

WHEN RECORDED, RETURN TO:

SunCor Development Company
2303 N Coral Canyon Blvd., Suite 200
Washington, Utah 84780

MASTER DECLARATION OF RESTRICTIVE COVENANTS (COMMERCIAL/RETAIL)

THIS MASTER DECLARATION OF RESTRICTIVE COVENANTS (the "Declaration") is made to be effective as of the 7th day of December, 2005, by SUNCOR DEVELOPMENT COMPANY, an Arizona corporation, and THE STATE OF UTAH, ACTING THROUGH THE SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION.

RECITALS

A. Declarant is the lessee of the Property pursuant to the Development Lease and has entered into this Declaration pursuant to Section 5.8(c) of the Development Lease. As fee owner of the Property, SITLA is joining in the Declaration pursuant to Section 5.8(c) of the Development Lease.

B. The Property is included within a master planned community located in Washington County, Utah, known as Coral Canyon. Declarant recognizes that the manner in which the Property is improved, used and maintained may affect the value and desirability of property within Coral Canyon and, as the master developer of Coral Canyon, has a vested interest in maintaining the quality of development on the Property because of the impact thereof on Coral Canyon.

In furtherance of a plan to promote and protect the value, desirability and attractiveness of the Property and Coral Canyon, Declarant does hereby declare that the Property shall hereafter be held, sold, conveyed, hypothecated, encumbered, leased and improved subject to the following easements, restrictions, covenants and conditions which shall run with the title to the Property and shall be binding on all parties having any right, title or interest in the Property or any part thereof (including, without limitation, all occupants, tenants and invitees), their heirs, successors, successors-in-title and assigns and shall inure to the benefit of Declarant.

NOW, THEREFORE, Declarant declares, covenants, and agrees as follows:

ARTICLE 1 DEFINITIONS

1.1 **“Common Area”** means all open space areas, landscaped areas and related facilities and designated common signage areas and related facilities within the Property which are for the common use and/or benefit of the Owners, together with those areas designated as common areas in a written, recorded instrument by the Declarant in its sole discretion at any time after the recording of this Declaration.

1.2 **“Coral Canyon”** that certain real property now or hereafter comprising the planned community so named located adjacent to or in the vicinity of the Property.

1.3 **“Declarant”** means:

(a) Prior to the Turnover Date, SunCor Development Company, an Arizona corporation, and the successors and assigns of Declarant's rights and powers hereunder, with SunCor Development Company having the right to assign its rights as Declarant hereunder to any Person who acquires all or any portion of the interest of SunCor Development Company in the Property or to the then current lessee under the Development Lease. Any assignment of all or any portion of Declarant's rights and powers pursuant to this Section 1.3(a) shall be made by a recorded instrument executed by the assignor, Declarant and the assignee. Prior to the Turnover Date, Declarant shall include SITLA but only to the extent provided in Section 2.3; and

(b) After the Turnover Date, unless an assignment of Declarant's rights has previously been made in accordance with Section 1.3(a), the Owner of the largest Lot in the Property, determined on a gross square foot basis.

1.4 **“Development Lease”** means Development Lease No. 610, dated June 30, 1999, between Declarant and SITLA, as it may be amended, supplemented or extended from time to time, and with respect to which a Memorandum of Lease was recorded July 2, 1999, as Entry No. 00653936, in Book 1339, beginning at page 1451, records of Washington County, Utah.

1.5 **“Environmental Law”** means any federal, state or local law, ordinance, regulation, order, permit, license, decree, common law, or treaty now or hereafter in force regulating, relating to or imposing liability or standards concerning materials or substances known or suspected to be toxic or hazardous to health or safety, the environment or natural resources.

1.6 **“Hazardous Materials”** means any substance or material which is defined as or included in the definition of “hazardous substance”, “hazardous waste”, “hazardous material”, “extremely hazardous substance”, “acutely hazardous wastes”, “restricted hazardous waste”, “asbestos-containing materials”, “presumed asbestos-containing materials”, “hazardous chemical”, “hazardous air pollutant”, “toxic substances”, or “known to cause cancer or reproductive toxicity” (or words of similar import), petroleum products (including crude oil or any fraction thereof) or any other chemical, substance or material which is prohibited, limited or regulated under any Environmental Law.

1.7 **“Lot”** means each portion of the Property that is designated as a lot on a recorded subdivision plat of the Property or otherwise created by subdivision or conveyance to a third party.

