the Council Maintained Landscaping.

(d) "Lot" means each portion of Unit 101 identified as a "Lot" on the Unit 101 Plat, together with the Dwelling Unit and all other improvements situated thereon.

(e) "Motor Court" means each of Tracts B, C, D, F, G, H, J, K, L, M, N, O, P, R, S, T, U, V, W, X, Y, DD, and GG as shown on the Unit 101 Plat.

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(f) "Owner" means one or more Persons holding 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. If a Lot is sold under a recorded contract of sale, and the contract specifically so provides the purchaser (rather than the fee owner) will be considered the Owner.

(g) "Unit 101 Common Area" means Tracts A through Z, inclusive, and Tracts AA through KK, inclusive, Anthem Unit 101, according to the plat recorded in Book 774 of Maps, Page 24, in the records of the County Recorder of Maricopa County, Arizona, together with all improvements situated thereon.

(h) "Unit 101 Common Expenses" means all costs and expenses incurred by the Council (including reasonable allocations to reserves) in connection with the maintenance, repair and replacement of the Unit 101 Common Area, the Council Maintained Landscaping, the Irrigation System and the light fixtures, photoelectric cells and light bulbs to be maintained by the Council pursuant to Paragraph 3(b) below.

(i) "Unit 101 Plat" means the Anthem Unit 101 Final Plat recorded in Book 774 of Maps, Page 24, in the records of the

County Recorder of Maricopa County, Arizona, together with all amendments, supplements and corrections thereto.

2. Conveyance and Maintenance of Unit 101 Common Area. Upon completion of all improvements on the Unit 101 Common Area by the Community Developer in accordance with the plans and specifications for such improvements approved by the Council Board and the Community Developer pursuant to the Anthem Declaration and the Anthem Parkside Declaration, the Unit 101 Common Area shall be conveyed to the Council by Special Warranty Deed free and clear of all monetary encumbrances, except for real estate taxes which are a lien but which are not yet due and payable. After the conveyance of the Unit 101 Common Area to the Council, the Unit 101 Common Area shall be considered Areas of Council Responsibility, and Council shall operate, manage and maintain the Unit 101 Common Area in accordance with the provisions of the Anthem Declaration. No Owner shall alter or make any addition to the Unit 101 Common Area without the prior written approval of the Council. Notwithstanding the foregoing provisions of this Supplemental Declaration, in the event the Unit 101 Common Area is damaged or destroyed by the intentional or negligent act of an Owner or other occupant of a Lot or their guests or invitees, the cost of the repair or restoration of the Unit 101 Common Area shall be assessed to the Lot Owner.

3. Maintenance of Landscaping and Other Improvements on Lots.

(a) After completion of the installation of the Council Maintained Landscaping and the Irrigation System Unofficial Document in accordance with plans approved by the Council Board and the Community Developer in accordance with the terms of the Anthem Declaration and the Anthem Parkside Declaration, the Council Maintained Landscaping and the Irrigation System shall be Areas of Council Responsibility, and the Council shall be responsible for the maintenance, repair and replacement of the Council Maintained Landscaping, Coach Lighting and the Irrigation System. The Irrigation System will be operated by time clocks or other systems controlled and maintained by the Council. All water and electricity used in the operation of the Irrigation System shall be paid by the Council. No Owner shall alter or make any addition to the Council Maintained Landscaping or alter or add to the Coach Lighting or Irrigation System without the prior written approval of the Council. Notwithstanding the foregoing provisions of this Supplemental Declaration, in the event the Council Maintained Landscaping, Coach Lighting or Irrigation System is damaged or destroyed by the intentional or negligent act of an Owner or other occupant of a Lot or their guests or invitees, the cost of the repair or restoration of the Council Maintained Landscaping, Coach Lighting or Irrigation System shall be assessed to the Lot Owner.

(b) As part of the construction of the Dwelling Units on the Lots, certain building mounted Coach Lighting will be installed on the outside of the Dwelling Units. The Coach Lighting will be operated by photoelectric cells so that they will automatically turn on and off. Upon completion of the installation of such lighting, the Council shall be responsible for the maintenance, repair and replacement of the lighting fixtures, the photoelectric cells and the light bulbs.

(c) Except for the Council Maintained Landscaping, the Coach Lighting in the common areas, and the Irrigation System located on the Lot and the Coach Lighting fixtures with the photoelectric cells and the light bulbs on the Dwelling Unit which are to be maintained, repaired and replaced by the Council pursuant to Subparagraphs (a) and (b) of this Paragraph 3, the Owner of a Lot shall maintain, repair and replace the Dwelling Unit, landscaping within private fenced areas, walls and other improvements located on the Owner's Lot in good and safe condition and in a manner consistent with the Community-Wide Standard (as defined in the Anthem Parkside Declaration).

4. Benefited Assessment. Pursuant to Section 6.5 of the Anthem Declaration, the Council Board shall levy a Benefited Assessment against the Owners of the Lots for all Unit 101 Common Expenses. The Benefited Assessment shall be levied at a uniform amount for each Lot. The Benefited Assessment shall be secured by the Assessment Lien of the Council created by the Anthem Declaration.

5. Restrictions on Motor Courts. No basketball hoops shall be installed within the Motor Courts. No automobiles, trucks, boats, trailers, motorcycles, campers, vans, recreational vehicles, trailers, campers, boats or other water craft shall be parked or kept on any Motor Court. In addition, no Motor Court shall be used for the washing or cleaning of any automobiles, trucks, boats, trailers, motorcycles, campers, vans, recreational vehicles, trailers, campers, boats or other water craft.

