

TOWN OF QUEEN CREEK



# Construction Assurance for Public Improvements

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Dear Applicant:

Thank you for your interest in developing in the Town of Queen Creek! My staff and I look forward to working with you throughout the development process.

While your project is still very early in the development process, I wanted to take this opportunity to provide you with this informational booklet about construction assurances. This informational material is intended to familiarize you with why the Town requires construction assurances, the process for submitting assurances, the types of assurances the Town accepts, sample documents, the process for accepting public improvements, and information about how and when assurances are released.

Understanding this information and submitting documents in accordance with the templates and timelines presented in this booklet may reduce your project's review time, following Town Council approval of your project.

Should you have any questions regarding the information in this booklet, please do not hesitate to contact me at 480-358-3000.

Sincerely,

Chris A. Dovel  
Principal Engineer

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## **Why does the Town of Queen Creek require construction assurances?**

The Town of Queen Creek requires every developer to provide the Town with a financial assurance that the improvements associated with the development, such as street paving, curb and gutter, water lines, and traffic signals will be properly installed. The financial assurances protect the Town by providing the Town with the money to finish the improvements, if for some reason the developer does not do so.

Every developer, from the largest projects and most experienced developer to the smallest projects and least experienced developer, is required to provide a financial assurance.

## **When does the assurance need to be submitted?**

Following Town Council approval of your preliminary plat, you might participate in a post-Council meeting with staff. Staff will remind you at this meeting, as well as with their first review comments, that at the time of second submittal, a draft financial assurance is to be submitted. The actual assurance does not have to be issued at this point; the draft is submitted in order to verify that you are using one of the Town's approved templates. All assurances submitted in formats other than the approved templates contained in this booklet are subject to review by the Town Attorney and may not be accepted. We strive to get the assurance language approved early in the process to minimize the chances of the assurance holding up the final plat from being recorded after all other reviews are completed.

## **What types of assurances are accepted?**

The Town's Subdivision Ordinance (Section 7.5 B) allows the Town to accept three types of assurances: subdivision performance bonds, letters of credit or cash.

For your convenience, the Town Attorney has developed two templates for the subdivision performance bond and one template for the irrevocable letter of credit. The appendix section of this document contains the currently approved versions. The time to review the assurance instrument will be reduced significantly if the format and language contained in these Town-approved templates is utilized. If you have done work in the Town in the past, it is possible that a different template was used. All assurances submitted in formats other than the approved templates contained in this booklet are subject to review by the Town Attorney and may not be accepted.

## **What happens to the assurance if the development is sold?**

Regardless of ownership, the Town requires an assurance to be in place for the public improvements associated with a development. If ownership of a project changes, the Town will not release the current owner's assurance until an assurance is received from the new owner and approved by the Town.

## **What if my project is phased?**

In instances where a project is phased but submitted as one plat, the Town requires assurance for the improvements associated with all phases of the project. Following completion and acceptance of the improvements associated with each phase, the developer may request to lower the assurance by the amount associated with the accepted phase improvements. Alternatively, separate assurances could be submitted for the improvements associated with each phase and, as the improvements are completed and accepted, the Town would release the individual phase assurances.

## **What is the process for accepting improvements and releasing the assurance?**

At the developer's request, the Town will complete the final inspection of improvements. Prior to staff taking the final acceptance of improvements to the Town Engineer for approval, the work must have passed final inspection, Mylar as-built plans along with a compact disc (CD) in PDF format of the as-built drawings must be submitted to the Town, and the Town must have a financial assurance in place for 10 percent of the total cost of the improvements. The 10 percent financial assurance must be in place for a period of one (1) year from the date of final acceptance of the improvements.

This assurance, held during the one year warranty period, may result from the reduction of the existing subdivision performance bond, irrevocable letter of credit, or cash assurance previously paid, or the developer may submit a new warranty bond, irrevocable letter of credit or cash, solely for the warranty purpose.

