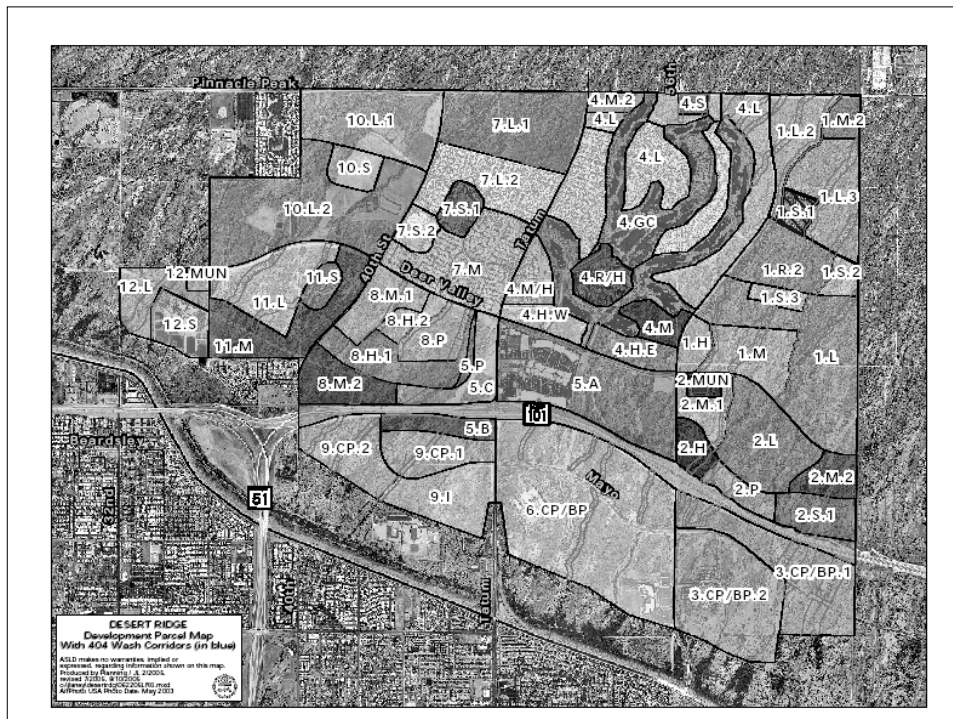


**SPECIAL ISSUES FOR PROJECTS
INVOLVING STATE LANDS**

A CASE STUDY OF DESERT RIDGE

*A Review of CC&R's, Development Agreement and
Easements on State Trust Lands
January 31, 2007*

**Michael J. Phalen
FENNEMORE CRAIG, P.C.**





Enabling Act

Sec. 28 No mortgage or other encumbrance of the said lands, or any part thereof, shall be valid in favor of any person or for any purpose or under any circumstances whatsoever.

Arizona Constitution

§ 3. Mortgage or other encumbrance; sale or lease at public auction

Section 3. No mortgage or other encumbrance of the said lands, or any part thereof, shall be valid in favor of any person or for any purpose or under any circumstances whatsoever.



CC&R's – Pre-Auction

Commissioner's Powers and Duties

A.R.S. § 37-132(A)(5) - "...The commissioner may impose such conditions and covenants and make such reservations in the sale of state lands as the commissioner deems to be in the best interest of the state trust."

Urban Lands Act

A.R.S. § 37-334(D) - "The development or secondary plan shall contain provisions as are necessary to implement the purposes of this section, including:





CC&R's – Pre-Auction

A.R.S. § 37-334.01(B) - “A development plan approved for a master plan area may propose:...

1. Design guidelines and covenants, conditions and restrictions.
6. Membership in a master property association ... to implement and enforce compliance with the master plan area.”

A.R.S. § 37-335(H) - “If urban lands in the area of the adopted plan are sold, the purchaser shall conform the use of the land to the development plan”



CC&R's - Post Auction

A.R.S. § 37-335(G) - “The certificate of purchase or patent shall require the purchaser to honor any covenants and restrictions as deemed necessary by the commissioner to implement the approved development or secondary plan. A breach of any covenant or restriction results in the reversion of all rights, title and interests in the land to this state pursuant to the conditions prescribed by § 37-247.”

Sales – Without a Development Plan CC&R, with State’s review and permission

Leases - Pursuant to the Lease and State’s review and permission



DESERT RIDGE CC&R's



RECURRING ISSUES

Land Department versus Master Developer

Phasing of Dispositions and Development

Infrastructure and Drainage

- Construction Responsibilities
- Allocation of Costs

Land Use Control

- CC&R's
- Zoning

Protecting the Commercial Core and Lease

Differences between the Commercial and Residential Developments

- Assessments
- Design Guidelines
- Association Control

DESERT RIDGE CC&R's



**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS
AND EASEMENTS FOR
DESERT RIDGE**

This Declaration of Covenants, Conditions, Restrictions and Easements is executed ... by the State of Arizona through the State Land Commissioner ("Declarant") and by Northeast Phoenix Partners, an Arizona General Partnership ("Master Developer").



