

P-11

**DOC # 20060005013**

Amended Restrictive Covenants Page 1 of 11  
Russell Shirts Washington County Recorder  
2/24/06 4:00 PM Fee \$ 30.00 By SOUTHERN UTAH TITLE CO



WHEN RECORDED, RETURN TO:

SunCor Development Company  
Attn: Legal Dept.  
80 East Rio Salado Parkway, Suite 410  
Tempe, Arizona 85281  
Tax ID # H-4-2-5-123

**SUPPLEMENTAL DECLARATION OF RESTRICTIVE COVENANTS**

This Supplemental Declaration of Restrictive Covenants (this "Supplemental Declaration") is made as of the 8th day of February, 2006, by **SUNCOR DEVELOPMENT COMPANY**, an Arizona corporation (the "SunCor") and **CORAL SPRINGS, LLC**, a Utah limited liability company, individuals ("Coral").

**RECITALS**

A. SunCor is the owner and/or developer of the property located in the City of Hurricane, Washington County, Utah, as depicted on Exhibit "A" (the "SunCor Parcel").

B. Coral owns the real property located in the City of Hurricane, Washington County, Utah, described on Exhibit "B" (the "Coral Parcel") pursuant to a Real Estate Sales Agreement between SunCor and Coral dated June 28, 2005 (the "Purchase Agreement").

C. The SunCor Parcel and the Coral Parcel are collectively referred to herein as the "Parcels" or as the "Property."

D. The Parcels comprise a portion of a larger parcel of real property of approximately 77 acres which Seller is developing as a commercial mixed-use project, City of Hurricane, Washington County, Utah (the "Project"). The Project is subject to that certain Master Declaration of Restrictive Covenants (Commercial/Retail) dated December 7, 2005 and recorded in the Official Records of Washington County, Utah on December 12, 2005 as Document No. 00990935 (the "Declaration") which has been imposed upon the Project and runs with the land.

E. SunCor and Coral are sometimes together referred to herein as "Owner(s)." The Owners desire to establish additional covenants and restrictions upon the Coral Parcel and restrict the types of uses for which the Coral Parcel may be utilized for the purpose of enhancing and protecting the value, desirability and attractiveness of the Parcels and the Project.

*MS*

NOW, THEREFORE, for the purposes set forth above, the Owners hereby declare that the Parcels shall hereafter be held, sold, transferred, used, conveyed, occupied and used subject to the following covenants, conditions and restrictions:

#### AGREEMENT

1. Use. The Coral Parcel may be used only for the construction and occupancy of multifamily/condominium residential units. Coral shall not change the use of the Coral Parcel such that it would result in a violation of the Declaration.

2. Improvements.

2.1. Plan Approval. Prior to Coral submitting for any governmental approvals or commencing construction of any building or improvements on the Coral Parcel, SunCor shall review and provide its reasonable approval of any plans, drawings, or specifications for the proposed buildings and improvements (the "Improvement Plans").

2.2. Design Review and Approval. SunCor shall establish and the Coral Parcel shall be subject to a design theme for the Property to ensure coordinated development of improvements thereon by each owner/occupant. All Improvement Plans, including a site plan and drainage plans, shall first be submitted to SunCor, who shall review same to determine whether architectural design, style, quality, materials, colors and layout of each building and all other improvements are compatible with SunCor's architectural theme to be established for the Project as well as for the present or intended use of any adjacent portions of the Property. All such development and construction shall be completed in accordance with, and shall otherwise comply with the design guidelines promulgated by SunCor from time to time, and with the plans and specifications submitted to SunCor for approval by SunCor.

SunCor agrees that its approval shall not be unreasonably withheld; however, SunCor shall have at least forty-five (45) days after receipt of a complete set of plans and specifications to make its decision with respect thereto, and thirty (30) days to make decisions for minor changes to previously approved plans and specifications. Any action not expressly approved in writing by SunCor shall be deemed disapproved. However, if SunCor fails to respond within such 45-day or 30-day periods, and also fails to respond within ten (10) days after it receives a written request for a decision given after the applicable time period expires for such approval, then such failure to respond shall constitute SunCor's approval of the requested matter, except that all improvements must nevertheless comply with all applicable laws, codes, rules and regulations of all governmental authorities.

