

WHEN RECORDED, RETURN TO:

SNELL & WILMER
111 East Broadway, Suite 900
Salt Lake City, Utah 84111
Attention: Greg R. Nielsen

00653937 Bk 1339 Pg 1456
RUSSELL SHIRTS * WASHINGTON CO RECORDER
1999 JUL 02 15:24 PM FEE \$42.00 BY RS
FOR: SOUTHERN UTAH TITLE CO

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made as of this 24th day of June 1999, by and between WASHINGTON CITY, a Utah municipal corporation (the "City"), and SUNCOR DEVELOPMENT COMPANY, an Arizona corporation (the "Developer").

RECITALS:

A. On or about January 27, 1999, the Washington City Council (the "City Council") granted final approval for the PCD Project Plan for Coral Canyon, A Planned Community Development, Washington, Utah (as such PCD Project Plan may be modified from time to time pursuant to this Agreement, the "PCD"). The PCD is on file with the City. The PCD covers certain lands located within Washington County, Utah as more particularly described in Section 1 of the PCD (the "Property") and on Exhibit B.

B. The School and Institutional Trust Lands Administration ("SITLA") of the State of Utah is the owner of the Property and has agreed to enter into a development lease with the Developer subject to the terms and conditions of that certain SITLA/SUNCOR AGREEMENT TO LEASE dated October 2, 1998.

C. The City and the Developer are entering into this Agreement pursuant to the Utah Municipal Land Use Development and Management Act, *Utah Code Annotated*, Title 10, Chapter 9, as amended (the "Land Use Act"), and Section 29.4 of the Washington City, Utah Zoning Ordinance (the Washington City, Utah Zoning Ordinance being referred to as the "Zoning Ordinance").

D. The Developer desires to develop the Property pursuant to the terms and conditions of this Agreement and the PCD, and the City desires the Developer to develop the Property pursuant to the terms and conditions of this Agreement and the PCD.

E. In contemplation of the development of the Property, the City has previously undertaken the activities and improvements described on Exhibit A to this Agreement (the "Prior Improvements"), all of which shall inure to the benefit of the Property as it is developed by the Developer.

AGREEMENT

NOW, THEREFORE, in consideration of the premises, conditions, covenants, and agreements set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Recitals; Prior Agreement. The Recitals above are incorporated into this Agreement. Prior to the date of this Agreement, the City entered into a development agreement (the "Prior Agreement") with

CAHOONBSLCA079463.12

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Rick Sant Construction, Inc. dba Sant Pacific Group ("Sant") with respect to the development of portions of the Property that Sant had leased from SITLA pursuant to Amended Special Use Lease Agreement No. 701, dated July 16, 1992, as amended, between Sant and SITLA ("SULA 701"). Developer represents and warrants that SULA 701 has been terminated. To the best of Developer's knowledge, the Prior Agreement is no longer in effect, and following the date hereof, Developer agrees to seek confirmation from SITLA that the Prior Agreement is no longer in effect.

2. Findings of City. The City finds that (a) the PCD and this Agreement are consistent with the Washington City General Plan (the "**General Plan**"), Zoning Ordinance, Washington City Subdivision Ordinance (the "**Subdivision Ordinance**") and all other applicable ordinances, rules, regulations and policies of the City, and (b) development of the Property pursuant to this Agreement and the PCD shall result in significant planning and economic benefits to and shall further the health, safety and welfare of the City and its residents by, among other things, (i) requiring development of the Property in a manner consistent with the applicable rules, regulations and policies of the City; (ii) providing for the dedication of infrastructure improvements to be completed in several phases as set forth herein; (iii) increasing sales and/or property tax and other revenues to the City derived from businesses and improvements to be constructed on the Property, and (iv) creating jobs from new businesses to be located on the Property. The City is entering into and approving this Agreement pursuant to its authority under the Land Use Act and the Zoning Ordinance and has made certain determinations with respect to the Property and, in the exercise of its legislative discretion, has elected to approve this Agreement as an agreement, compromise, and settlement as to the matters covered by this Agreement.

3. Master Plan; Development Pursuant to PCD; Restrictive Covenants.

(a) Master Plan. Prior to the date of this Agreement, the City Planning Commission approved the Coral Canyon Master Plan, dated January 28, 1999. The Coral Canyon Master Plan, as it may be amended and supplemented by the Developer from time to time in a manner consistent with the PCD and Design Guidelines described below, is referred to in this Agreement as the "**Master Plan**". The Master Plan and the PCD are an integral part of this Agreement.