DESERT RIDGE CC&R's



RECITALS

- B. ..., Master Developer will acquire from Declarant a leasehold interest in approximately three hundred thirty-two (332) acres ... (the "Core Lease"). As part of its rights and obligations under the Core Lease, Master Developer has agreed to act as the master developer of Desert Ridge, ... assist Declarant in the development of Desert Ridge and in the implementation and enforcement of this Declaration.

- C. ... to develop ... in phases, ...

DESERT RIDGE CC&R's



ARTICLE 1
DEFINITIONS

- 1.11 "Certificate of Purchase" ...

- 1.13 "Commercial Core Parcel" ... portions of the Covered Property ... which are leased to Master Developer pursuant to the Core Lease.

- 1.17 "Core Lease" shall mean that Commercial Lease No. 03-52415, dated July 7, 1993, executed by Declarant, as Lessor, and Master Developer, as Lessee, covering the Commercial Core Parcel.

- 1.18 "Covered Property" shall mean the real property ... which is approximately 5,723 acres



DESERT RIDGE CC&R's



- 1.27 “Land Use Plan” shall mean the map ... which illustrates the land uses permitted under the Master Development Plan.
- 1.33 “Master Developer” shall be Northeast Phoenix Partners,...who simultaneously with, ... the Recording of this Declaration, shall enter into the Core Lease to Lease the Commercial Core Parcel. Any assignment by Master Developer of ... Master Developer’s rights, duties or obligations as master developer of Desert Ridge must be made concurrently with and appurtenant to an assignment of all or a portion of the Core Lease. The document evidencing such an assignment shall: ... (b) be approved by Declarant, which approval shall not be unreasonably withheld
- 1.34 “Master Development Plan” shall refer to the Desert Ridge Specific Plan dated July 18, 1990, ...

DESERT RIDGE CC&R's



- 1.41 “Owner” (when capitalized) shall mean ...:
- (a) The Record holder of legal title to the fee simple interest....
 - (b) ... the holder of the ... Certificate of Purchase....
 - (c) The ... holder of the lessee’s interest in a Leased Parcel ... if the lessee’s interest .. is ...assigned, in whole or in part, the assignee under such ... assignment shall be treated as the Owner ... A sublease ... shall not change the identity of the Owner of the Leased Parcel (the Owner remaining the Record holder ...).
 - (d) ... the Owner of the interest in the Parcel and not the improvements shall be deemed an Owner....
 - (e) Master Developer shall be an Owner so long as it is the lessee of all or part of the Commercial Core Parcel pursuant to the Core Lease....
 - (f) Declarant shall not be deemed an Owner hereunder.



DESERT RIDGE CC&R's



ARTICLE 2
PROPERTY AND PERSONS BOUND BY THIS
DECLARATION

2.2 The Role of Master Developer. Declarant desires to develop Desert Ridge as a high quality, master-planned community in the manner provided for in this Declaration, but desires to limit its involvement in the day-to-day affairs of the Association while remaining involved in certain major decisions affecting the development of Desert Ridge. Master Developer, as lessee of the Core Lease, will have a long-term interest in insuring that Desert Ridge is developed in accordance with Declarant's goals and is willing to undertake the responsibility of Master Developer as set forth herein. Based on their respective interests, Declarant and Master Developer have agreed to cooperate in the development of Desert Ridge in the manner set forth herein.... (emphasis added)

DESERT RIDGE CC&R's



2.5 Declarant's and Master Developer's Disclaimer of Representations. Notwithstanding anything to the contrary herein, Declarant and Master Developer make no warranties or representations whatsoever that the plans presently envisioned for the complete development of Desert Ridge can or will be carried out, or that the real property described on Exhibit "A" is or will be committed to or developed for a particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect....



DESERT RIDGE CC&R's



ARTICLE 3
DEVELOPMENT PROCESS

- 3.1 Outline of Development Procedure. ... The Developer Owner's use of its Lot(s) or Parcel must be consistent with the Master Development Plan.... All subdivision plats, condominium declarations, Subsidiary Declarations, easements, or applications for zoning, rezoning, variances or use permits must be approved by the Board ... (and may also need to be approved by Master Developer ...) or by Declarant before they are submitted to the City for approval or Recorded. ... If a Developer Owner's Lot(s) or Parcel includes land designated as right-of-way for an Arterial Street, the Developer Owner must dedicate such right-of-way to the City immediately following the transfer of such Parcel from Declarant to such Developer Owner, ...
- 3.9 Wash Corridors. The Wash Corridors shall be constructed in accordance with the Master Development Plan, the Master Plans and the Secondary Plans....

