

5
P-11

WHEN RECORDED, RETURN TO:

SunCor Development Company
Attn: Legal Dept.
80 East Rio Salado Parkway, Suite 410
Tempe, Arizona 85281
TAX ID# H-PL

DOC # 20060028099

Restrictive Page 1 of 11
Russell Shirts Washington County Recorder
6/28/06 1:44 PM Fee \$ 30.00 By SOUTHERN UTAH TITLE CO



DECLARATION OF COVENANTS AND RESTRICTIONS
AFFECTING LAND

This Declaration of Covenants and Restrictions Affecting Land (this "Declaration") is made as of the 26th day of June, 2006, by **SUNCOR DEVELOPMENT COMPANY**, an Arizona corporation (the "Declarant").

RECITALS

A. Declarant is the developer of the property located in the City of Hurricane, Washington County, Utah, as depicted on Exhibit "A" and legally described on Exhibit "A-1" (the "Property").

B. Declarant desires to restrict the types of uses for which the Property may be utilized and regulate the architectural theme and design of any improvements to the Property (the "Improvements") for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property.

NOW, THEREFORE, Declarant hereby declares that the Property shall be subject to the covenants and restrictions hereafter set forth:

AGREEMENT

1. Use. The Property may be used only as a multifamily project (attached four-plexes) with a density of 12-16 units per acre, or any other use as approved by Declarant, and only as otherwise consistent with the terms of this Declaration. The use of the Property shall not change such that it would (i) result in a violation of the Declaration, or (ii) violate any exclusive use restrictions, if any, identified in Exhibit "B", which are then in full force and effect and by their terms applicable to the Property.

2. Regulation of Improvements.

2.1 Architectural Control.

2.1.1 No Improvements shall be constructed, erected, placed, altered, maintained or permitted to remain on or within any portion of the Property until plans and specifications for all such Improvements, including a site plan and drainage plans, are approved by Declarant as hereafter provided ("Improvement Plans").

52025

2.1.2 All plans and specifications for Improvements, including a site plan and drainage plans, shall first be submitted to Declarant, 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 Declarant's architectural theme established for the Coral Canyon master planned development, as well as for the present or intended use of any adjacent portions of the Property. Declarant agrees that its approval shall not be unreasonably withheld; however, Declarant 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 Declarant shall be deemed disapproved. However, if Declarant 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 by an Owner seeking approval, then such failure to respond shall constitute Declarant'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.

2.2 Time to Complete. All Improvements to the Property, including any building(s) to be constructed on the Property shall be completed within twenty-four (24) months of the recordation of this Declaration. Provided, however, if Declarant and any current or future owner of the Property ("Owner") reasonably agree that Owner is delayed solely and directly by unanticipated acts of God, riots, terrorist, or war, then Owner's obligations under this Agreement shall be extended for a period of time of equal duration to the actual delay caused thereby. Furthermore, if Declarant determines, in its sole, reasonable discretion that the Owner of the Property is diligently pursuing completion but will not complete within the relevant time period, Declarant may extend Owner's deadline an additional one hundred eighty (180) days.

2.3 Maintenance. At all times prior to construction on the Property, the Property shall be maintained in a clean condition, free of dust, weeds and debris. 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 Property.

3. Repurchase Agreement.

3.1 Failure to Complete. If the Owner of the Property fails to complete construction of the Improvements, including any building(s) to be built on the Property pursuant to Section 2.2 above, Declarant may, by delivering written notice to the Owner of the Property (the "Election Notice") on or after twenty-four (24) months after the date this Declaration is recorded, elect to repurchase the Property in the manner set forth in this Declaration unless, within thirty (30) days after the Owner of the Property receives the Election Notice, the Improvements are completed. The Election Notice shall exclude any portions of the Property that have been improved and sold as separate parcels by Buyer and the Repurchase Price shall be reduced pro rata based on the acreage of such excluded parcels. Owner's address for notice purposes shall be as shown on the recorded deed unless otherwise specified by the Owner in writing.