For your convenience, the Town Attorney has developed a warranty bond template that is included in the appendix section of this document. As is the case for the subdivision performance bond templates and irrevocable letter of credit, assurances submitted in formats other than the approved templates contained in this booklet are subject to review by the Town Attorney and may not be accepted.

After the work has passed final inspection, the Town has received the Mylar set and CD of the as-builts, and the 10 percent assurance is in place, staff will make a recommendation to the Town Engineer to approve the final acceptance of improvements. If the developer opted to submit a new warranty bond, irrevocable letter of credit or cash, the Town will release the initial assurance provided for construction after the Town Engineer approves the final acceptance of improvements.

During the one year warranty period, the developer is responsible for repair work for any of the public improvements. Town staff will periodically inspect the public improvements and will notify the developer of the necessary repair work. The developer is responsible for having the repair work completed prior to the end of the warranty period. Upon successful completion of the warranty period and successful repair of any necessary warranty items, the remainder of the assurances retained by the Town will be released.

## **Subdivision Performance Bond Templates**

### **Instructions**

1. The following three (3) pages contain two different subdivision performance bond templates. It is the developer's choice which template to use.
2. Throughout the documents you will see blanks for the Principal, surety, dollar amount, and the work the Principal has agreed to perform. Please enter this information. Some information may not be available at the time the draft is submitted for review; this information may be added later when the subdivision performance bond is actually issued.
3. The surety utilized may not be located in Arizona, but must be licensed to do business in Arizona. A sample certificate of authority follows the template documents. It will be necessary to provide this documentation if the surety is located outside of Arizona.
4. Submit the draft subdivision performance bond with your second submittal following Council approval of your preliminary plat.
5. As a reminder, all assurances submitted in formats other than the approved templates contained in this booklet are subject to review by the Town Attorney and may not be accepted.
6. An electronic copy of this template may be requested from the case engineer.



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**SUBDIVISION PERFORMANCE BOND**

**KNOW ALL MEN BY THESE PRESENTS:**

That \_\_\_\_\_, a \_\_\_\_\_, as **Principal** (herein so called), and \_\_\_\_\_, a corporation organized under the laws of the State of \_\_\_\_\_ and duly authorized to do business in the State of Arizona, as **Surety** (herein so called), are held and firmly bound unto the Town of Queen Creek, an Arizona municipal corporation (“**Town**” or “**Obligee**”), 22350 South Ellsworth Road, Queen Creek, Arizona 85242, as Obligee, in the penal sum of \_\_\_\_\_ (\$\_\_\_\_\_), to which payment well and truly to be made, we bind ourselves, our and each of our heirs, executors, administrators, successors and assigns jointly and severally, firmly by these presents.

**EXECUTED** and dated this \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

**WHEREAS**, the Principal is obligated to construct, or cause to be constructed, certain subdivision improvements for the so-called “\_\_\_\_\_” project, as more specifically set forth in [Zoning/Subdivision] Case No: \_\_\_\_\_ (collectively, the “**Work**”), on or before the \_\_\_ day of \_\_\_\_\_, 200\_ (the “**Completion Date**”).

And

**WHEREAS**, under the terms of the Town’s Codes, regulations, and requirements, the said Principal is required to provide a bond to protect the said Obligee against the failure of the Principal to timely complete the Work, and against the result of incomplete work or faulty materials or workmanship in, or other defects relating to, said Work.

**NOW, THEREFORE**, the condition of this obligation is such that if the said Principal shall complete the work by the Completion Date in a manner acceptable to the Town, as evidenced by the Town’s acceptance of such Work, and upon the expiration of the warranty period required by the Town, if applicable, then the above obligation is void; otherwise it remains in full force and effect.

If Town provides written notice to Surety that Principal has failed to either commence or complete, to Town’s sole satisfaction, any Work, Surety shall promptly, and at the Surety’s sole cost and expense, take one of the following actions at the Town’s written election:

1. Undertake to perform and complete the Work itself, through its agents or through independent contractors;
2. Obtain bids or negotiated proposals from qualified contractors acceptable to the Town for a contract for performance and completion of the Work, arrange for a contract to be prepared for execution by the Surety and the contractor selected with the Town’s

concurrency, and thereby to complete the defaulted Work at the sole cost and expense of the Surety; or

- 3. Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances after investigation, determine the amount for which it may be liable to the Town and, as soon as practicable after the amount is determined, tender payment therefore to the Town.