DESERT RIDGE CC&R's



ARTICLE 6
PERMITTED LAND USES AND RESTRICTIONS

- 6.1 Permitted Land Uses. The Master Development Plan establishes the permitted land uses within Desert Ridge and all of the provisions of the Master Development Plan relating to such land uses are hereby incorporated herein by this reference. ...
- 6.1.1 Village Center. ... All commercial development within Desert Ridge, except for a limited number of Neighborhood Convenience Centers ... is to be restricted to the Village Center. The balance of Desert Ridge ... is limited to residential development and a limited number of related uses ...



DESERT RIDGE CC&R's



6.1.2 Residential Areas. The balance of Desert Ridge, other than the Village Center, shall be limited to residential development and to the following related uses:

- (a) Schools;
- (b) Public buildings ...
- (c) Resort and hotel uses ...
- (d) Golf course and related or similar recreational uses ...
- (e) "Neighborhood Convenience Centers"...
- (f) Churches.

No other uses shall be permitted within the residential portions of Desert Ridge.

DESERT RIDGE CC&R's



6.1.3 Residential Superblocks; Density Limitations. The residential portions of Desert Ridge have been divided into Superblocks for planning and development purposes ... Each Superblock has a maximum number of Dwelling Units which may be constructed within it, as well as an overall average density which cannot be exceeded. Each Superblock, in turn, is divided into several Development Parcels based on the type of residential development to be permitted therein ... Each Development Parcel has its own density limitations ... All development within the residential portions of Desert Ridge shall be subject to the overall density limitations imposed by the Master Development Plan, provided, however, that the Master Developer (with the consent of Declarant ... may approve variations in (a) the exact location of Development Parcels and (b) densities within one or more Development Parcels, so long as such variations are consistent with the overall plan set forth in the Master Development Plan.



DESERT RIDGE CC&R's



6.6 Declarant's Land. The parties acknowledge that the use restrictions ... of this Article 6 shall not apply to the portions of the Covered Property which are owned by Declarant until such portions are subject to a Sale or Lease. ... This use restriction may be enforced by any Owner in the same manner as the other use restrictions contained in this Article 6.

ARTICLE 7
ORGANIZATION OF ASSOCIATION

7.2 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and Bylaws. ... So long as there is a Class B Member of the Association, the Master Developer shall have the right to appoint all members of the Board. Thereafter, the Board shall be elected annually by the Members. ...

DESERT RIDGE CC&R's



ARTICLE 14
TERM; AMENDMENTS; TERMINATION

14.4 Declarant Right To Terminate As To Portion Of Covered Property. Declarant and Master Developer acknowledge that the Master Development Plan calls for the development of the Covered Property in stages and that, accordingly, much of the Covered Property may not disposed of or developed for a number of years. Declarant acknowledges and agrees that the entire Covered Property shall remain subject to this Declaration so long as development is proceeding in accordance with Section 14.4. However, Declarant desires to retain the right to terminate this Declaration as to portions of the Covered Property if development does not proceed as anticipated, as more fully set forth in the balance of this Section 14.4:



DESERT RIDGE CC&R's



ARTICLE 16
ACTIONS REQUIRING DECLARANT'S APPROVAL

- 6.1 Declarant's Rights. Desert Ridge is a unique master planned community in that while the land is owned by Declarant, Master Developer will be responsible for the development of the project. ... so long as Declarant continues to own any of the Covered Property, Declarant must approve the following:
- (a) Any amendments to the Master Development Plan, this Declaration, the Bylaws and the Articles.
 - (b) Any material amendments to the Design Guidelines. ...
 - (ii) any overall change in the Arterial Street, ... or
 - (iv) any overall change in the treatment of the Wash Corridors.

DESERT RIDGE CC&R's



- (c) Any termination of the Master Development Plan, this Declaration, the Articles or the Bylaws as to all or any part of the Covered Property.
- (d) Any Secondary Plans for a Superblock that affect any portion of the Covered Property owned by Declarant within such Superblock, including property subject to a Certificate of Purchase, a Lease, or any other property to which Declarant otherwise holds fee title.
- (e) Any shifting of residential density within Development Parcels ... if such shifting affects the residential density permitted within Development Parcels owned by Declarant.
- (f) Any increase in the Maximum Annual Assessment ... and any levy of a Special Assessment ...



DESERT RIDGE CC&R's



16.2 Right to Terminate Restrictions. If any land previously Sold or Leased by Declarant reverts to Declarant, whether as a result of forfeitures or other defaults under Certificates of Purchase or defaults or terminations under Leases, Declarant shall have the right to extinguish any land use restrictions, covenants, conditions or easements filed or Recorded against such land, ...

