

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

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After recording, please return to:
Anthem Arizona L.L.C.
Attn: Jan Braithwaite
14901 North Scottsdale Road, Suite #200
Scottsdale, AZ 85254

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Reference to Declaration: Instrument No. 99-0042709
Reference to Grantor: Anthem Arizona L.L.C.

RECREATIONAL COVENANT
FOR
THE ANTHEM COUNTRY CLUB COMMUNITY

HYATT & STUBBLEFIELD, P.C.
1200 Peachtree Center, South Tower
225 Peachtree Street, N. E.
Atlanta, Georgia 30303
(404) 659-6600

RECREATIONAL COVENANT
FOR
THE ANTHEM COUNTRY CLUB COMMUNITY

THIS RECREATIONAL COVENANT is made this 6th day of July, 1999, by Anthem Arizona L.L.C., an Arizona limited liability company, on behalf of itself, its successors-in-title, and assigns ("Declarant").

BACKGROUND AND INTENT

The Anthem Country Club community is a residential planned community in Maricopa County, Arizona, which is comprised of the real property described in Exhibit "A" to that certain Declaration of Covenants, Conditions, and Restrictions for Anthem Country Club, recorded in the Office of the County Recorder of Maricopa County, Arizona, as Instrument No. 99-0042709 (as may be amended or supplemented from time to time, the "Declaration"), and such additional real property as is made subject to the Declaration in accordance with its terms. (The real property now or hereafter made subject to the Declaration is referred to as the "Club Community.") Declarant is the owner of the real property described in Exhibit "A" to the Declaration.

Declarant also is the owner of the real property described on Exhibit "A" attached hereto, which real property comprises or shall comprise the Anthem Golf and Country Club (the "Club"), a golf and country club located adjacent to the Club Community. The Club is a Country Club Amenity, as defined in the Declaration. Declarant intends to transfer the real property described in Exhibit "A" attached hereto to a third party which shall own and operate or provide for the operation of the Club in accordance with the Membership Policies for Anthem Golf and Country Club, as they may be amended ("Membership Policies"). (The owner of the Club's real property and facilities is referred to herein, as in the Membership Policies, as the "Club Operator.")

Club Operator has established or shall establish a membership program in the Club which contemplates that each Owner of a Lot in the Club Community will be a "Social" member in the Club ("Social Member") (The membership held by a Social Member is referred to as a "Social Membership."). Social Membership entitles the Social Member to limited use of certain of the Club's facilities, as more particularly described in.

The Membership Policies also provide for categories of membership in addition to Social Membership. Membership in such additional membership categories is subject to availability and application and approval by the Club Operator, acting in its discretion.

By this Recreational Covenant, Declarant, on behalf of itself and Club Operator, intends to grant each Club Community Lot Owner a Social Membership in the Club, subject to the obligation to pay Membership Fees (as defined in Section 2.3 below) and other conditions more particularly described in the Membership Policies. In addition, Declarant intends to grant Club

Operator collection rights, including lien rights, with respect to such Membership Fees as applicable to each Lot Owner's membership category.

STATEMENT OF COVENANTS

Declarant hereby declares that the real property described in Exhibit "A" attached hereto and all real property now or hereafter made subject to the Declaration shall be held, used, sold, and conveyed subject to the covenants, conditions, and restrictions contained herein, which shall run with the title to such property. This Recreational Covenant shall be binding upon and inure to the benefit of Declarant, Club Operator, and each Owner of a Lot within the Club Community, and their respective legal representatives, heirs, successors, successors-in-title, and assigns having any right, title, or interest in any portion of such real property.

This Recreational Covenant shall be enforceable by Declarant, Club Operator, any Lot Owner, and their respective legal representatives, heirs, successors, and assigns, by any means available at law or in equity.

If any provision of this Recreational Covenant is determined by judgment or court order to be invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications.

Article I **Definitions**

The words used in this Recreational Covenant shall be given their normal, commonly understood definitions. Capitalized terms shall be defined as set forth herein or in the Declaration, unless the context indicates otherwise.

Article II **Club Membership - Rights and Obligations**

2.1. **Grant of Social Membership.** Declarant, on behalf of itself and Club Operator, hereby grants to each Lot Owner in the Club Community a Social Membership in the Club with such use rights and privileges as are provided Social members in the Membership Policies. Social Membership shall be subject to the terms and conditions of membership set forth in the Membership Policies, including, without limitation, the obligation to pay such membership fees, dues, and other charges as are established from time to time by Club Operator in the manner provided in the Membership Policies. Social Membership is a license to use, during operating hours and subject to availability, the Club's swimming, tennis, fitness, dining, and clubhouse facilities.