If the Surety does not proceed as provided immediately above within fifteen (15) days after written notice by the Town of a breach by Owner in the Work, the Surety shall be deemed to be in default on this Bond fifteen (15) days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Town shall be entitled to enforce any remedy available to the Town.

To the limit of the amount of this Bond, the Surety is obligated to the Town, without duplication, for:

- 1. The responsibilities of the Principal for the Work; and
- 2. Additional legal, design professional, construction, maintenance and delay costs resulting from the Principal’s default or resulting from the actions or failure to act of the Surety in a timely manner in accordance with the terms of this Bond.

The Surety hereby waives notice of any change, including changes of time, to the Construction Contract for the Work, or to related subcontracts, purchase orders and other obligations.

\_\_\_\_\_  
Surety

\_\_\_\_\_  
Developer (Principal)

BY: \_\_\_\_\_  
\_\_\_\_\_

BY: \_\_\_\_\_  
\_\_\_\_\_

**Template 2**

Subdivision Bond  
Faithful Performance – Public Work

Bond No.:

Premium: \$

**KNOWN ALL MEN BY THESE PRESENTS:** That we, \_\_\_\_\_, as Principal, and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, duly licensed in and holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article I, as Surety, are held and firmly bound unto **TOWN OF QUEEN CREEK, 22350 S Ellsworth Road, Queen Creek, AZ 85242**, as Obligee, in the sum of (\$ \_\_\_\_\_), for the payment wherefore, well and truly to be made, said Principal and Surety bind themselves, their heirs, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has agreed to perform [or is obligated by Zoning Case No. \_\_\_\_\_] to perform the following work (the “Work”) on or before \_\_\_\_\_, 200\_ (the “Completion Date”), to wit:

NOW, THEREFORE, the condition of this obligation is such that if the Principal faithfully performs and fulfills all of the undertakings, covenants, terms, conditions, and agreements of the Work on or before the Completion Date and any extension of the Completion Date, with or without notice to the Surety, and during the life of any guaranty required by the Town, and also performs and fulfills all of the undertakings, covenants, terms, conditions, and agreements of all duly authorized modifications of the Work that may hereafter be made, notice of which modifications to the S surety being hereby waived, the above obligation is void. Otherwise it remains in full force and effect. The term of this bond shall begin upon the date of filing with the Town and shall remain in effect until the completion of the Work to the satisfaction of the Town \_\_\_\_\_.

Provided, however, that this bond is executed pursuant to the provisions of title 34, chapter 2, article 2, Arizona Revised Statutes, and all liability of this bond shall be determined in accordance with the provisions of title 34, chapter 2, Article 2, Arizona Revised Statutes, to the extent as if it were copied at length in this agreement. The prevailing party in a suit on this bond shall recover as part of the judgment responsible attorney fees that may be fixed by a judge of this court.

This Bond shall not be executed by an individual surety or sureties, even if the requirements of A.R.S. Section 7-101 are satisfied.

SIGNED, SEALED, DATED:

(Principal)  
By: \_\_\_\_\_

(Surety)  
By: \_\_\_\_\_  
Attorney-in-fact

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# Irrevocable Letter of Credit Template

## Instructions

1. The following four (4) pages contain the template for the irrevocable letter of credit and the two exhibits that are part of the approved template.
2. Throughout the document you will see where it is noted to insert the builder name, bank name and letter of credit document name. Please insert this information where requested.
3. The irrevocable letter of credit number will probably not be available when you initially submit the draft language for review. This can be inserted later when the letter is actually issued by your financial institution.
4. Submit the draft irrevocable letter of credit with your second submittal following Council approval of your preliminary plat.
5. As a reminder, all assurances submitted in formats other than the approved templates contained in this booklet are subject to review by the Town Attorney and may not be accepted.
6. An electronic copy of this template may be requested from the case engineer.