(b) Development. Upon execution of this Agreement by the City, the Developer is authorized to develop the Property as set forth in this Agreement (including the Master Plan and the PCD) and in accordance with the types, densities and intensities of the land uses set forth in **Section 2** of the PCD and pursuant to the Design Guidelines and Standards set forth in **Section 3** of the PCD (the Design Guidelines contained in the PCD and Master Plan from time to time being referred to in this Agreement as the "**Design Guidelines**"). Further, upon execution by the City of this Agreement, the PCD shall be incorporated into and become part of the City's General Plan, as amended.

(c) Restrictive Covenants. Prior to transferring ownership of any portion of the Property, via recorded title, other than to itself, the Developer shall record against such portion of the Property covenants, conditions and restrictions consistent with the PCD, including the Design Guidelines, and this Agreement (such covenants, conditions, and restrictions, as amended from time to time in a manner consistent with this Agreement being referred to in this Agreement as the "**Restrictive Covenants**").

4. Term. The term of this Agreement shall be 15 years from the date of execution of this Agreement by both parties. Upon mutual agreement of the parties, as evidenced by a written amendment

executed by both parties and recorded in the Official Records of Washington County, Utah, prior to the expiration of the initial term, the term may be extended for one additional period not to exceed 15 years.

5. Regulation of Development.

(a) Vested Rights. The Developer acquired vested rights to develop the Property on November 19, 1998 and this Agreement is intended to memorialize such vested rights as contemplated by **Section 29-4-2** of the Zoning Ordinance. The City agrees and confirms that the Developer's vested rights grant the Developer the right to develop the Property with the types, densities, and intensities of land uses set forth in the PCD, the Master Plan, and as contemplated by this Agreement. The City agrees to promptly grant to the Developer those permits and approvals necessary to permit the Developer to implement and complete the development of the Property pursuant to this Agreement, the Master Plan, and the PCD, subject only to the review and approval provisions set forth in **Section 29-3** of the Zoning Ordinance.

(b) Open Space, Buffer Areas, Landscaped Areas & Setbacks. The City agrees and acknowledges that the development of the Property as set forth in the PCD and the Master Plan will exceed all of the City's requirements, if any, for the percentage of open space, areas that provide a buffer between developed and parking areas and areas not to be developed, landscaped areas, and setbacks from parking areas, easements, roadways and rights of way.

6. Project Improvements.

(a) City Provided Improvements. The City shall obtain, install, construct, and complete the following improvements to and for the Property, as and when needed for the development of the Property (the "City's Municipal Improvements"):

(i) Prior Improvements. The Prior Improvements.

(ii) Irrigation Water Supply and Storage. A supply of irrigation water with sufficient flow, quantity, pressure, capacity, and quality for all of the various irrigation uses to be developed on the Property, as contemplated in the PCD and the Master Plan, together with adequate facilities for the storage of such water for the development of the Property, such supply of irrigation water to be made available at the perimeter of the Property at the location(s) shown in the Master Plan. Notwithstanding the foregoing, the parties agree that the obligations of the City under this **Paragraph 6(a)(ii)** are contingent upon the City entering into such interlocal agreements with the City of Hurricane and the Washington County Water Conservancy District as the City deems necessary or appropriate in connection with the provision of irrigation water to the Property. The City agrees to use its reasonable best efforts, diligently and in good faith to negotiate and enter into such interlocal agreements, and Developer agrees to cooperate with the City's efforts, as requested by the City from time to time. In connection with such irrigation water obligations of the City, the Developer agrees to make available to the City such irrigation storage pond sites on the Property located north of State Route 9 when and as may reasonably be required to support the provision of irrigation water to the Property.

(iii) Culinary Water Supply and Storage. A supply of culinary water with sufficient flow, quantity, pressure, capacity and quality for all of the various culinary uses to

be developed on the Property, as contemplated in the PCD and the Master Plan, together with adequate facilities for the storage of water for the development of the Property, such supply of culinary water to be made available at the perimeter of the Property at the location(s) shown in the Master Plan. In connection with such culinary water obligations of the City, the Developer agrees to make available to the City a site for a culinary water storage tank on the Property located north of State Route 9, together with such easements as may be reasonably necessary to connect such water storage tank to the City's culinary water system, when and as may reasonably be required to support the provision of culinary water to the Property.

(iv) Electric Power. An adequate and sufficient supply of electrical power to meet all power demands for all of the various uses to be developed on the Property as contemplated in the PCD and the Master Plan, such electric power to be made available within the Property at the location(s) shown in the Master Plan.