Social Membership also includes second priority advance reservation privileges (after "Golf Members") for use of the golf course, practice range, and other golf facilities, subject to availability and payment of applicable fees and charges; provided, availability of tees times for

Social Members is not guaranteed. Social Membership rights are more specifically described in the Membership Policies and are subject to change as provided therein.

The privileges afforded a Social Member also are subject to Club rules and the rights and authority of Club Operator with respect to suspension and other sanctions by the Club, all as more specifically set forth in the Membership Policies.

Each Owner's Social Membership in the Club shall be effective immediately upon taking title to a Lot; provided, each Owner must return to Club Operator an executed membership agreement as a condition of using the Club facilities. The Social Membership conferred pursuant to this Recreational Covenant shall continue so long as such Owner owns a Lot in the Anthem Country Club Community.

2.2. Membership Fees. Membership under the Social Membership and other membership category shall require the payment of "Membership Fees." Membership Fees include periodic dues and other charges as authorized by the Membership Policies and also include initiation fees for membership categories other than Social Membership. The Membership Fees for any membership category are established by Club Operator in accordance with the Membership Policies. Any reference to Membership Fees in this Recreational Covenant shall include, as to a particular Owner, the Membership Fees applicable to such Owner's particular category of membership in the Club.

2.3. Other Membership Categories. In addition to the Social Membership category, Owners are eligible for Club membership under other membership categories, affording additional use privileges in the Club and its facilities, subject to the Membership Policies. Membership in any category other than Social Membership is subject to availability and any qualification and approval requirements imposed by Club Operator, acting in its sole discretion. Neither this Recreational Covenant nor ownership or occupancy of a Lot in the Club Community shall guarantee any Lot Owner the availability of a membership, or acceptance of his or her application for membership, in any category other than Social Membership.

2.4. Personal Obligation for Membership Fees. Each Owner, by accepting a deed to any Lot, is deemed to covenant and agree to pay the Membership Fees required for his or her category of membership in the Club. All such Membership Fees, together with interest (computed from its due date at a maximum rate of 18% per annum or such higher rate as Club Operator may establish under the Membership Policies, subject to the limitations of Arizona law), late charges, costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Lot until paid in full. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any Membership Fees due at the time of conveyance.

The Club Operator's failure to establish Membership Fees or to notify Owners of the Membership Fees shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay Membership Fees.

No Owner may exempt himself or herself from liability for Membership Fees by non-use of Club facilities, abandonment of his Lot, or any other means. The obligation to pay Membership Fees is a separate and independent covenant on the part of each Owner. No diminution or abatement of Membership Fees or set-off shall be claimed or allowed for any alleged failure of the Club Operator to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

2.5. Lien for Membership Fees. Subject to any limitations imposed by Arizona law, the Membership Fees authorized by and levied in accordance with the Membership Policies shall constitute a lien against the Lot against which they are levied from the time such Membership Fees become due until paid. The lien shall also secure payment of interest (subject to the limitations of Arizona law), late charges, and costs of collection (including attorneys' fees, lien fees, and administrative costs). Such lien shall be superior to all other liens, except any lien of the Anthem Community Council, Inc., the Association, and the lien or charge of any Recorded first Mortgage (meaning a Recorded first Mortgage with first priority over other Mortgages) made in good faith and for value, and those deemed by Arizona law to be superior. Club Operator may enforce such lien, when any Membership Fee is delinquent, by suit, judgment, and foreclosure; provided, if enforcement proceedings are not instituted within three years after the full amount of the assessment or other charge becomes due, the lien (but not the personal obligation of the subject Owner) shall be deemed extinguished.

Club Operator may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by Club Operator following foreclosure no assessment shall be levied on it. Club Operator may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot shall not affect the above-described lien or relieve such Lot from the lien for any subsequent Membership Fees, except that the sale or transfer of any Lot pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any Membership Fee installments due prior to the foreclosure. The subsequent Owner of the foreclosed Lot shall not be personally liable for Membership Fees on such Lot due prior to such acquisition of title.

2.6. Term of Social Memberships. The Social Membership issued to any Owner pursuant to this Recreational Covenant shall automatically terminate, as to such Owner, when such person ceases to be the Owner of the Lot; however, a former Owner shall remain obligated for all charges incurred on account of such membership prior to such termination. Upon transfer of title to a Lot and termination of the Social Membership held by the previous Owner, the new Owner shall become a Social Member.