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**FORM LETTER OF CREDIT**  
[INSERT BANK NAME]  
**[INSERT LETTER OF CREDIT DOCUMENT NAME]**

\_\_\_\_\_, 20\_\_\_\_

Letter of Credit No. \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Town of Queen Creek  
22350 S. Ellsworth Road  
Queen Creek, AZ 85242  
Attn: \_\_\_\_\_

Gentlemen/Ladies:

1. At the request and for the account of our customer, [INSERT BUILDER NAME], a(n) \_\_\_\_\_, (Builder) [INSERT BANK NAME] (Bank), hereby establishes in your favor this [INSERT LETTER OF CREDIT DOCUMENT NAME] (Letter of Credit). This Letter of Credit authorizes you to draw on us in amounts which in the aggregate shall not exceed the “Stated Amount” of \_\_\_\_\_ and No/100 Dollars (\$\_\_\_\_\_).

2. You or your duly authorized successor or transferee may obtain the funds available under this Letter of Credit by presentment to us, of your sight draft or drafts drawn on us in the form set forth as Exhibit A hereto, accompanied by your executed statement signed by the Town Manager or Town Engineering Manager, certifying that the amount set forth in the draft is immediately due and payable and accompanied by the original of this Letter of Credit and Amendments(s) thereto, if any.

2A (i) If cancellation of this Letter of Credit is required before the expiry date stated herein (which may be extended from time to time by amendment by us and acceptance by beneficiary), the original of this Letter of Credit and amendments(s) thereto, if any, must be returned to us accompanied by the beneficiary’s letter requesting cancellation in the form attached hereto as Exhibit B.

(ii) This letter of credit may also be reduced upon our receipt of a reduction certificate from you in the form of Exhibit B.

(iii) We hereby engage with you that draft(s) drawn and required documents presented in compliance with the terms contain in this Letter of Credit will be duly honored upon presentation and delivery to [INSERT NAME AND ARIZONA LOCATION OF BANK], on or before the expiration date hereof.

3. Your sight draft will be honored by payment to you of the draft amount in immediately available funds. Each draft presented for payment under this Letter of Credit must be in the form attached hereto as Exhibit A.
4. You may draw the full amount of this Letter of Credit or only part of it, in your discretion, provided that drafts honored by us under this Letter of Credit shall not exceed the Stated Amount available to you under this Letter of Credit.
5. If Builder does not deliver to you a renewal Letter of Credit at least ten (10) days prior to the expiration of this Letter of Credit, then, in addition to other rights available to you under the Agreement, you shall have the right to draw on this Letter of Credit.
6. We consider this Letter of Credit to be irrevocable and unconditional (except as expressly stated herein) under the terms mentioned above.
7. Unless otherwise expressly stated herein, this irrevocable Standby Letter of Credit is subject to the uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500.

Very Truly Yours,

[INSERT BANK NAME]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT "A"**

Drawn Under **[Insert Bank Name]**  
**[Insert Letter of Credit Document Name]** No. \_\_\_\_\_

\$ \_\_\_\_\_ (U.S.) \_\_\_\_\_, 200\_\_

To: **[Insert Bank Name]**

Drawn under **[Insert Bank Name]** **[Insert Letter of Credit Document Name]** No.  
\_\_\_\_\_.

I am a duly authorized representative of the beneficiary of **[Insert Bank Name]**  
**[Insert Letter of Credit Document Name]** No. \_\_\_\_\_ and hereby  
certify that the amount drawn hereunder represents funds due as a result of the  
failure of **[Insert Builder Name]** to:

- timely and properly complete the improvements described in.
- deliver a renewal letter of credit within the time required under Letter  
of Credit No. \_\_\_\_\_.