**2.3 Maintenance.** At all times prior to construction on the Coral Parcel, the Coral Parcel shall be maintained in a clean condition, free of dust and debris, and if construction has not commenced within six (6) months of the date of recordation of this Supplemental Declaration, the Coral Parcel shall be covered with decomposed granite and maintained in a condition consistent with the first class operation of the Project. The roads or any driveways, sidewalks or other rights-of-way shall not be unreasonably obstructed or disturbed at any time with machinery, equipment, or personnel used in connection with the development of the Coral Parcel.

**2.4 Building(s) Size(s) and Positioning.** Notwithstanding any other provisions in this Supplemental Declaration to the contrary, the square footage and height of the building(s) to be built on the Coral Parcel shall be subject to approval by SunCor, and the building(s) shall be constructed on or before twelve (12) months after the date this Supplemental Declaration is recorded in the Official Records of Washington County, Utah.

**2.5 Indemnity.** Coral agrees to indemnify and hold SunCor harmless against any loss, damage, or injury to people or property resulting from the acts of Coral or its employees, agents, contractors, subcontractors or any other person involved in the construction of any improvements on the Coral Parcel. In the event of any damage to real or personal property not owned by Coral, as a result of, or connected with any work being performed by or at the request of Coral, then upon written notice from SunCor, Coral shall have ten (10) calendar days thereafter in which to commence to repair such damage and restore the damaged property to its condition immediately prior to such damage; and thereafter Coral shall diligently pursue such repairs to completion. Should Coral fail to commence the repair of the damage within the said 10-day period, SunCor shall have the right to repair the damage and charge Coral the cost therefor plus interest at the prime rate of interest plus four percent (4%) per annum as quoted by Wells Fargo Bank, NA (or its successor) and adjusted from time to time at Phoenix, Arizona.

**3. Use of Common Areas.** The owner(s) of the residential units to be constructed on the Coral Parcel shall have access to all Common Areas. Notwithstanding the foregoing, owner(s) of residential units shall not be entitled to use of the Coral Canyon Community Center.

**4. Covenants to Run with the Land.** The restrictions and provisions contained in this Supplemental Declaration: (i) are made for the mutual benefit of the parties; (ii) will create a servitude upon the Coral Parcel in favor of the Property; (iii) will constitute covenants running with the land; (iv) will bind or inure to the benefit of every person having any fee, leasehold, or other interest in any portion of the Coral Parcel or the SunCor Parcel at any time or from time to time to the extent that such portion is bound by or benefited by the provisions of this Supplemental Declaration; provided, however, that only

one legal entity may at any time have the rights of SunCor under this Supplemental Declaration and, accordingly, in the event of a transfer of less than all of the SunCor Parcel by SunCor, SunCor must designate that party which shall continue to have the rights of SunCor under this Supplemental Declaration (provided, however, that if SunCor does not designate a party which shall have the rights of SunCor under this Supplemental Declaration, SunCor shall be deemed to have retained such rights); and (v) will inure to the benefit and be binding upon the parties to this Supplemental Declaration, their legal representatives, successors and assigns. In the event of any violation or threatened violation of any agreement contained in this Supplemental Declaration, any party entitled to enforce this Supplemental Declaration shall have the right to enjoin such violation or threatened violation in any court of competent jurisdiction.

5. Default. The owner of the Coral Parcel shall be deemed to be in default of this Supplemental Declaration upon the expiration of twenty (20) days from receipt of written notice from the owner of the SunCor Parcel specifying the particulars in which such party has failed to observe the obligations of this Supplemental Declaration, unless the owner of the Coral Parcel, prior to the expiration of said 20-day period, has rectified the matters specified in the notice of default; provided, however, that if such failure is of such a nature that it cannot reasonably be cured within such 20-day period, such owner shall have such additional time as is reasonably necessary to cure such failure provided such owner commences the cure thereof within such 20-day period and diligently pursues same to completion.

6. Specific Performance, Remedies. If Coral fails to perform in a timely manner any duty or obligation under this Supplemental Declaration, the other party shall be entitled to all remedies in law or equity that are available under applicable law.