3.2 Repurchase Price. The repurchase price for the Property (the "Repurchase Price") shall be ninety-five percent (95%) of the purchase price paid by the Owner of the Property to Declarant to acquire the Property, plus all of Owner's reasonable expenses incurred in connection with the development on the Property, which expenses shall include, but not be limited to, architectural, legal, engineering, environmental and other out-of-pocket third party costs and expenses associated with the development on the Property.

3.3. Escrow. Within fifteen (15) days after delivery of the Election Notice, an escrow (the "Escrow") for the repurchase shall be established with Southern Utah Title Company, 2303 North Coral Canyon Boulevard, Suite 101, Washington, Utah 84780 (the "Escrow Agent"). Within such 15-day period, Declarant shall deposit with Escrow Agent a copy of the Election Notice delivered to the Owner of the Property along with a copy of this Declaration, the terms of which shall constitute Escrow Instructions for the sale of the Property. The Escrow so established shall provide for a closing (the "Close of Escrow" or "Closing") on or before the tenth (10th) business day following the deposit of the Election Notice.

3.4. Title. At the Close of Escrow, the Owner of the Property shall convey fee simple title to the Property and all improvements, if any, located on the Property to Declarant by special warranty deed, subject only to the approved exceptions as determined pursuant to Section 3.7 below, current real estate taxes which are a lien, but not yet due and payable, and any other matters previously approved in writing by Declarant. The Repurchase Price shall be payable in cash by Declarant to the Owner of the Property except that Declarant may offset against the Repurchase Price any amounts owed by the Owner of the Property to Declarant and the amount of any monetary liens or encumbrances against the Property.

3.5. Closing Costs. Real estate taxes and all assessments shall be prorated through Escrow between the Owner of the Property and Declarant as of the Closing, based upon the latest available information. Any other closing costs shall be paid by Declarant.

3.6. Escrow Cancellation Charges. In the event that the election to repurchase is made and the Escrow shall fail to close by reason of Declarant's default under this Declaration, Declarant shall pay all escrow cancellation charges. In the event that the Escrow shall fail to close for any other reason, the Owner of the Property shall be liable for all escrow cancellation charges. Nothing contained in this Section 3.6, however, shall be deemed to limit, waive, or exhaust any other rights or remedies available to either party at law or in equity on account of a default under this Declaration.

3.7. Title Report and Approved Exceptions. The Owner of the Property shall not, after the date of the Election Notice, without the prior written consent of Declarant, such consent not to be unreasonably conditioned, delayed or withheld, and except as provided in the Escrow Instructions: (i) further encumber the Property; (ii) grant any easement on the Property; (iii) seek, impose, or allow any dedication, plat, subdivision, restrictive covenant, or any other matter to occur which could affect the title to the Property. The Owner of the Property shall cause, at its sole cost and

expense, any other matters affecting title to be removed at or prior to the Close of Escrow, except for those that exist as of the date hereof.

3.8. Possession. Possession of the Property shall be delivered to Declarant upon the Close of Escrow.

4. Covenants to Run with the Land. The restrictions and provisions contained in this Declaration: (i) will create a servitude upon the Property in favor of the Property; (ii) will constitute covenants running with the land; and (iii) will bind or inure to the benefit of every person having any fee, leasehold, or other interest in any portion of the Property at any time or from time to time to the extent that such portion is bound by or benefited by the provisions of this Declaration, provided, however, that only one legal entity may at any time have the rights of Declarant under this Declaration and, accordingly, in the event of a transfer of less than all of the Property by Declarant, Declarant must designate that party which shall continue to have the rights of Declarant under this Declaration (provided, however, that if Declarant does not designate a party which shall have the rights of Declarant under this Declaration, Declarant shall be deemed to have retained such rights). In the event of any violation or threatened violation of any agreement contained in this Declaration, any party entitled to enforce this Declaration shall have the right to enjoin such violation or threatened violation in any court of competent jurisdiction.

5. Recordation. This Declaration shall be recorded in the Official Records of Washington County, Utah.

6. Rule Against Perpetuities. If any interest purported to be created by this 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.

7. Modification and Termination. This 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 Declarant and the Owner(s) of the Property and recorded in the office of the Washington County Recorder.