Accordingly, please pay to the order of **Town of Queen Creek, an Arizona municipal  
corporation,** \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

**TOWN OF QUEEN CREEK,** an Arizona  
municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT "B"**

Date:

\_\_\_\_\_ and \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Ref: Letter of Credit No. \_\_\_\_\_

As parties to the above referenced Letter of Credit, we request that the following action(s) be taken as evidenced by our initials and signatures below:

Please initial:

\_\_\_\_\_ Reduce the amount from U.S. \$ \_\_\_\_\_ to U.S. \$ \_\_\_\_\_.

\_\_\_\_\_ Extend the expiration date from \_\_\_\_\_ to \_\_\_\_\_.

\_\_\_\_\_ Cancel this Letter of Credit effective immediately.

Enclosed herewith are the original Letter of Credit documents, including the amendment(s), if any, thereto.

(Note: If any of these documents are not included with this letter, you must specify each missing document and explain the reason why it is not being returned.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**TOWN OF QUEEN CREEK**, an Arizona  
municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

# Warranty Bond Template

## Instructions

1. The following two (2) pages contain the warranty bond template.
2. Throughout the documents you will see blanks for the Principal, surety, dollar amount, and the work the Principal has agreed to perform. Please enter this information. Some information may not be available at the time the draft is submitted for review; this information may be added later when the warranty bond is actually issued.
3. The surety utilized may not be located in Arizona, but must be licensed to do business in Arizona. A sample certificate of authority follows the template documents. It will be necessary to provide this documentation if the surety is located outside of Arizona.
4. Submit the draft warranty bond when the final inspection is scheduled with the Town or immediately following the final inspection.
5. As a reminder, all assurances submitted in formats other than the approved templates contained in this booklet are subject to review by the Town Attorney and may not be accepted.
6. An electronic copy of this template may be requested from the case engineer.

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**WARRANTY BOND**  
(One-Year Warranty)

Bond No. \_\_\_\_\_

**KNOW ALL MEN BY THESE PRESENTS:**

That \_\_\_\_\_, a \_\_\_\_\_, as **Principal** (herein so called), and \_\_\_\_\_, a corporation organized under the laws of the State of \_\_\_\_\_ and duly authorized to do business in the State of Arizona, as **Surety** (herein so called), are held and firmly bound unto the Town of Queen Creek, an Arizona municipal corporation (“**Town**” or “**Obligee**”), 22350 South Ellsworth Road, Queen Creek, Arizona 85242, as Obligee, in the penal sum of \_\_\_\_\_ (\$\_\_\_\_\_), to which payment well and truly to be made, we bind ourselves, our and each of our heirs, executors, administrators, successors and assigns jointly and severally, firmly by these presents.

**EXECUTED** and dated this \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

**WHEREAS**, on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_, the said Principal informed the Town that said Principal would be constructing, or causing to be constructed, the following improvements for the so-called “\_\_\_\_\_” \_\_\_\_\_ project: \_\_\_\_\_ (collectively, the “**Work**”).

And

**WHEREAS**, under the terms of the specifications for said Work, and as a condition to the Town’s acceptance of the Work by virtue of Principal’s dedication thereof to the Town [**TO BE ADJUSTED ACCORDING TO CIRCUMSTANCES**], the said Principal is required to provide a bond to protect the said Obligee against the result of faulty materials or workmanship in, or other defects relating to, said Work for the period of twelve (12) months from and after the date of the completion and acceptance of same by Obligee, which shall be evidenced by Obligee’s written acceptance thereof, the date of such acceptance being the beginning of said twelve (12) month period.

**NOW, THEREFORE**, if the said Principal shall, for a period of twelve (12) months from and after the date of the completion and acceptance of the Work by said Obligee, maintain, repair and replace any and all defects in said Work (all actions necessary to correct defects in said Work, including, without limitation, those arising out of defective materials or defective workmanship being herein called the “**Warranty Work**”), then the above obligation to be void; otherwise to remain in full force and effect.