2.7. Conveyance of Club Facilities. Club Operator reserves the right to sell or otherwise transfer all or any portion of the real property or facilities comprising the Club to a third party or parties at any time upon such terms and conditions as Club Operator determines appropriate in its sole and absolute discretion. The transfer of the Club or any of its facilities

shall not affect the continued validity or enforceability of this Recreational Covenant, unless terminated in accordance with Section 3.2.

2.8. No Ownership Interest. No Owner, by virtue of ownership of a Lot or membership in the Club, acquires any ownership interest, beneficial interest, or other vested interest whatsoever in the Club or the Club Operator, but only the privilege of using and enjoying the Club's facilities as a Social Member in accordance with the Membership Policies and the Club's rules, which are subject to change from time to time.

2.9. Declarant Lots Excluded. The granting of a Social Membership and the obligation for Membership Fees pursuant to this Recreational Covenant shall not apply to Declarant or any Builder, or to any Lot owned by Declarant or any Builder, while so owned.

Article III **Amendment**

3.1. Amendment. This Recreational Covenant may be amended only by an instrument signed by the Club Operator and by the Owners of at least 67% of the Lots within the Club Community. So long as Declarant owns any property described in Exhibit "A" or "B" to the Declaration, any amendment to this Recreational Covenant also shall require Declarant's written consent.

Amendments to this Recreational Covenant shall be effective upon Recordation of the above-described amendment instrument. Any procedural challenge to an amendment must be made within three months of its Recordation. In no event shall a change of circumstances or conditions operate to amend any portion of this Recreational Covenant.

3.2. Duration; Termination. Unless terminated as provided below, this Recreational 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 Recreational Covenant shall automatically be extended at the expiration of such period for successive periods of 20 years each unless terminated as provided below. If any of the covenants, conditions, restrictions, or other provisions of this Recreational Covenant shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

This Recreational Covenant may be terminated in the same manner as provided for amendment in Section 3.1. In addition, upon any conveyance of title to the Club, the grantee under such conveyance shall have a period of 90 days from the close of escrow to terminate this Recreational Covenant by Recorded instrument. The termination of this Recreational Covenant shall terminate any Social Memberships issued pursuant hereto and any corresponding obligation to pay Membership Fees. Other rights and obligations of the Club Operator and the Owners, if any, shall be determined in accordance with the Membership Policies.

3.3. Construction; Severability. This Recreational Covenant shall be governed by and construed under Arizona law. Invalidation of any provision of this Recreational Covenant, in whole or in part, by judgment or court order shall not affect other provisions.

3.4. Waiver. No failure of Declarant or the Club Operator to exercise any right or power under this Recreational Covenant or to insist upon strict compliance with this Recreational Covenant and no custom or practice at variance with the terms of this Recreational Covenant shall constitute a waiver of the right thereafter to demand exact compliance with the terms of this Recreational Covenant.

3.5. Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.


3.6. Notices. Any notice required under or pursuant to this Recreational Covenant shall be in writing and shall be personally delivered or sent by registered or certified mail to the principal office of Declarant or Club Operator, as applicable, or, if to a Lot Owner, to the address of the Owner's Lot.

All such notices shall, for all purposes, be deemed delivered and received (a) upon personal delivery to the party or address specified above, or (b) on the third day after being deposited in the United States mail, postage prepaid and properly addressed.

[SIGNATURES SET FORTH ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned have executed this Recreational Covenant as of the date first written above.

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

By: 
Name: Philip H. Darrow
Title: Assistant Secretary

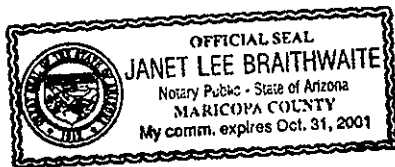
STATE OF ARIZONA

) s.s.

COUNTY OF MARICOPA

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The foregoing instrument was acknowledged before me this 6th day of July, 1999, by Philip H. Darrow, as the Assistant Secretary of ANTHEM ARIZONA L.L.C., an Arizona limited liability company.



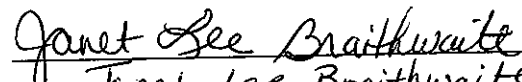
By: 
Name: Janet Lee Braithwaite
Title: Notary Public
My Commission Expires: October 31, 2001

EXHIBIT "A"**Land Initially Submitted**

Anthem Country Club Unit 1 Amended, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 503, Page 01.

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

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

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

Anthem Country Club Unit 5 Amended, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 505, Page 30.

Anthem Country Club Unit 6 Amended, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 502, Page 50.