FIRST AMENDMENT



**FIRST AMENDMENT
TO DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR DESERT RIDGE**

5. Design Guidelines for Commercial Development. The Declaration is hereby amended to add the following ...:

“5.9 Design Guidelines for Commercial Development. Master Developer and Declarant recognize that different design considerations apply to commercial than to residential development and, therefore, that it is appropriate to have different (but compatible) sets of Design Guidelines for the commercial and residential portions of Desert Ridge. ... The Commercial Design Guidelines shall control all commercial, office, industrial and retail development within Desert Ridge, ...”



FIRST AMENDMENT



7. Rate of Assessment. Section 9.3 of the Declaration is amended and restated in its entirety to read as follows:

“9.3 Rate of Assessment.

(a) For purposes of determining the amount of Annual Assessments and Special Assessments only, Master Developer shall be deemed, with respect to Parcels and Lots owned by Master Developer, to have the same number of Memberships it would have if Class A Memberships were issued with respect to Lots and Parcels owned by Master Developer. Because land owned by Declarant cannot be subject to assessments or liens, the portion of the Covered Property owned by Declarant shall not be subject to Assessments unless and until it is Sold or Leased to a third party.

FIRST AMENDMENT



(c) The amount of the Annual Assessment per Membership for any Parcel or Lot shall be twenty-five percent (25%) of the Annual Assessment ... until the Parcel or Lot associated ... has been included in a Recorded Phase Description ... and one of the following events has occurred ...

(i) A certificate of occupancy has been issued for any commercial building constructed within the phase;

(ii) The Association assumes responsibility for maintenance of any Common Areas ...; or

(iii) A sale, lease or rental of a Dwelling Unit has occurred within the phase. ...

Thereafter the rate of Annual Assessment against such Parcel or Lot shall be one hundred percent (100%) of the rate of Annual Assessment per Membership.



FIRST AMENDMENT



ARTICLE 18
PUBLIC SCHOOL EXEMPTIONS

- 18.2 Exemption from Design Control. So long as a Parcel is used exclusively as a Public School it shall be exempt from Article 5 of this Declaration.
- 18.3 Exemption from Site Plan Approval. So long as a Parcel is used exclusively as a Public School, its Owner shall be exempt from the provisions of ... this Declaration which require Board approval of site plans for the Public School.
- 18.4 Exemption from Use Restrictions. So long as a Parcel is used exclusively as a Public School, the activities associated with the normal maintenance and conduct of a Public School on the Parcel shall be exempt from Sections 6.3 and Subsections 6.4.1 through 6.4.11, inclusive, of this Declaration.
- ...

SECOND AMENDMENT



SECOND AMENDMENT
TO DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR DESERT RIDGE

2. Village Center Subsidiary Declaration. The Declaration is hereby amended and restated in its entirety to read as follows:

“2.6 Village Center Subsidiary Declaration. Declarant and Master Developer recognize that different design, use, and maintenance considerations apply to the Village Center ... than to the residential portions of Desert Ridge. ... Declarant and Master Developer shall have the right ... to record one or more Subsidiary Declarations covering all or part of the Village Center ... which may modify the effect of this Declaration on the Village Center as set forth below.



SECOND AMENDMENT



All property covered by a Village Center Subsidiary Declaration shall remain a part of the Covered Property under this Declaration. ...

A Village Center Subsidiary Declaration may provide for substitute or modified use restrictions ... design controls, and other provisions relating to the use and development of the property it covers. A Village Center Subsidiary Declaration may also establish the types and amounts of assessments, if any, to which property covered by it will be subject and may ... A Village Center Subsidiary Declaration may provide a process for removing property from the Village Center ...