8. Default. Any Owner of the Property shall be deemed to be in default of this Declaration upon the expiration of twenty (20) days from receipt of written notice from the Declarant specifying the default, unless the Owner of the Property, 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, the Owner of the Property shall have such additional time as is reasonably necessary to cure such failure provided the Owner of the Property commences the cure thereof within such 20-day period and diligently pursues same to completion.

9. 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.

Declarant: SunCor Development Company
Attn: Legal Department
80 East Rio Salado Parkway, Suite 410
Tempe, Arizona 85281

With a copy to: SunCor Development Company
Coral Canyon Development
Attn: Mike Gardner
2303 North Coral Canyon Blvd., Suite 200
Washington, Utah 84780

10. No Waiver. The waiver by any party of the performance of any covenant or condition hereunder shall not invalidate this Declaration, nor shall it be considered to be a waiver by such party of any other covenant or condition hereunder. The waiver by any party 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 Declaration for any remedy shall not exclude other remedies unless they are expressly excluded.

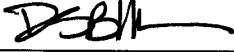
11. Attorneys' Fees. If either Declarant or Owner shall bring suit against the other as a result of any alleged breach or failure by the other party to fulfill or perform any covenants or obligations under this Declaration or in any deed, instrument or other document delivered pursuant hereto, or to 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.

12. Provisions Severable. Each provision of this Declaration shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this 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 Declaration.

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

DECLARANT:

SUNCOR DEVELOPMENT COMPANY,
an Arizona corporation

By: 
Name: Duane S. Black
Title: Executive Vice President and COO

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 26 day of June, 2006, before me, the undersigned Notary Public, personally appeared Duane S. Black, Executive Vice President and Chief Executive Officer of SunCor Development Company, an Arizona corporation, known to me or proven to me to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same for the purpose therein contained.