1.8 **“Mortgage”** means any mortgage, deed of trust or other security instrument encumbering real property and/or the improvements thereon.

1.9 **“Owner”** means the record holder of legal, beneficial or equitable title to the fee simple interest of any Lot, including, without limitation, one who is buying a Lot under a recorded installment land sales contract, but excluding others who hold such title merely as security for the performance of an obligation. Owner shall not include a lessee or tenant of a Lot except as provided in Section 2.3. In the case of property, the fee simple title to which is vested of record in a trustee pursuant to Utah Code Annotated Section 57-1-19 *et seq.*, as amended from time to time, the Owner shall be deemed to be the Person who is the trustor under such deed of trust. In the case of property, the fee simple title to which is vested in a trustee pursuant to a trust agreement, the beneficiary of any such trust entitled to possession shall be deemed to be the Owner. An Owner shall include any Person who holds record title to a Lot in joint ownership with any other Person or holds an undivided fee interest in any Lot. If there is more than one Person comprising an Owner, then all such Persons shall be jointly and severally obligated to perform the obligations and responsibilities of the Owner under this Declaration; however, any one of such Persons shall be authorized to act on behalf of such Owner for the purposes of this Declaration. Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions, or similar executory contract that is intended to control the rights and obligations of the parties to executory contracts pending the closing of a sale and purchase transaction.

1.10 **“Person”** means a natural person, a corporation, a partnership, a trustee, a governmental entity, or other legal entity.

1.11 **“Pro Rata Share”** means, as to any Owner, a fraction, the numerator of which is the gross square footage of the Lot or Lots owned by such Owner and the denominator of which is the gross square footage of all Lots within the Property.

1.12 **“Property”** means the real property described in **Exhibit A** to this Declaration.

1.13 **“Review Committee”** means the Owners of the three Lots that are next largest to the largest Lot in the Property, determined on a gross square foot basis; *provided, however*, that if the matter being referred to the Review Committee is being referred by one of such Owners, then, for the purpose of considering and acting on such matter, such referring Owner shall be replaced on the Review Committee by the Owner of that Lot which is the next largest Lot in the Property after the Lots of the Owners serving on the Review Committee for that matter and after the Lot of the referring Owner, excluding in all cases the Owner of the largest Lot in the Property. Each Owner on the Review Committee shall have one vote.

1.14 **“SITLA”** means the State of Utah, acting through the School and Institutional Trust Lands Administration, and its successors and assigns as the holder of the rights of the Lessor pursuant to the Development Lease.

1.15 **“Turnover Date”** means the date that the Person serving as Declarant under Section 1.3 no longer owns any Lot within the Property.

ARTICLE 2

PROPERTY SUBJECT TO DECLARATION

2.1 **General Declaration.** Declarant declares that all of the Property is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration. This Declaration is declared and agreed to be in furtherance of a general plan for the subdivision, development, improvement and sale of the Property and is established for the purpose of enhancing and perfecting the value, desirability and attractiveness of each portion of the Property and Coral Canyon. This Declaration shall run with the Property for all purposes and shall be binding upon and inure to the benefit of Declarant, all Owners and their respective successors in interest.

2.2 **Leases.** Any agreement for the lease of all or any portion of a Lot must be in writing and must be expressly subject to this Declaration. The Owner shall remain liable for compliance with the Declaration and shall be responsible for any violations thereof by such Owner's tenants or subtenants and their agents, employees, representatives, contractors, invitees, or licensees. The Development Lease is not subject to the terms of this Section 2.2.

2.3 **SITLA.** By executing this Declaration, SITLA joins in and consents to this Declaration pursuant to Section 5.8(c) of the Development Lease, for the purpose of subjecting the fee ownership interest in the Property to all of the terms, covenants, conditions, easements, restrictions, servitudes, and other provisions of this Declaration. Any other provision of this Declaration to the contrary notwithstanding, unless Declarant specifically assigns to SITLA, and SITLA specifically assumes, the rights and obligations of Declarant under this Declaration, SITLA shall have no rights, obligations or liabilities hereunder as Declarant. Upon a termination of the Development Lease, if SITLA then owns any of the Property, SITLA shall have the right, but not the obligation to succeed to the rights and obligations of Declarant by executing and recording an Assumption of Declarant's Rights and Obligations with the Washington County Recorder's office, whereupon SITLA shall be entitled to exercise all rights of Declarant under this Declaration and shall be subject to all of the obligations of Declarant under this Declaration. From time to time, as requested by Declarant, SITLA will join in such documents and instruments as are necessary or appropriate to effectuate or further the intents and purposes of this Declaration. At such times as the Development Lease is in effect as to any portion of the Property and Declarant is the lessee of such portion of the Property, Declarant shall, solely for the purposes of this Declaration, be deemed to be the fee owner of such Property and the Owner of such Property for all purposes of this Declaration. At such time as Declarant is no longer the lessee of any portion of the Property and SITLA is the fee owner of such portion of the Property, SITLA shall be deemed the Owner of such portion of the Property.