(b) Costs Associated with the City's Municipal Improvements. Except as otherwise provided in this Agreement or in the PCD or the Master Plan, the City will pay all costs to obtain, install, construct, complete and maintain the City's Municipal Improvements. Nothing in this Agreement, however, shall prohibit the City from charging and collecting Impact Fees (as defined in and to the extent provided for in Paragraph 7), "hookup fees" (as defined in the Utah Impact Fee Statute referred to in Paragraph 7); and consumption fees for utilities provided by the City.

(c) Developer Provided Improvements. The Developer shall install, construct, and complete the following improvements, all as set forth in and contemplated by the Master Plan (the "Developer's Municipal Improvements"), all such improvements shall be constructed to applicable governmental standards and within the time periods for development set forth in the PCD and the Master Plan:

(i) Water Distribution System. All pipes, valves, fittings, pressure reducing valve stations, air release valves, and other distribution facilities within the Property for the purpose of distributing water within the Property.

(ii) Electrical Distribution System. To the extent not currently in existence on the Property, all of the following within the Property (the "Electrical Distribution System"): (A) overhead transmission lines, substations and switching racks; (B) transformers, circuit breakers, voltage regulating equipment, buses, switches, capacitor banks, reactors, protection and control equipment and any other equipment related to switching, regulating, transforming or otherwise modifying the characteristics of electricity; and (C) underground power lines and distribution lines.

(iii) Sewer Distribution System. Sewer lines connecting all of the structures to be developed on the Property to the existing City sewer system.

(iv) Roads. All roads located within the Property, other than Telegraph Street and State Road SR-9.

(v) Parks and Trails. The parks and trail systems as set forth in and contemplated by the Master Plan, with the parks and trail systems to be improved prior to dedication to the City to at least the minimum standards therefor imposed by the City.

(d) Costs Associated with the Developer's Municipal Improvements.

(i) Construction Costs. Except as provided in **Paragraph 6(d)(ii)** with respect to the Electrical Distribution System, the Developer will pay all costs to install, construct, and complete the Developer's Municipal Improvements.

(ii) City Contribution to Electrical Distribution System Costs. The parties acknowledge that the Master Plan contemplates that the Electrical Distribution System described in **Paragraph 6(c)(ii)** will be designed and constructed to serve not only the Property but other property that the City is currently serving or that the City contemplates serving in the future. Accordingly, the costs of design and construction in excess of the costs that would be incurred in connection with the installation, construction, and completion of the Electrical Distribution System, if designed solely to serve the Property, as determined by the electric utility study currently being undertaken by the City and the Developer (the "**Excess Costs**") shall be paid by the City, such payment to be made at the commencement of construction of the Electrical Distribution System, if the City determines that it has the funds available at such time to pay such Excess Costs. If the City determines that it does not have the funds available to pay such Excess Costs, the Developer will, nevertheless, proceed with the Electrical Distribution System, paying the Excess Costs from its own funds, subject to recoupment of such Excess Costs by Developer pursuant to **Paragraph 8**.

(iii) Maintenance Costs. Until such time as a particular component of Developer's Municipal Improvements is dedicated to and accepted by the City, as provided in **Paragraph 6(e)**, the Developer shall maintain, at its cost, such component of Developer's Municipal Improvements.

(e) Inspection and Dedication of Developer's Municipal Improvements. Upon completion of the Developer's Municipal Improvements with respect to a particular phase of the Property (any such completed portion of Developer's Municipal Improvements being referred to as "**Offered Improvements**"), the City shall inspect the Offered Improvements within 15 working days after receipt of written notice from the Developer that such Offered Improvements are complete. The City shall approve and accept for dedication the Offered Improvements so long as they are constructed in accordance with the City's adopted standards therefor, as verified by the City's inspection. Each final subdivision plat shall dedicate to the City for public purposes the Offered Improvements within the plat, and following completion of the Offered Improvements and recordation of such final plat, the City shall thereafter own, operate and maintain the Offered Improvements without charge or cost to the Developer.

(f) Natural Open Spaces. The PCD and the Master Plan contemplate that certain portions of the Property will be designated as natural open space and, as such, will not be developed but will be left in a natural state. Natural open space shall be retained by the Developer or conveyed to a property owner's association, as Developer shall determine, and the City shall have no obligation with respect to any of the natural open spaces.

(g) Other Utilities. The Developer shall install, construct and complete, without cost to the City and within the time periods for development set forth in the PCD and the Master Plan, natural gas, telephone and cable television service as set forth in **Sections 1, 5, and 7** of the Master Plan.