7. Recordation. The parties agree that this Supplemental Declaration shall be recorded in the Official Records of Washington County, Utah.

8. Rule Against Perpetuities. If any interest purported to be created by this Supplemental Declaration is challenged under the Rule Against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be the United States Senator from the State of Arizona, John McCain, and his children and grandchildren who are living at the time the period of perpetuities starts to run on the challenged interest.

9. Modification and Termination. This Supplemental Declaration may not be modified in any respect whatsoever or terminated, in whole or in part,

except by written instrument duly executed and acknowledged by the Owner of the SunCor Parcel and the Owner of the Coral Parcel and recorded in the office of the Washington County Recorder.

10. Notices. All notices shall be made in writing and shall be delivered personally (including delivery by hand or by express or courier service), expenses prepaid, with request for receipt or other proof of delivery or by certified or registered mail, postage prepaid, return receipt requested, to the address of said other party. Any such notice shall be deemed given on the date on which it is actually delivered to said party's address as evidenced, if necessary, by the proof of delivery, the request for return receipt or other receipt. Any party hereto may change its address by giving notice of such change to the other parties in accordance with the provisions of this section.

Coral: Coral Springs, LLC  
Attn: Galen Nelson  
Managing Member  
504 North 4000 East  
Rigby, Idaho 83442

SunCor: SunCor Development Company  
Attn: Michael Gardner  
2303 North Canyon Blvd., Suite 200  
Washington, Utah 84780

With a copy to: SunCor Development Company  
Attn: Legal Dept.  
80 East Rio Salado Parkway, Suite 410  
Tempe, Arizona 85281

11. No Waiver. The waiver by one party of the performance of any covenant or condition hereunder shall not invalidate this Supplemental Declaration, nor shall it be considered to be a waiver by such party of any other covenant or condition hereunder. The waiver by either or both parties of the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time. The exercise of any remedy provided by law and the provisions of this Supplemental Declaration for any remedy shall not exclude other remedies unless they are expressly excluded.

12. Attorneys' Fees. If either party hereto shall bring suit against the other as a result of any alleged breach or failure by the other party to fulfill or perform any covenants or obligations under this Supplemental Declaration or in any deed, instrument or other document delivered pursuant hereto, or to seek declaratory relief as to the rights or obligations of either party hereto, then in such event, the prevailing party in such action shall, in addition to any other

relief granted or awarded by the Court, be entitled to judgment for reasonable attorneys' fees incurred by reason of such action and all costs of suit and those incurred in preparation thereof, at both trial and appellate levels.

13. Provisions Severable. Each provision of this Supplemental Declaration shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Supplemental Declaration be deemed to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Supplemental Declaration.

14. Entire Supplemental Declaration. This Supplemental Declaration contains all of the agreements, representations and warranties of the parties hereto and together with the Declaration supersedes all other discussions, understandings or agreements with respect to the use restrictions binding on the Coral Parcel.

IN WITNESS WHEREOF, this Supplemental Declaration has been executed as of the day and year first above written.

**SUNCOR:**

SunCor Development Company,  
an Arizona corporation

By: [Signature]  
Name: Michael T. Gardner  
Title: G.M.

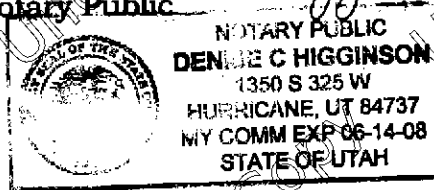
UTAH )  
STATE OF ARIZONA )  
WASHINGTON ) ss.  
County of Maricopa )

On this 24<sup>th</sup> day of FEBRUARY, 2006, before me, the undersigned Notary Public, personally appeared MICHAEL T. GARDNER the GENERAL MANAGER of SunCor Development Company, an Arizona corporation, for and on behalf of the corporation.

My commission expires:

6-14-08

[Signature]  
Notary Public



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**CORAL:**

By: *Galen Nelson*  
Name: Galen Nelson  
Title: Managing Member

Idaho  
STATE OF UTAH )  
Madison ) ss.  
County of Washington )

On this 8 day of February, 2006, before me, the undersigned Notary Public, the foregoing instrument was acknowledged before me by Galen Nelson, Managing Member of Coral Springs, LLC, a Utah limited liability company, for and on behalf of the company.