SECOND AMENDMENT

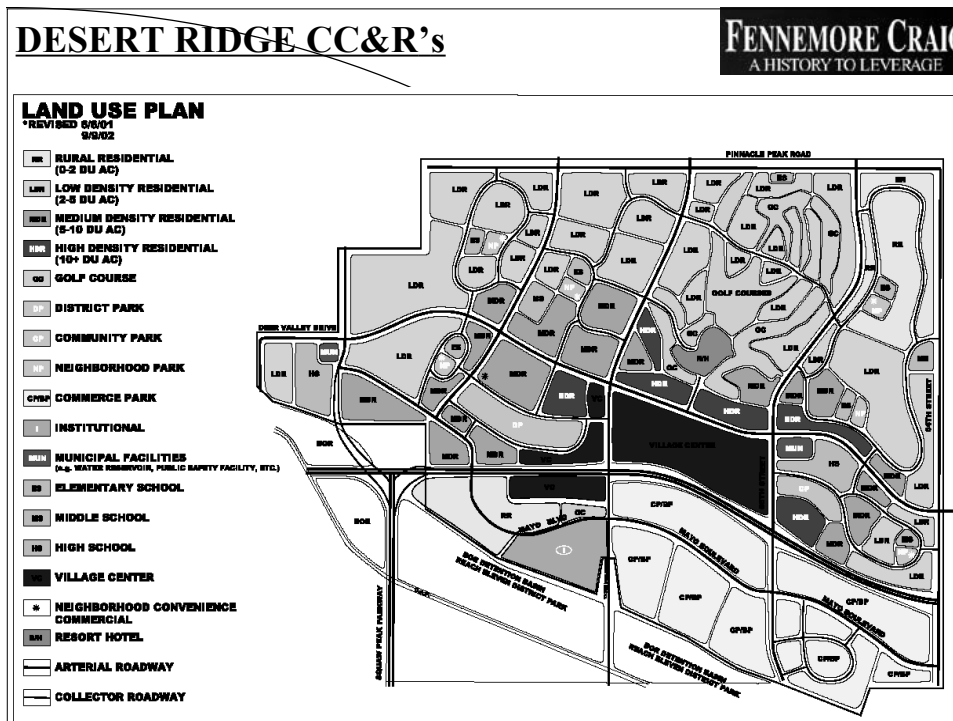
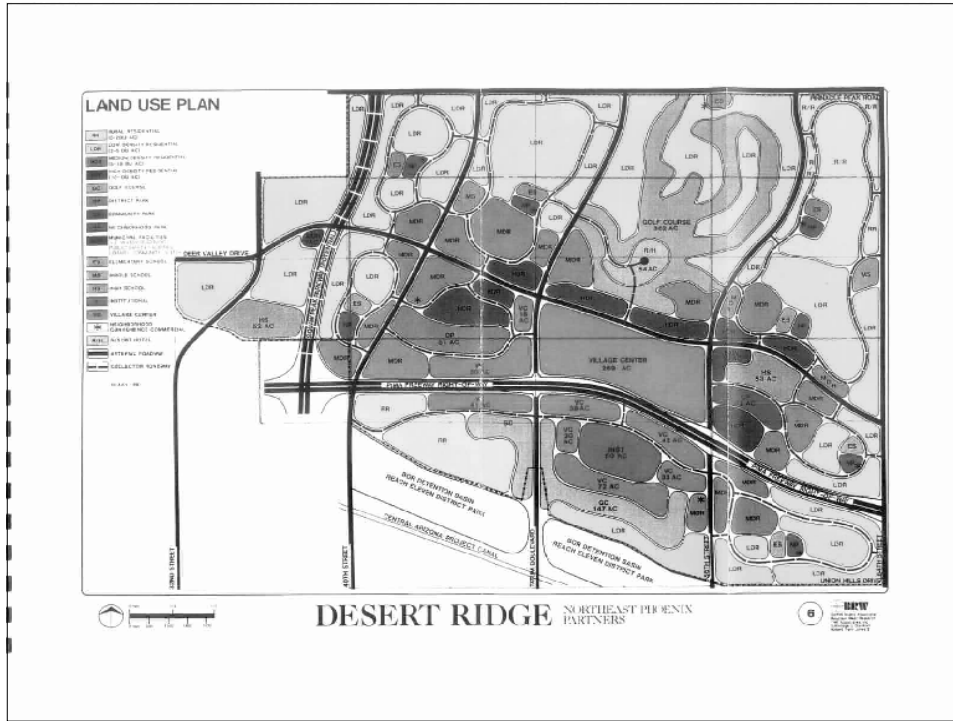


3. De-annexation of Property. The Declaration is hereby amended to add the following ...:

14.5 Declarant and Master Developer Right to Terminate as to Portions of the Covered Property. Declarant and Master Developer shall have the right to terminate this Declaration as to any portion of the Covered Property at any time without the consent of any other Owner or Person ...

17.10 Annexation of Additional Property. From time to time the Declarant and Developer may add land to the Covered Property by recording an Annexation Certificate which describes the land and states that the land is being added to the Covered Property and is subjected to this Declaration. ...





DEANNEXATION NO. 1 **FENMORE CRAIG**
A HISTORY TO LEVERAGE

DECLARATION OF USE RESTRICTION
(Sumitomo Sitix)

C. Owner, as Lessor, and Sitix of Phoenix, Inc., as Lessee (“Anchor Tenant”), have entered into that certain Lease dated December 12, 1995 (“Lease”) for approximately 105.787 acres, ... (“Anchor Lease Property”);

E. Owner and Master Developer now desire to deannex the Anchor Lease Property from the Master Association and impose this Agreement in its place, while reserving certain rights in favor of the Owner and the Master Developer to ensure that the Anchor Lease Property, ... will continue to be developed as a compatible and harmonious part of the overall Desert Ridge master-planned community.