If Town provides written notice to Surety that Principal has failed to either commence or complete, to Town's sole satisfaction, any Warranty Work, Surety shall promptly, and at the Surety's sole cost and expense, take one of the following actions at the Town's written election:

1. Arrange for the original contractor which executed the Work (the "**Contractor**") to perform and complete the Warranty Work;
2. Undertake to perform and complete the Warranty Work itself, through its agents or through independent contractors;
3. Obtain bids or negotiated proposals from qualified contractors acceptable to the Town for a contract for performance and completion of the Warranty Work, arrange for a contract to be prepared for execution by the Surety and the contractor selected with the Town's concurrence, and thereby to complete the defaulted Warranty Work at the sole cost and expense of the Surety; or
4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances after investigation, determine the amount for which it may be liable to the Town and, as soon as practicable after the amount is determined, tender payment therefore to the Town.

If the Surety does not proceed as provided immediately above within fifteen (15) days after written notice by the Town of a breach by Owner in the Warranty Work, the Surety shall be deemed to be in default on this Bond fifteen (15) days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Town shall be entitled to enforce any remedy available to the Town.

To the limit of the amount of this Bond, the Surety is obligated to the Town, without duplication, for:

1. The responsibilities of the Principal for the Warranty Work; and
2. Additional legal, design professional, construction, maintenance and delay costs resulting from the Principal's default or resulting from the actions or failure to act of the Surety in a timely manner in accordance with the terms of this Bond.

The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

\_\_\_\_\_  
Surety  
BY: \_\_\_\_\_

\_\_\_\_\_  
Developer  
BY: \_\_\_\_\_

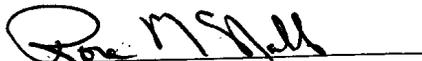
## **Sample Certificates of Authority**

STATE  
OF  
ARIZONA

DEPARTMENT OF INSURANCE

THIS IS TO CERTIFY, THAT THIS  
INSTRUMENT IS A FULL, TRUE AND  
CORRECT COPY OF THE ORIGINAL ON  
FILE WITH THE DEPARTMENT OF  
INSURANCE OF THE STATE OF ARIZONA  
AND CONSISTS OF 1 PAGE(S).

HEREUNTO SET MY HAND AND THE OFFICIAL SEAL OF THIS DEPARTMENT  
FOR THE DIRECTOR OF INSURANCE THIS 4<sup>th</sup> DAY OF May, 2006

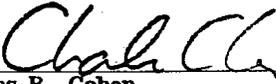
  
AUTHORIZED REPRESENTATIVE

224242

CERTIFICATE No.:



Sample 2

<b>STATE OF</b>			<b>ARIZONA</b>
<b>DEPARTMENT OF INSURANCE</b> <b>CERTIFICATE OF AUTHORITY</b>			
I, <b>CHARLES R. COHEN</b> , Acting Director of Insurance of the State of Arizona, do hereby certify that			
<b>THE HANOVER INSURANCE COMPANY</b> Domiciled in New Hampshire NAIC NO. 22292			
is hereby authorized, subject to the provisions thereof and the Charter Powers of said Company, to transact the business of:			
<b>CASUALTY WITHOUT WORKERS' COMPENSATION</b> <b>DISABILITY</b> <b>MARINE AND TRANSPORTATION</b> <b>PROPERTY</b> <b>SURETY</b> <b>VEHICLE</b>			
insurance within the State of Arizona until terminated at the request of the insurer or suspended or revoked by the Director of Insurance.			
Arizona Revised Statutes § 20-217 (C) states:			
<i>A Certificate of Authority remains the property of the State of Arizona. Upon termination at the request of the insurer or revocation by the Director of Insurance, the insurer shall immediately deliver the Certificate of Authority to the Director of Insurance.</i>			
In <b>TESTIMONY WHEREOF</b> , I have hereunto set my hand and affixed the official seal of the Director of Insurance at the City of Phoenix. The effective date of this Certificate is October 13, 1998.			
			
<b>E146 (01/97)</b>		<b>Charles R. Cohen</b> Acting Director of Insurance	
			<b>001089</b>

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