(h) Landscaping. The Developer shall install, construct, complete and thereafter maintain, all without cost to the City, landscaping within the rights-of-way for the roads within the Project, as provided in the Master Plan. At such time as a property owner's association is formed with respect to the Property, the Developer may delegate its maintenance obligations under this subparagraph to such association, and upon assumption by such association of the maintenance obligations, the Developer shall have no further liability with respect thereto.

(i) Telegraph Street. The parties acknowledge that Telegraph Street through the Property is a city highway serving regional transportation needs. At such time as the City reasonably determines that Telegraph Street needs to be reconstructed to serve increased traffic flow from the Property and other regional traffic needs (which the City agrees will not occur prior to the second anniversary of this Agreement), the Developer agrees to pay for 50% of the "Net Costs" of the reconstruction of Telegraph Street, where it is within the Property, to a right of way width not to exceed 100 feet, together with curb, gutter, and, to the extent required by the City, sidewalks (the "Reconstruction"). Such funding shall be made as the Reconstruction proceeds and upon presentation to Developer of reasonably detailed invoices showing the costs of construction. In addition, if the City determines that it does not have the funds available to pay the remainder of the Net Costs (the "City Share"), the Developer will pay the City Share from its own funds, subject to recoupment of such City Share by Developer pursuant to **Paragraph 8**. The City agrees to use its reasonable best efforts to seek, obtain, and use federal and state funds for the Reconstruction, to the maximum extent reasonably possible. As used herein, "Net Costs" means the hard and soft costs of the Reconstruction, net of any federal and state funds that are available for the Reconstruction project. The City agrees that it will maintain Telegraph Street without cost to the Developer.

(j) State Route 9. State Route 9 is a state highway and, as such, neither the City nor the Developer shall have any responsibility with respect thereto pursuant to this Agreement.

(k) Sewer System Upgrades. The Developer agrees to pay a proportionate share of the costs of necessary upgrades, if any, to the City's sewer system reasonably required to increase the capacity of the City's sewer system to receive increased sewer load from the development of the Property in the City (the "Sewer Upgrade Costs"). The Developer's proportionate share of any Sewer Upgrade Costs shall not exceed the proportionate impact to the City's sewer system from the development of the Property as set forth in the Washington City Sewer Impact Analysis in **Section 4** of the Master Plan. If the Developer is required to pay any portion of Sewer Upgrade Costs, the Developer shall be entitled to recoup the amount so paid in accordance with **Paragraph 8**.

(l) Financial Assurance. To the extent permissible under applicable state law, the City agrees that this Agreement constitutes the written undertaking of the Developer to install, construct, and complete those improvements that the Developer is required to make pursuant to this Agreement and satisfies the City's requirements, including the requirements of **Section 5.4** of the Subdivision Ordinance, that the developer/subdivider provide financial assurances of installation, construction or completion of improvements, but only so long as (i) the Developer is SunCor Development Company ("SunCor"); (ii) SunCor has the obligation to install, construct, and complete such improvements; and (iii) SunCor has a net worth, based on its most recent audited financial statement, of at least \$200,000,000. Notwithstanding the foregoing, the obligations of the City under this **Paragraph 6(l)** are contingent upon the adoption by the City of an amendment to the Planned Community

Development ordinance, chapter 29 of the Zoning Ordinance, which amendment the City agrees to favorably consider.

7. Impact Fees. The City may charge, and the Developer shall pay, such impact fees (the "**Impact Fees**") as are imposed from time to time by the City with respect to the Property, in such amounts as the City determines at such time and as are permitted by the Utah Impact Fees Act, taking into account all credits contemplated or authorized by the Utah Impact Fees Act; *subject, however*, to the following:

(a) Timing. Impact Fees will only be charged at such times in the course of development of the Property as the City customarily charges similar impact fees to other developers within the City, in accordance with applicable law.

(b) Irrigation Water Impact Fee. At such time as the City becomes obligated to provide irrigation water to the Property pursuant to **Paragraph 6(a)(ii)**, Developer agrees to pay an Impact Fee of \$72,100 in connection therewith.

(c) No Park Impact Fees. In consideration of the obligations of the Developer to construct, at the Developer's expense, the parks and trail systems as provided in **Paragraph 6(c)(v)** and to dedicate the parks and trail systems to the City as provided in **Paragraph 6(e)**, no Impact Fees shall be charged for parks, trails, or similar recreational public facilities, unless by subsequent agreement between the City and the Developer, it is agreed that such facilities will be constructed by the City.

As used herein, "**Utah Impact Fees Act**" means *Utah Code Annotated*, Title 11, Chapter 36.