My commission expires: 12-11-2011

*Miriam Hernandez*  
Notary Public

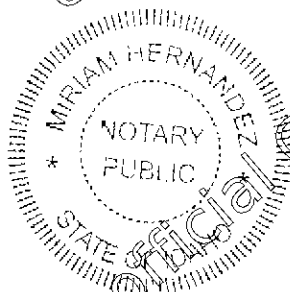
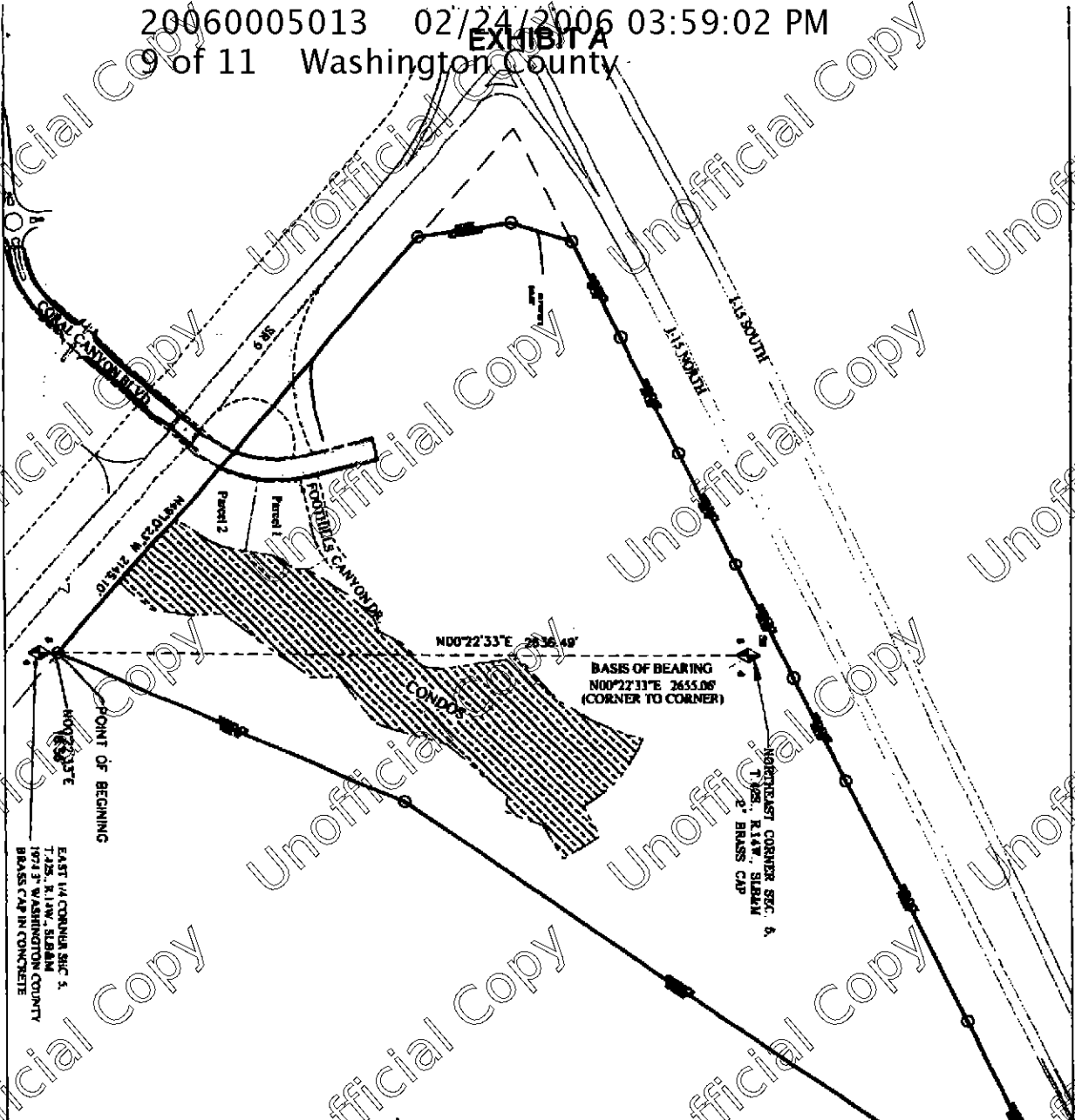