6. Use Restrictions. The <sup>Unofficial Document</sup> Anthem Parkside Declaration contains certain restrictions upon the use and occupancy of the Lots and Tracts within Unit 101. All Owners and occupants of the Lots shall comply with the use restrictions set forth in the Anthem Parkside Declaration. In the event of any conflict between the use restrictions in Anthem Declaration and this Supplemental Declaration, the more restrictive provisions shall control.

7. Anthem Parkside Community Association. Pursuant to the terms of the Anthem Parkside Declaration, each Owner of a Lot shall be a member of the Anthem Parkside Community Association, Inc., an Arizona nonprofit corporation (the "Anthem Parkside Association") formed pursuant to the Anthem Declaration. Each Owner of a Lot shall have such votes and membership privileges as are set forth in the Anthem Parkside Declaration and the Articles of Incorporation and Bylaws of the Anthem Parkside Association.

8. Assessments. In addition to the Benefited Assessment to be levied against the Lots pursuant to Paragraph 4 of this Supplemental Declaration, all Lots are subject to additional assessments by the Council pursuant to the Anthem Declaration and by the Anthem Parkside Association pursuant to the Anthem Parkside Declaration.

9. Drainage. A perpetual easement is hereby granted and created over, upon and across each Lot for the drainage of storm water from adjoining Lots (and the Dwelling Units located thereon) and Tracts in accordance with the drainage plans for Unit 101 approved by Maricopa County (the "Approved Drainage Plans"). No additional

Dwelling Unit, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water over and across the Lots and Tracts in accordance with the Approved Drainage Plans. View walls, air conditioning and heating units and related equipment and trash cans may be installed, placed and kept in drainage areas provided the location of such walls, air conditioning and heating units and related equipment and trash cans is approved by the Council. In addition, no Owner or other Person shall change the grade or elevation of a Lot in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the Approved Drainage Plans.

10. Easements In Favor of the Council. There are hereby reserved and granted to the Council perpetual, non-exclusive blanket easements over, upon and across the Lots and Tracts in Unit 101 (but not through a Dwelling Unit) as necessary for access, ingress and egress to and from Areas of Council Responsibility and to enable the Council to fulfill its responsibilities under this Supplemental Declaration.

11. Binding Effect. The covenants, conditions, restrictions and easements set forth in this Supplemental Declaration shall run with the land and be binding upon the Community Developer, the Council and their respective successors and assigns and all Persons having any right, title or interest in or to any portion of Unit 101. Deeds to and instruments affecting any Lot or any other part of the Unit 101 may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference <sup>Unofficial Document</sup> made in any deed or instrument, each and all of the provisions of this Supplemental Declaration shall be binding upon the grantee-owner or other Person claiming through any instrument and his heirs, executors, administrators, successors and assignees.

12. Duration and Amendment.

(a) Unless terminated in accordance with the provisions of this Paragraph, this Supplemental Declaration shall have perpetual duration. This Supplemental Declaration may only be terminated with the written consent or affirmative vote of the Council Board, the Community Developer so long as the Community Developer owns any property described on Exhibits A or B of the Anthem Declaration and by the Owners of ninety percent (90%) of the Lots.

(b) This Supplemental Declaration may be amended only with the written consent or affirmative vote of the Owners of seventy-five percent (75%) of the Lots, the Council Board and the Community Developer so long as the Community Developer owns and property described on Exhibits A or B to the Anthem Declaration. Amendments to this Supplemental Declaration are effective only upon Recordation unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within ninety (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 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 making the challenge. In no event shall a change of conditions or circumstances operate to amend any provision of this Supplemental Declaration.

13. Interpretation. Except for judicial construction, the Council Board shall have the exclusive right to construe and interpret the provisions of this Supplemental Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Council Board's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by this Supplemental Declaration. Wherever the context of this Declaration so requires, words used in the masculine, feminine, or neuter genders, or the singular or plural number, shall include the others.


14. Severability. Any determination by any court of competent jurisdiction that any provision of this Supplemental Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

15. Attorneys' Fees. In the event of any action instituted to enforce any provision of this Supplemental Declaration, the prevailing party in such action shall be entitled to recover from the other party, as part of the judgment, reasonable attorneys' fees and costs. In the event the Council is the 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.

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16. Captions. The captions of each paragraph of this Supplemental Declaration are for convenience only and shall not be construed as defining, limiting, extending or otherwise modifying or adding to the particular paragraph to which they refer.

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

By:   
Name: Steve Pritulsky

Its: Vice President-Planning & Development

State of Arizona )  
 ) ss.  
County of Maricopa )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 12<sup>th</sup>  
day of Sept., 2005, by Steve Pritulsky, the V.P. Planning + Development  
of Anthem Arizona, LLC, an Arizona limited liability company, on behalf of the  
company.

Angela Carmitchel

Notary Public

My Commission Expires: May 24, 2008



Notary Public State of Arizona  
Maricopa County  
Angela Carmitchel  
Expires May 24, 2008

**ANTHEM COMMUNITY COUNCIL, INC.,**  
an Arizona nonprofit corporation

By: [Signature]

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Name: Steve Peterman

Its: Community Manager

State of Arizona )  
 ) ss.  
County of Maricopa )

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