8. Recoupment of Certain Costs. If, pursuant to any provision of this Agreement, Developer is entitled to recoup amounts it has advanced (the aggregate amount that Developer is entitled to recoup at any time being referred to as the "**Recoupment Amount**"), to the extent allowable by state law, Developer shall be entitled to recoup the Recoupment Amounts pursuant to the provisions of this **Paragraph 8**. Developer shall be entitled from time to time to offset the Recoupment Amount against all Impact Fees and other fees payable by the Developer to the City pursuant to this Agreement, the PCD, or otherwise, until the entire Recoupment Amount has been recouped. Offsets shall be applied to items included in the Recoupment Amount in the order in which such items were advanced by the Developer, beginning with the oldest item. No interest shall accrue on the Recoupment Amount. If a particular item of the Recoupment Amount has not been entirely recouped within 3 years of the date such item was advanced by the Developer, such unrecouped amount shall be paid by the City to the Developer within 120 days from the expiration of such recoupment deadline.

9. Public Financing. Upon the Developer's written request, the City shall favorably consider approval of the formation of one or more independent improvement districts and/or service areas pursuant to Title 17A, Chapter 2 and Title 17B, *Utah Code Annotated* (or any successor or similar state statute) for the purpose of financing the cost of construction of all or any portion of the infrastructure improvements for the development of the Property, including without limitation, recreational improvements, water, sewage, storm and flood water control, electricity, gas, street lighting, curb and gutter, sidewalk, roads, bridges, and landscaping (any such district, service area or other source of development financing being referred to as an "**Alternative Financing Vehicle**"); if and only if the City shall have reasonably determined that:

(a) The participation of the City in the Alternative Financing Vehicle will not have an adverse effect upon the City, including the City's bonding capacity;

(b) The obligations of the Alternative Financing Vehicle will not constitute general obligations of the City or a lien on any revenues or other assets of the City;

(c) The Alternative Financing Vehicle will not adversely affect, obligate, or encumber any property other than the Property; and

(d) The City will not incur any significant administrative obligations in connection with the ongoing operations of the Alternative Financing Vehicle, with the City agreeing, to the maximum extent permissible under applicable law, to governance of the Alternative Financing Vehicle by the owners of property, including the Developer, subject to the Alternative Financing Vehicle

10. **Moratoria.** No City moratorium or other City ordinance, resolution, rule, or regulation (a "**Moratorium Ordinance**") enacted after the date of this Agreement that prohibits or regulates the erection, construction, reconstruction, or alteration of any building or structure or the City's approval process for subdivisions in a manner inconsistent with the terms of the Master Plan and the PCD shall apply to or govern the development of the Property during the term of this Agreement unless the Moratorium Ordinance:

(a) Complies in all respects with applicable state law;

(b) Was enacted to reasonable alleviate or otherwise reasonably respond to a legitimate, bona fide threat to the public health and safety; **provided, however**, that the requirement in this clause (b) shall not apply to a Moratorium Ordinance enacted by the City in response to facts and circumstances beyond the reasonable control of the City; and

(c) Has a period of effectiveness not to exceed 6 months, with no renewal provisions; **provided, however**, that the requirement in this clause (c) shall not apply to a Moratorium Ordinance enacted by the City in response to facts and circumstances beyond the reasonable control of the City.

11. **Amendments.** The Developer and the City agree to cooperate and pursue any amendments to this Agreement (including, if appropriate, to the PCD and the Master Plan) that are reasonably necessary to accomplish the goals expressed in this Agreement and the PCD and the development of the Property in light of any changes in market conditions or development requirements. All amendments shall be in writing and shall be approved and signed by both the Developer and the City. Any amendment to this Agreement shall be recorded.

12. **Cooperation and Dispute Resolution.** It is the intent of the parties that the Developer be able to proceed expeditiously with the development of the Property and that, accordingly, an expedited City review process is necessary. Therefore, the parties agree that if at any time the Developer believes that an impasse has been reached with the City staff on any issue affecting the Property, the Developer shall have the right to immediately appeal to the City Manager for an expedited decision pursuant to this Paragraph. If the issue on which an impasse has been reached is an issue where a final decision can be reached by the City staff, the City Manager shall give the Developer a final decision within 15 days after the date of a written request for an expedited decision is made. If the issue on which an impasse has been reached is one where a final decision requires action by the City Council, the City Manager shall be responsible for placing the matter on the agenda for the next regularly scheduled City Council meeting following the date that the Developer has requested an

expedited decision; *provided, however*, that if the issue is appropriate for review by the City Planning Commission, the matter shall be submitted to the City Planning Commission first, and then to the City Council. Both parties agree to continue to use reasonable good faith efforts to resolve any impasse pending any such expedited decision.