EXHIBIT A



**LEGAL DESCRIPTION**  
 Beginning at a point which is North 00°22'33\"/>

**COMMERCIAL - BOUNDARY**  
**CORAL CANYON DEVELOPMENT**  
 LOCATED IN  
 CITY OF BUREAU  
 WASHINGTON COUNTY, UTAH

**ALLIANCE CONSULTING**  
 A Planning and Engineering Firm

200 N Coral Canyon Blvd, Suite 201  
 Washington, Utah 84793-2001  
 Tel: (435) 972-8888 Fax: (435) 972-8889



**EXHIBIT B**

**CONDOS-HURRICANE**

Beginning at a point which is North 00°22'33" East 257.49 feet along the East Section line and North 90°00'00" West 278.09 feet from the East Quarter Corner of Section 5, Township 42 South, Range 14 West, Salt Lake Base and Meridian; said point also being on the Northeasterly Right-of-Way of State Route 9; running thence along said State Route 9 North 49°10'23" West 330.83 feet to the point on the Coral Canyon Hurricane Sewer Lift Station boundary line, thence along said Sewer Lift Station boundary line North 33°17'56" East 60.52 feet to the point on Coral Canyon Hurricane Parcel 2 boundary line, thence along said boundary line for the following three (3) courses: North 33°17'56" East 100.39 feet; thence North 23°58'07" East 57.31 feet; thence North 10°03'51" East 89.54 feet to the point on Shell Station Parcel; thence along said Shell Station Parcel for the following five (5) courses: North 09°12'37" East 97.17 feet; thence North 19°12'56" East 52.35 feet; thence North 47°00'06" East 32.78 feet; thence North 30°10'14" East 32.96 feet; thence North 02°20'18" East 46.46 feet; thence North 31°44'46" East 182.09 feet; thence North 42°06'16" East 55.00 feet; thence North 29°45'41" East 22.28 feet; thence North 48°09'05" East 21.35 feet to the point of curvature of a 220.00 foot radius curve concave to the right; thence Northeasterly 81.32 feet along the arc of said curve through a central angle of 21°10'38" to the point of reverse curvature of a 30.00 foot radius curve concave to the left, the radius point of which bears North 20°40'16" West; thence Northeasterly 22.34 feet along the arc of said curve through a central angle of 42°40'31" to the point of tangency; thence North 26°39'13" East 81.93 feet; thence North 44°01'48" East 83.44 feet; thence North 82°13'28" East 22.53 feet; thence North 35°21'12" East 32.16 feet; thence North 06°51'27" East 71.80 feet; thence North 08°17'25" West 63.99 feet; thence North 49°37'58" East 235.67 feet; thence North 18°53'57" West 133.10 feet; thence North 71°06'57" East 163.53 feet; thence North 07°13'11" East 109.69 feet; thence South 82°47'44" East 184.01 feet; thence North 63°17'14" East 64.19 feet; thence South 26°42'46" East 151.05 feet; thence South 20°29'44" West 136.66 feet; thence North 69°30'16" West 82.15 feet; thence South 19°56'30" West 69.58 feet; thence South 41°04'16" West 252.94 feet; thence South 19°55'09" West 273.18 feet; thence South 52°08'16" West 211.48 feet; thence South 01°06'52" East 142.01 feet; thence South 35°26'49" West 421.96 feet; thence South 01°57'27" East 134.36 feet; thence South 09°54'17" West 142.85 feet; thence South 40°49'37" West 165.57 feet to the point of beginning.

Containing: 12.80 Acres

The above described parcel is subject to open space areas that will be designated as areas outside actual grading area, i.e. roadways, parking, sidewalks and trails, and building pads, said parcel also subject to modification and will be based on actual grading done to the site, by SunCor Development, said parcel shall not be less than 12.80 acres.