2.4 **Incorporation of Recitals.** The Recitals above are incorporated into and are a part of this Declaration.

ARTICLE 3

RIGHT OF ENTRY; EASEMENTS

3.1 Right of Entry. Declarant shall have the right, but not the obligation, to enter upon the Property and each portion thereof (a) for emergency, security and safety reasons; (b) to inspect for the purpose of ensuring compliance with this Declaration; (c) to perform its duties under this Declaration; and (d) to exercise any and all rights and remedies in the event of any default hereunder by an Owner or occupant; provided, nothing herein shall authorize Declarant to enter any building interior on the Property without permission of the Owner or occupant, which permission shall not be unreasonably withheld, conditioned or delayed. This right of entry may be exercised by Declarant, any agent or employee of Declarant acting with the permission of Declarant, and all police, fire and similar emergency personnel in the performance of their respective duties. Except in an emergency situation to avoid an imminent threat of personal injury or property damage, entry shall only be authorized during reasonable hours and after receipt of the Owner's or occupant's consent.

3.2 General Easements. Subject to the provisions of this Declaration, Declarant hereby establishes and grants to, and each other person who becomes an Owner shall, immediately upon becoming an Owner and without further act, be deemed to have established and granted to, (i) Declarant and (ii) all other Owners and their respective contractors, agents, employees, licensees, customers, visitors and invitees (collectively, "Permittees"), irrevocable, nonexclusive easements over, across, upon and beneath the Common Area located on the Lot owned by such Owner for the purposes set forth in Section 3.3 hereof. Nothing in this Section 3.2 or elsewhere in this Declaration shall be deemed to be or constitute a gift or dedication of any portion of the Property to the general public or for any public use or purpose whatsoever.

3.3 Use of Common Area. The Common Area may be used only for the following purposes:

(a) The parking on an Owner's Lot of passenger vehicles of all Permittees of the Owner of such Lot. Neither Declarant nor Declarant's Permittees, nor an Owner nor such Owner's Permittees, may use any portion of the Property owned by another Owner for the parking of vehicles without first obtaining the written consent of such other Owner.

(b) The vehicular and pedestrian ingress and egress of all Permittees and their vehicles to and from any portion of the Common Area and the streets adjacent to the Common Area over those portions of the Common Area from time to time improved for purposes of ingress and egress.

(c) The installation, operation, maintenance, repair, replacement, relocation and removal of sanitary sewers; storm drains; water and gas mains; electric power lines and conduits; telephone lines and conduits; television cables; vaults; manholes; meters; pipelines; valves; hydrants; sprinkler controls; subject to Declarant's prior written approval, ponds, basins and drywells for the retention of storm drainage and/or runoff; and related utility and service facilities serving any part of the Property. All Owners shall cooperate in the granting of appropriate reasonable and proper easements to each other or to utility companies and

governmental authorities for the installation, operation, maintenance, repair, replacement, relocation and removal of the facilities set forth above. The original location of the facilities set forth above shall be subject to the reasonable approval of Declarant. Each Owner shall have the right to enter upon any portion of the Common Area as may be necessary or appropriate in order to accomplish the installation, operation, maintenance, repair, replacement, relocation and removal of the facilities referred to above; provided, however, such Owner shall not unreasonably interfere with the use of the Common Area by Permittees or with the operation by any Owner or other occupant of the Property of its business carried on within the Property and that no relocation or removal of any such facilities shall be made without the prior written consent of both Declarant and any Owner of the Lot affected by such relocation or renewal, provided, further, however, that following any such entry and installation, operation, maintenance, repair, replacement, relocation and removal of the facilities referred to above, the entering Owner shall be obligated to restore and repair the Lot upon which such entering Owner entered to substantially the same condition as existed prior to such entry.