My commission expires: 4-30-09

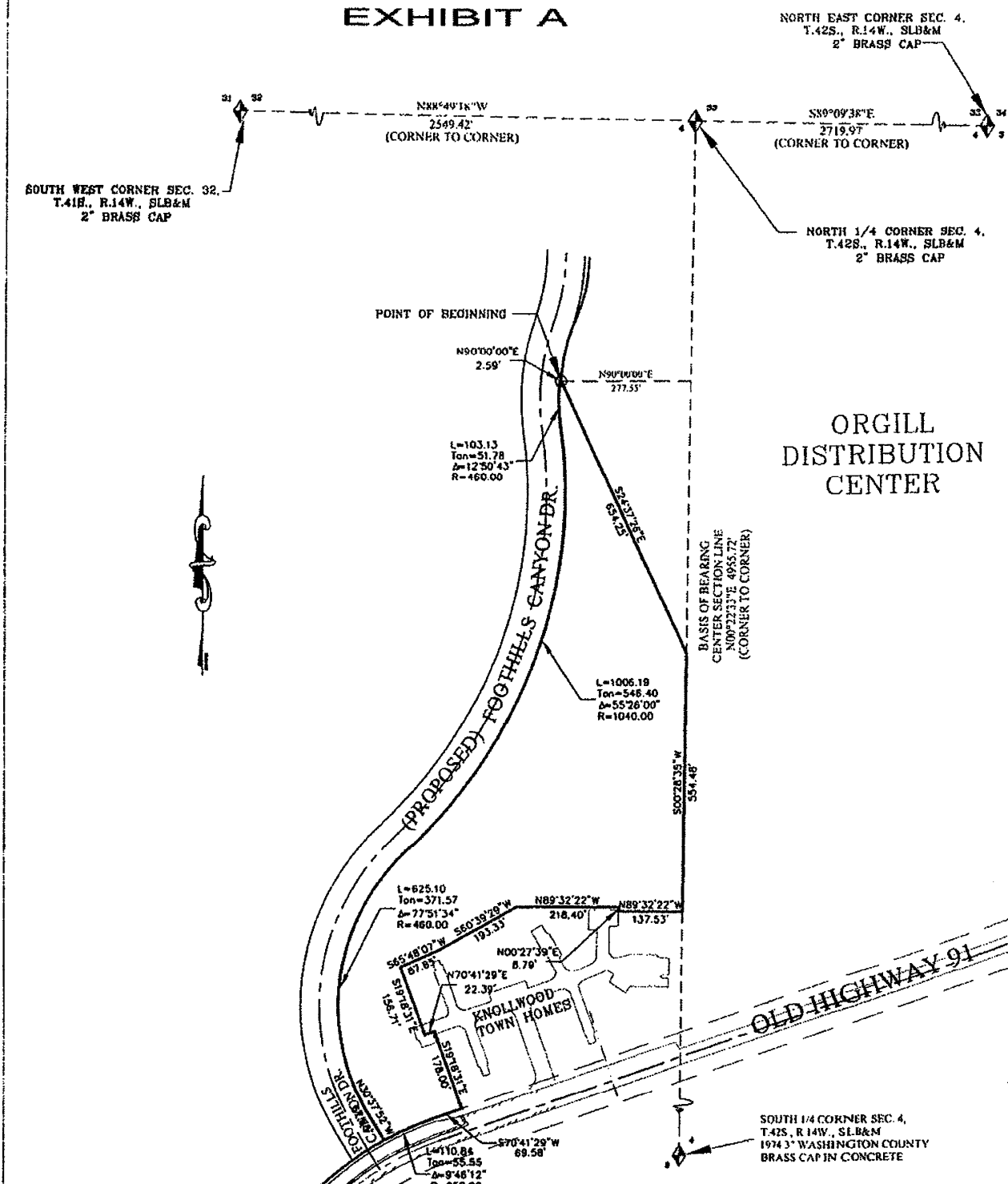
Notary Public



EXHIBIT "A"

Depiction of the Property

EXHIBIT A



DATE: 11/3/05
 JOB NUMBER: 4010-HUR
 SCALE: NOT TO SCALE

ALLIANCE CONSULTING
 A Planning and Engineering Firm

2303 N Coral Canyon Blvd, Suite 201
 Washington, Utah 84780-0517

Tel: (435) 673-6060
 Fax: (435) 673-6065

10 ACRE PARCEL FOR CORAL CANYON DEVELOPMENT
 HURRICANE CITY WASHINGTON COUNTY, UTAH

FIGURE
A-1

EXHIBIT "A-1"

Legal Description of the Property

File No. 133025
Page No. 2

EXHIBIT "A" - LEGAL DESCRIPTION

Beginning at a point which is South 00°28'35" West 747.89 feet along the Center Section Line and North 90°00'00" West 277.59 feet from the North Quarter Corner of Section 4, Township 42 South, Range 14 West of the Salt Lake Base and Meridian, which point is also the Westerly corner of Orgill Inc. boundary, recorded December 30, 2004, as Entry No. 919292, in Book 1701, at Page 2109, Official Washington County Records, in said County, in the State of Utah, and running thence along said property boundary South 24°36'08" East 654.90 feet to a point on the said Center Section Line; thence leaving said Orgill Inc. boundary line to said Center Section Line South 00°28'35" West 553.81 feet to the Northeast Corner of Knollwood Townhomes Phase 1-Amended, Entry No. 489341, in Book 879, at Page 76, Official 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°27'36" 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°41'24" East 22.39 feet; thence South 19°18'31" East 177.82 feet to a point on the Northerly Right-of-Way Line of Highway 91 realignment, Entry No. 579572, in Book 1141, at Page 84, Official 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 69.25 feet to the point of curvature of a 650.00 foot radius curve concave to the left; thence Southwesterly 134.37 feet along the arc of said curve, through a central angle of 11°50'39", to a point on the Easterly Right-of-Way Line of Foothills Canyon Drive; thence along said Foothills Canyon Drive Right-of-Way Line in the following four (4) courses North 34°41'35" West 29.65 feet to the point of curvature of a 460.00 foot radius curve concave to the right; thence Northeasterly 666.09 feet along the arc of said curve, through a central angle of 82°57'57" to the point of reverse curvature of a 1040.00 foot radius curve concave to the left; thence Northwesterly 1025.15 feet along the arc of said curve, through a central angle of 56°28'40" to the point of curvature of a 460.00 foot radius curve concave to the right; thence Northeasterly 102.87 feet along the arc of said curve, through a central angle of 12°48'46"; thence leaving said Right-of-Way line North 90°00'00" East 2.32 feet to the point of beginning.

EXHIBIT B

Existing Exclusive Uses

NONE