DEANNEXATION NO. 1 **FENMORE CRAIG**
A HISTORY TO LEVERAGE

1. Deannexation of Anchor Lease Property

(a) Deannexation. By executing this Agreement, Owner and Master Developer agree to deannexation of the Anchor Property ... from the Master Declaration,...

(b) Reserved Rights. ...

(1) Rights Reserved in Favor of Owner.

(a) The right to approve any amendment to this Agreement ...

(b) The right to approve any additional permitted uses ...

(c) The right to enforce the use restrictions ...



DEANNEXATION NO. 1



(2) Rights Reserved in Favor of Master Developer.

(a) The right to approve any amendment to this Agreement ...

(b) The right to approve any additional permitted uses ... and such approval shall not be unreasonably withheld; and,

(c) The right to enforce the use restrictions contained ...

2. Permitted Uses of Anchor Lease Property. ... any use permitted under and pursuant to the "Desert Ridge Specific Plan" approved by the City of Phoenix (the "Specific Plan Amendment") ...

DEANNEXATION NO. 1



3. Prohibited Uses. ...

a. ... office use, including both general office and specialty office ...

b. Retail or wholesale sales uses (including commercial banking and other financial services) and restaurants, ...

c. Any development involving building heights above sixty (60) feet ...

d. Hotel, motel or resort development.

Master Developer and Owner may give or withhold their consent as to any use listed in this Section 3 in their sole and absolute discretion, for any reason or no reason, and either may condition their consent on additional restrictions being placed on the portion of the Covered Property covered by the consent. ...



DEANNEXATION NO. 2



**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR
SUPERBLOCK 3
(Mayo Hospital)**

RECITALS

- E. Declarant and Master Developer now desire to deannex the DR Property from the Master Declaration and to impose this Declaration in its place. Declarant and Master Developer also desire to reserve certain rights in favor of the Declarant, the Master Developer ... to ensure that the DR Property... will continue to be developed as a compatible and harmonious part of the overall Desert Ridge master-planned community.

- H. Declarant intends to sell ... simultaneously, with the execution of this Declaration the portion of the Covered Property ... (the "Hospital Parcel") for development of a Hospital and related uses.

DEANNEXATION NO. 2



**ARTICLE 2
DEANNEXATION FROM DESERT RIDGE
RESERVED RIGHTS**

- 2.1 Deannexation from Desert Ridge. By executing this Declaration, Declarant agrees to (and by consenting to this Declaration, Master Developer consents to) the deannexation of the DR Property ... from the Master Declaration. As a condition to such deannexation, Declarant, Master Developer and Master Association shall have the rights reserved under **Section 2.2 and Section 17.1** below. ...

- 2.2 Reserved Rights. In order to ensure that the DR Property continues to be developed compatible manner with the balance of Desert Ridge, despite its deannexation from the Master Declaration, this Declaration hereby reserves the following rights in favor of Master Developer and/or the Master Association:



DEANNEXATION NO. 2



2.2.1 Rights Reserved in Favor of Master Developer.

...

(c) The right to enforce the use restrictions contained in this Declaration relating to Parcel 1 and the Hospital Parcel for the benefit of the Commercial Core Parcel ... and/or the Desert Ridge development as a whole, whether or not Master Developer owns any portion of the Covered Property. Declarant expressly acknowledges and agrees that the rights reserved by Master Developer hereunder have been granted to Master Developer in consideration of Master Developer (i) agreeing to allow the DR Property to be deannexed from the Master Declaration and (ii) agreeing to allow commercial development within the DR Property (... notwithstanding the rights to commercial development granted to Master Developer by ... the Master Declaration. Declarant further acknowledges that Master Developer may exercise the rights reserved by it hereunder for the benefit of the Commercial Core Parcel ... and that nothing herein shall be deemed to obligate Master Developer to agree to any further expansion of the commercial uses permitted hereunder.

DEANNEXATION NO. 2



ARTICLE 7

PERMITTED LAND USES AND RESTRICTIONS

- 7.1 Uses Prohibited Anywhere Within Covered Property. ...
- 7.2 Uses Permitted Anywhere Within the Covered Property. ...
- 7.3 Additional Uses Permitted Within the Hospital Parcel. ...
- 7.4 Additional Uses Permitted Within Parcel 1. ...
- 7.5 Additional Uses Permitted Within Parcel 2. ...
- 7.6 Uses in Parcel 1 and Hospital Parcel Which Require the Consent of the Master Developer and the Declarant. ...
- 7.7 Uses in Parcel 2 Which Require the Consent of the Declarant. ...
- 7.8 Uses Which Require the Consent of the Hospital Owner. ...



DEANNEXATION NO. 2



ARTICLE 17
DECLARANT'S RIGHTS

17.1 Declarant's Rights. To assure Declarant that the development of Superblock 3 conforms to the standards established by this Declaration ..., so long as Declarant continues to own any of the property covered by this Declaration or the Master Declaration, Declarant shall have the following rights:

...