13. Third Party Service Providers. If the City delegates any of its obligations under this Agreement to independent third party contractors, prior to entering into an agreement with such contractor, the City agrees to notify the Developer and provide the Developer with a copy of the proposed agreement for review and comment by the Developer. If any such third party contractor defaults on its obligations to the City under any such agreement, the City agrees to give the Developer prompt written notice thereof.

14. Default. Failure by a party to perform any of such party's obligation under this Agreement for a period of 30 days (the "**Cure Period**") after written notice thereof from the other party shall constitute a default by such failing party under this Agreement; *provided, however*, that if the failure cannot reasonably be cured within 30 days, the Cure Period shall be extended for the time period reasonably required to cure such failure so long as the failing party commences its efforts to cure within the initial 30 day period and thereafter diligently proceeds to complete the cure. Said notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible.

15. Notices and Filings. All notices, filings, consents, approvals and other communications provided for herein or given in connection herewith shall be validly given, filed, made, delivered or served if in writing and delivered personally, sent by certified United States mail, postage prepaid, or by a national express overnight delivery service, freight prepaid, if to:

The City:

WASHINGTON CITY
111 North 100 East
P.O. Box 575
Washington City, Utah 84780
Attention: City Manager

with a copy to:

SNOW, NUFFER, ENGSTROM, DRAKE, WADE & SMART
192 East 200 North
PO Box 400
St. George, Utah 84771
Attention: Washington City Attorney

The Developer:

SUNCOR DEVELOPMENT COMPANY
321 North Mall Drive, Suite H
St. George, Utah 84790
Attention: Bart Gillespie

with a copy to:

SUNCOR DEVELOPMENT COMPANY

3838 North Central, Suite 1500

Phoenix, Arizona 85012

Attention: Steve Gervais, Esq.

or to such other addresses as either party hereto may from time to time designate in writing and deliver in a like manner. Notices, filings, consents, approvals and communication given by personal delivery or overnight delivery shall be effective upon receipt and if given by mail shall be deemed delivered 72 hours following deposit in the U.S. mail, postage prepaid and addressed as set forth above.

16. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the City or the Developer of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

17. Attorney Fees. If either party finds it necessary to bring any action at law or other proceeding against the other party to enforce any of the terms, covenants or conditions hereof, or by reason of any breach or default hereunder, the party prevailing in any such action or other proceeding shall be paid all reasonable costs and reasonable attorney fees by the other party, and if any judgment is secured by said prevailing party, all such costs and attorney fees shall be included therein, such fees to be set by the court and not by jury.

18. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all parties may be physically attached to a single document.

19. Headings. The descriptive headings of the sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

20. Further Acts. Each of the parties shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

21. Time of the Essence; Force Majeure. Except as otherwise provided in this Paragraph, time is of the essence for this Agreement. If either party is delayed or hindered in or prevented from the performance of any act required hereunder by reason of inability to procure materials, acts of God, failure of power, riots, insurrection, war or other reason of a like nature (other than labor disputes) not the fault of the party delayed in performing work or doing acts required under this Agreement, then performance of such act will be excused for the period of delay and the time for the performance of any such act will be extended for a period equivalent to the period of such delay.

22. Assignment. Except as expressly provided in this Agreement, the Developer may not assign its rights or delegate any of its duties under this Agreement without the prior written consent of the City, such consent not to be unreasonably withheld or delayed.

23. **Binding Effect.** Subject to the provisions of **Paragraph 22**, all of the provisions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto, except as provided in **Paragraph 24** with respect to any Public Lot.

24. **Termination on Sale to the Public.** It is the intention of the parties that although recorded, this Agreement shall not create conditions or exceptions to title or covenants running with the Property. Nevertheless, in order to alleviate any concern as to the effect of this Agreement on the status of title to any of the Property, this Agreement shall terminate without the execution or recordation of any further document or instrument as to any lot which has been finally subdivided and individually (and not in "bulk") leased (for a period of longer than one year) or sold to the purchaser or user thereof (a "Public Lot") and thereupon such Public Lot shall be released from and no longer be subject to or burdened by the provisions of this Agreement.

25. **No Partnership or Third Party Beneficiaries.** It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between the Developer and the City. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

26. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged herein.

27. **Names And Plans.** The Developer shall be the sole owner of all names, titles, plans, drawings, specifications, ideas, programs, designs and work products of every nature at any time developed, formulated or prepared by or at the instance of the Developer in connection with the Property.