(d) The ingress and egress of delivery and service trucks and vehicles (including, without limitation, trucks and vehicles transporting merchandise or products to or from tenants or occupants of the Property) to and from all buildings over those portions of the Common Area from time to time improved for purposes of ingress and egress.

(e) The discharge of surface storm drainage and/or runoff upon and across the Common Area, upon the following terms and conditions:

(i) The Common Area grades and the surface water drainage/retention system for the Property shall be initially constructed in strict conformance with the details approved by Declarant; and

(ii) No Owner shall alter or permit to be altered the surface of the Common Area or the drainage/retention system constructed on its property if such alteration would materially increase the flow of surface water onto adjacent property either in the aggregate or by directing the flow of surface water to a limited area.

Notwithstanding anything herein to the contrary, Declarant may from time to time establish reasonable rules and regulations governing traffic within the Property, and each Owner and Permittee hereby agrees to comply with such reasonable rules and regulations upon notification thereof.

3.4 Easement Reservations ~~Error! Bookmark not defined.~~ The easements granted pursuant to Section 3.2 shall be subject to the following reservations as well as the other provisions contained in this Declaration:

(a) Each Owner reserves the right to close off its portion of the Common Area for such reasonable period of time as may be legally necessary, in the opinion of such Owner's counsel, to prevent the acquisition of prescriptive rights by anyone; provided, however, that prior to closing off any portion of the Common Area, as herein provided, such Owner shall give not less than ten (10) business days' advance written notice to each other Owner of its intention to do

so, and shall attempt to coordinate such closing with each other Owner so that no unreasonable interference in the passage of pedestrians or vehicles shall occur;

(b) Each Owner reserves the right at any time and from time to time to exclude and restrain any person who is not a Permittee from using the Common Area located on such Owner's Lot; and

(c) Declarant shall have the right from time to time to designate a portion or portions of the Common Area located on a Lot then owned by Declarant for the exclusive use of an Owner or Permittee and, in such event, such designated area shall not be subject to and shall be excluded from the easements established and granted under clause (ii) of the first sentence of Section 3.2 until such time as Declarant expressly redesignates such area as being subject to and included within such easements.

3.5 Restriction on Granting Easements. No Owner other than Declarant (and, if the easement property is located on a Lot not owned by Declarant, Declarant shall in that instance obtain the consent of the Owner of such Lot thereto) shall grant any easement for the purpose set forth in this Article for the benefit of any real property not within the Property; provided, however, that the foregoing shall not prohibit the use of any easements granted to others by Declarant prior to the recordation of this Declaration and shall not prohibit the granting or dedicating of easements by an Owner on its Lot to governmental or quasi-governmental authorities or to public utilities.

ARTICLE 4

COMMON AREA

4.1 Maintenance of the Common Area.

(a) **Generally.** Declarant shall, at Declarant's initial expense, but subject to partial reimbursement from the Owners as provided in this Section 4.1, and further subject to the provisions of Section 4.1(e), maintain and repair any improvements within or otherwise relating to the Common Area in good condition and repair and in compliance with applicable governmental rules and regulations, such maintenance to include, without limitation, the following:

(i) Removing all papers, debris, filth and refuse so as to keep the Common Area in a clean and orderly condition;

(ii) Maintaining and watering all landscaped areas; maintaining, repairing and replacing, when necessary, automatic landscape sprinkler systems and water lines; and replacing shrubs and other landscaping as is necessary;

(iii) Maintaining, repairing and replacing, when necessary, all fences, screen walls, retaining walls or barricades in the Common Area;

(iv) Maintaining, repairing and replacing, when necessary, all storm drains, detention pond and drainage facilities located within the Common Area;

(v) Maintaining, repairing and replacing, when necessary, all signage and related facilities which Declarant allows to be located within the Common Area, but only if such signage and related facilities are for the benefit all Owners (to the extent such signage and/or related facilities are for the benefit of less than all the Owners, then the benefited Owners shall be solely responsible for maintaining, replacing and repairing and for all costs associated with the use and operation of such signage and related facilities);

(vi) Maintaining, repairing and replacing, when necessary, all sewers and other utility lines and facilities located within the Common Area and not dedicated to the public or conveyed to any public or private utility which are necessary for the operation of the buildings and improvements located on the Lots (with the cost of all such items being allocated between the Owners of all buildings and improvements serviced or to be serviced by said facilities on the basis of the gross square footage amounts of each Owner's respective Lot(s)); and