(c) To approve any termination of this Declaration ...

(d) To approve any additional uses ...

(e) To enforce the use restrictions contained in this Declaration for the benefit of the Desert Ridge community as a whole, whether or not Declarant still owns any portion of the Covered Property.

DEANNEXATION NO. 3



DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR
SUPERBLOCK 6 DESERT RIDGE
(American Express)

RECITALS

C. Declarant is the owner of ... "Superblock 6 of Desert Ridge",
....The Covered Property initially does not include ...the "Sitix
Parcel" ...

D. Declarant and Master Developer now desire to deannex the Covered Property from the Master Association and impose this Declaration in its place, while reserving certain rights in favor of the Declarant, the Master Developer ... to ensure that the Covered Property, will continue to be developed as a compatible and harmonious part of the overall Desert Ridge master-planned community.



DEANNEXATION NO. 3



ARTICLE 1
DEFINITIONS

- 1.1 “Additional Property” shall mean the additional property which may be annexed to this Declaration The Additional Property includes the Sitix Parcel ... and all or parts of Desert Ridge Superblock 9, ...
- 1.18 “Covered Property” shall mean ... approximately 410 acres ... of property commonly known as Superblock 6 within the Desert Ridge master-planned community, except for the Sitix Parcel. ...
- 1.25 “East Major Control Area” shall mean ...: (a) the approximately 22.7 acres of the Covered Property located north of the East Major Parcel, from 56th Street to the Wash Corridor which serves as the west boundary of the East Major Parcel, and (b) the portion of the Covered Property located west of the East Major Parcel and south of Mayo Boulevard from the west boundary of the East Major Parcel to 300 feet west of the boundary of the East Major Parcel.

DEANNEXATION NO. 3



1.26 “East Major Owner” shall mean (a) the first Record holder after the Recordation of this Declaration of all of the Owner’s interest in the East Major Parcel, or (b) any Person to whom the then East Major Owner specifically assigns its interest as the “East Major Owner” ...; provided, however, in no event will there be more than one (1) East Major Owner at any time and, at any time that no one Person (including its affiliates) is the Owner of at least fifty percent (50%) of the Net Acres of the East Major Parcel there will be no East Major Owner for purposes of this Declaration. Notwithstanding the foregoing, neither the Master Developer nor the Association will be required to recognize any Person as the East Major Owner until the Master Developer or Association, ..., receives written notice that such Person is the East Major Owner.



DEANNEXATION NO. 3



1.27 “East Major Parcel” shall mean the portion of the Covered Property ... containing approximately ninety-one (91) acres. Declarant intends to enter into a long-term Lease for the East Major Parcel within one (1) year after Recording of this Declaration. In the event Declarant has not entered into a Lease for the East Major Parcel for a minimum term of twenty (20) years within one (1) year after the Recording of this Declaration, then there shall be no East Major Parcel and all references to the East Major Parcel, the East Major Parcel Owner and the East Major Control Area shall be deemed to be deleted from this Declaration.

DEANNEXATION NO. 3



ARTICLE 2
DEANNEXATION FROM DESERT RIDGE;
RESERVED RIGHTS

2.1 Deannexation. By executing this Declaration, Declarant agrees to (and by consenting to this Declaration, Master Developer consents to) the deannexation of the balance of the Covered Property from the Master Declaration, subject to the specific retained rights set forth herein. Declarant and Master Developer acknowledge and agree that the recording of this Declaration shall be deemed to be a “Notice of Termination” ...



DEANNEXATION NO. 3



2.2.1 Rights Reserved in Favor of Master Developer.

- (b) The right to approve the additional uses ...
- (c) The right to enforce the use restrictions ...

Declarant expressly acknowledges and agrees that the rights reserved by Master Developer... have been granted to Master Developer in consideration of Master Developer (i) agreeing to allow the Covered Property to be deannexed from the Master Declaration and (ii) agreeing to allow limited commercial development within the Covered Property ..., notwithstanding the rights to commercial development granted to Master Developer ... of the Master Declaration. Declarant further acknowledges that Master Developer may exercise the rights reserved by it hereunder for the benefit of the Commercial Core Parcel and/or other properties ... and that nothing herein shall be deemed to obligate Master Developer to agree to any further expansion of the commercial uses permitted hereunder. Declarant further acknowledges that Master Developer may exercise its right to ...approve the additional uses ... in its sole, absolute and unfettered discretion.