28. **Good Standing: Authority.**

(a) The Developer hereby represents and warrants to the City that: (i) the Developer is duly formed and validly existing under the laws of Arizona and is qualified to do business in the State of Utah; (ii) the individual(s) executing this Agreement on behalf of the Developer are duly authorized and empowered to bind the Developer; and (iii) this Agreement is valid, binding, and enforceable against the Developer in accordance with its terms.

(b) The City hereby represents and warrants to the Developer that: (i) the City is a Utah municipal corporation; (ii) the City has power and authority pursuant to enabling legislation, the Land Use Act, and the Zoning Ordinance to enter into and be bound by this Agreement; (iii) the individual(s) executing this Agreement on behalf of the City are duly authorized and empowered to bind the City; and (iv) this Agreement is valid, binding, and enforceable against the City in accordance with its terms.

29. **Severability.** If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, and the Agreement shall otherwise remain in full force and effect. If any applicable law or court of competent jurisdiction prohibits or excuses the City from undertaking any contractual commitment to perform any act hereunder, this Agreement shall remain in full force and effect, but the provision requiring such action shall be deemed to permit the City to take such action at its discretion. If, however, the City fails to take the action required hereunder, the Developer shall be entitled to terminate this Agreement.

30. Governing Law. This Agreement is entered into in Utah and shall be construed and interpreted under the laws of Utah.

31. Recordation. No later than 10 days after this Agreement has been executed by the City and the Developer, it shall be recorded in its entirety, at the Developer's expense, in the Official Records of Washington County, Utah.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

DEVELOPER:

SUNCOR DEVELOPMENT COMPANY,
an Arizona corporation

By DSB
Its V.P.

CITY:

WASHINGTON CITY,
a Utah municipal corporation

By Lorel Wynn Turek
Lorel Wynn Turek
Mayor Pro Tem

ATTEST:

Ralph McClure
Ralph McClure
City Recorder



STATE OF ARIZONA)

County of Maricopa)

The foregoing document was acknowledged before me this 28 day of June, 1999, by Diane S. Black, the Vice President of **SUNCOR DEVELOPMENT COMPANY**, an Arizona corporation, on behalf of said corporation.

My Commission Expires:



Gail Sanchez
Notary Public

STATE OF UTAH)

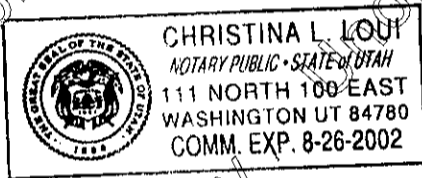
County of Washington)

The foregoing document was acknowledged before me this 25 day of June, 1999, by Eileen Wynn Turek, the Mayor Pro Tem of **WASHINGTON CITY**, a Utah municipal corporation, on behalf of said City.

My Commission Expires:

8-26-2002

Christina J. Loui
Notary Public



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EXHIBIT A
PRIOR IMPROVEMENTS

Construct a one million gallon storage tank.
Drill and equip a new water well.
12 inch PVC water lines
Valves, fittings and fire hydrants as required
Engineering and environmental studies
Realignment of Telegraph Street west of SR-9
Improvements and obligations to adjacent property owners

EXHIBIT "B" - LEGAL DESCRIPTION

The following described real property, to the extent lying within the boundaries of Washington City, Utah as of the date of the recordation of this instrument:

Beginning at the North Quarter (N 1/4) Corner of Section 4, Township 42 South, Range 14 West of the Salt Lake Base and Meridian and running thence South 00°28'35" West 1896.88 feet along the Center Section Line to the Northeast Corner of Knollwood Townhomes Phase 1-Amended, Entry Number 489341, Book 879, Page 76, Washington County Records; Thence along the Boundary Line of said Knollwood Townhomes Phase 1-Amended and Knollwood Townhomes Phase 2 in the following eight (8) courses: North 89°32'22" West 137.53 feet; Thence North 00°27'38" East 8.79 feet; Thence North 89°32'22" West 218.40 feet; Thence South 60°39'29" West 193.33 feet; Thence South 65°48'07" West 87.85 feet to the Northwest Corner of said Knollwood Townhomes Phase 2; Thence South 19°18'31" East 156.71 feet; Thence North 70°41'29" East 22.39 feet; Thence South 19°18'31" East 178.00 feet to the Northerly Right-of-Way Line of Highway 91 realignment, Entry Number 579572, Book 1141, Page 84, Washington County Records; Thence leaving Knollwood Townhome Phase 2 Boundary Line and along said Northerly Right-of-Way Line in the following two (2) courses: South 70°41'29" West 69.58 feet to the point of curvature of a 650.00 feet radius curve concave to the Southeast; Thence Southwesterly 568.18 feet along the arc of said curve through a central angle of 50°05'01" to the Northeast Corner of that certain Hurricane Associates Property at Entry Number 552744, Book 1062, Page 306 of the Washington County Records; Thence leaving said Northerly Right-of-Way Line and along Boundary Line of said Hurricane Associates property in the following six (6) courses: North 73°35'59" West 226.48 feet; Thence South 16°24'01" West 139.00 feet; Thence South 30°30'26" West 99.86 feet; Thence South 00°52'12" West 205.77 feet to the Northerly Right-of-Way Line of S.R. 9 Highway, and a point on the arc of a 1709.86 foot radius curve concave to the North, from which point the radius bears North 07°36'34" West; Thence Northeasterly 111.01 feet along the arc of said curve through a central angle of 03°43'11" to the point of tangency; Thence North 78°40'15" East 155.74 feet to the Westerly Right-of-Way Line of said Highway 91 Realignment; Thence South 03°40'34" West 513.87 feet along said Westerly Right-of-Way Line to the point of curvature of an 1150.00 foot radius curve concave to the Northwest; Thence continuing along said Right-of-Way Line Southwesterly 1544.75 feet along the arc of said curve through a central angle of 76°57'47" to the point of tangency; Thence South 80°38'21" West 207.84 feet to the point of curvature of a 1250.00 foot radius curve concave to the Southeast; Thence Southwesterly 37.88 feet along the arc of said curve through a central angle of 01°44'11" from which point the radius bears South 11°05'50" East; Thence leaving said Right-of-Way Line South 10°56'26" East 100.00 feet; Thence South 01°05'53" West 174.20 feet to the Northeast Corner of Section 8, Township 42 South, Range 14 West;

(CONTINUED)

PROOFREAD

EXHIBIT "B" - LEGAL DESCRIPTION (CONTINUED)

Thence South 213.85 feet; Thence North 40°28'45" West 327.21 feet; Thence North 46°25'46" West 171.31 feet; Thence North 04°14'38" West 576.08 feet; Thence North 13°25'06" West 477.18 feet; Thence North 13°27'52" West 860.98 feet to the North Line of Section 7, Township 42 South, Range 14 West; Thence leaving the toe of the slope South 89°00'45" East 527.59 feet along the Section Line to the North Quarter (N 1/4) Corner of Section 7, said Township and Range; Thence North 01°19'03" West 1316.26 feet along the Center Section Line of Section 6 to the Center-South Sixteenth Corner; Thence North 88°51'17" West 1339.43 feet, more or less, to the Southeasterly Right-of-Way Line of Interstate 15 Freeway; Thence along said Southeasterly Right-of-Way Line in the following Nineteen (19) courses; North 73°33'14" East 242.95 feet; Thence North 78°30'53" East 308.84 feet; Thence North 73°32'06" East 1099.66 feet; Thence North 72°44'58" East 626.70 feet; Thence North 71°21'19" East 504.55 feet; Thence North 70°07'02" East 504.15 feet; Thence North 68°13'28" East 1011.22 feet; Thence North 65°41'48" East 1005.76 feet; Thence North 63°55'32" East 509.45 feet; Thence North 63°13'10" East 494.79 feet; Thence North 63°13'03" East 675.86 feet; Thence North 63°13'03" East 908.00 feet; Thence North 63°13'08" East 921.82 feet; Thence North 63°12'10" East 494.35 feet; Thence North 63°13'46" East 499.47 feet; Thence North 63°10'30" East 499.98 feet; Thence North 63°13'22" East 449.95 feet; Thence North 63°14'11" East 1049.81 feet; Thence North 64°26'50" East 1500.79 feet to the Northwest corner of the Wal-Mart Stores Inc. property, Entry No. 425232, Book 705, Page 786, Washington County Records; Thence leaving said Interstate 15 Freeway Right-of-Way Line South 24°12'06" East 1771.61 feet along an existing fence line to a point on the North Line of Section 4, Township 42 South, Range 14 West; Thence North 89°09'38" West 791.16 feet along the Section line to the North Quarter (N 1/4) Corner of said Section 4 and the point of beginning.

Contains 1838.741 Acres,

Less and Excepting the following areas:

1. The area lying within the S.R. 9 Highway Right-of-Way.
Approx. area = 45 acres
2. The area lying within the old Highway 91 and the new realigned Highway 91. Approx. area = 24 acres
3. The area that lies within the Southeast Quarter of the Southeast Quarter (SE 1/4 SE 1/4) of Section 6, Township 42 South, Range 14 West, Salt Lake Base and Meridian. Approx. area = 40 acres

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