DEANNEXATION NO. 3



ARTICLE 3
PROPERTY AND PERSONS BOUND BY THIS
DECLARATION

- 3.1 General Declaration. ... This Declaration is declared and agreed to be in furtherance of the Desert Ridge Master Development Plan and is established for the purpose of enhancing the value, desirability and attractiveness of the Covered Property.
- 3.2 The Role of Master Developer. ... Master Developer, as developer of the Commercial Core Parcel, will have a long-term interest in insuring that Desert Ridge is developed in accordance with Declarant's goals and is willing to undertake the responsibility of Master Developer as set forth herein. Based on their respective interests, Declarant and Master Developer have agreed to cooperate in the development of the Covered Property in the manner set forth herein.
- 4.3 Dedication of Right-of-Way. ...
- 4.4 Wash Corridors. ...



DEANNEXATION NO. 3



**ARTICLE 7
PERMITTED LAND USES AND RESTRICTIONS**

- 7.1 Uses Prohibited Anywhere Within Covered Property. ...
- 7.2 Uses Permitted Anywhere Within the Covered Property. ...
- 7.3 Uses Permitted Within the Sitix Parcel. ...
- 7.4 Uses Within the East Major Parcel.
- 7.5 Uses in the Covered Property (Other Than the East Major Parcel) Which Require the Consent of the Master Developer and the Declarant.
- 7.6 Uses in the East Major Control Area Which Require the Consent of the East Major Owner. ...
- 7.7 Floor Area Ratio Restrictions. ...
- 7.8 Height Restrictions. ...

DEANNEXATION NO. 3



**ARTICLE 17
ACTIONS REQUIRING DECLARANT'S APPROVAL**

- 17.1 Declarant's Rights. ...
 - (a) To initiate and approve any amendments to the ...
 - (c) To approve any termination of the Desert Ridge Master Development Plan, this Declaration, the Articles or the Bylaws as to all or any part of the Covered Property.
 - (d) The right to approve the additional uses ...
 - (e) The right to enforce the use restrictions ...
- 17.2 Right to Terminate Restrictions. If any land previously sold of Leased by Declarant reverts to Declarant, ..., Declarant shall have the right to extinguish any land use restrictions, covenants, conditions or easements filed or Recorded against such land, such as ... "Subsidiary Restrictions".



COMMERCIAL CORE



DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND
EASEMENTS FOR DESERT RIDGE
COMMERCIAL CORE

RECITALS

B. Declarant is also currently the Master Developer under the Master Declaration, with the rights and obligations specified in the Master Declaration.

C. Declarant desires to record this Commercial Core Declaration as a Village Center Subsidiary Declaration, as provided for in the Second Amendment to the Master Declaration, to govern the development of the Covered Property.

COMMERCIAL CORE



ARTICLE 1
DEFINITIONS

1.3 "ASLD" shall mean the State of Arizona, acting by and through the Arizona State Land Commissioner.

1.6 "Assignment Lease" shall mean a new lease entered into between the ASLD and an assignee of a portion of the Core Lease, ...

1.12 "Core Lease" shall mean Commercial Core Lease Number 03-52415 date July 7, 1993, between Declarant and the State of Arizona,

1.13 "Covered Property" shall mean the real property ... which is approximately 337 acres in size and constitutes the property commonly known as the commercial core within the Desert Ridge master-planned community. ...



COMMERCIAL CORE **FENMORE CRAIG**
A HISTORY TO LEVERAGE

ARTICLE 2
EXEMPTION FROM MASTER DECLARATION;
RESERVED RIGHTS

2.1 Exemption. By executing this Commercial Core Declaration, Declarant and the ASLD exempt the Covered Property from all but [certain provisions] of the Master Declaration, subject to the specific retained rights set forth ... herein. Declarant and the ASLD acknowledge and agree that the recording of this Commercial Core Declaration shall be deemed to be a "Village Center Subsidiary Declaration" within the meaning of Section 2.6 of the Master Declaration....

2.2 De-Annexation from Master Declaration. The ASLD and Declarant agree that Declarant and the Association shall have the right to terminate the Master Declaration as to any portion of the Covered Property in accordance with the provisions of this Section ...

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A HISTORY TO LEVERAGE

ARTICLE 15
ASLD' S RIGHTS

15.1 ASLD's Rights. To assure the ASLD that the development of the Covered Property conforms to the standards established by the Desert Ridge Master Development Plan, this Commercial Core Declaration and the Design Guidelines, so long as the ASLD continues to own any property covered by the Master Declaration or this Commercial Core Declaration, the ASLD shall have the following rights:

- (a) To initiate and to approve any amendments to the Desert Ridge Master Development Plan, and to approve any amendments to this Commercial Core Declaration. ...
- (c) To approve any termination of this Commercial Core Declaration ...
- (e) To enforce the use restrictions ...



SPECIAL ISSUES FOR PROJECTS
INVOLVING STATE LANDS

A CASE STUDY OF DESERT RIDGE

*A Review of CC&R's, Development Agreement and
Easements on State Trust Lands
January 31, 2007*

Michael J. Phalen
FENNEMORE CRAIG, P.C.