(vii) Providing and maintaining general commercial liability insurance with broad form coverage endorsement (including broad form property damage endorsement) insuring Declarant and the Owners against claims for personal injury, bodily injury or death, and property damage or destruction, occurring in, on or about the Common Area. Such insurance shall be written with an insurer licensed to do business in the State of Utah and each Owner shall be named on the policy as an additional insured. The limits of liability of all such insurance shall be a combined single limit (covering personal injury, bodily injury or death and property damage or destruction) of not less than \$3,000,000 per occurrence. Declarant shall furnish each of the Owners with certificates evidencing such insurance. The policies of such insurance shall provide that the insurance represented by such certificates shall not be cancelled, materially changed or nonrenewed without the giving of thirty (30) days prior written notice to the holders of such insurance and the holders of such certificates.

(b) Management Company. Declarant may perform itself or contract with a third party or parties to perform any of the services described in this Section 4.1; *provided, however*, that such Maintaining Holder shall remain responsible and liable for the performance of all of said services in accordance with the terms of this Section 4.1 and for the performance of any such third party or parties under any such contract or contracts.

(c) Reimbursement of Maintenance Costs. Each Owner shall pay to Declarant its Pro Rata Share of the all of the costs and expenses incurred by Declarant in furtherance of its obligations under Section 4.1 (the "Maintenance Costs"), such payment to be made within fifteen (15) days of presentation to the Owner of reasonable documentation substantiating the costs incurred and that such costs have been paid. Declarant may, subject to the provisions hereof, charge a maximum service charge of fifteen percent (15%) of all reimbursable expenses incurred by Declarant in performing the services described in this Section 4.1 to cover management and administration costs ("Service Charge"). Notwithstanding the foregoing, if Declarant contracts with a management company (a "Management Company"), then Declarant shall not be entitled to a Service Charge with respect to those items delegated to the Management Company. The fee of the Management Company shall be a reimbursable expense as part of Maintenance Costs, *provided, however*, that such fee

shall not exceed ten percent (10%) of all reimbursable out-of-pocket expenses incurred by the Maintenance Director in performing the services delegated to the Management Company.

(d) Interest on Late Payments; Lien Rights. Amounts owed to Declarant pursuant to Section 4.1(c) and not paid when due shall bear interest from the due date until paid at a rate equal to twelve percent (12%) per annum. Furthermore, Declarant shall have a lien on the portion of the Property owned by the defaulting Owner for the amount due plus accrued interest as set forth above, as provided in Section 9.3.

(e) Maintenance of Common Area by Owners. Notwithstanding the provisions of this Section 4.1 to the contrary, Declarant may elect to cause one or more Owners to operate, maintain and repair, or cause to be operated, maintained and repaired, the Common Area on such Owner's Lot in a first-class, safe, attractive and good state of condition and repair and to perform the obligations of Declarant in Section 4.1(a) with respect to such Lot. The minimum standard of maintenance for the improved Common Area shall be comparable to the standard of maintenance followed in other developments of comparable size and use in the metropolitan area in which the Coral Canyon development is located; provided, however, all Common Areas shall be operated and maintained in compliance with all applicable governmental laws, rules and regulations and the provisions of this Declaration. All Common Area improvements shall be repaired or replaced with materials of a quality which is at least equal to the quality of the materials being repaired or replaced so as to maintain the architectural and aesthetic harmony of the Coral Canyon Development as a whole. In such event, such Owner shall pay directly the costs of maintaining such Owner's Lot and shall not be required to participate in reimbursement for Common Area maintenance generally (and the costs of maintenance of the Common Areas on such Lot shall be excluded from the amounts to be reimbursed by other Owners pursuant to Section 4.1(c)).

4.2 Dedication. The Common Area Holder may dedicate the Common Area to any governmental authority that agrees to provide substantially the same level of maintenance with respect to the Common Area as is required of Declarant under this Article 4.

4.3 Common Area Restrictions. No Owner shall cause or permit the alteration, relocation, reconfiguration or temporary or permanent closure of any parking areas or parking spaces located upon the portion of the Common Areas located upon its Lot without the prior written consent of Declarant. Notwithstanding the foregoing, an Owner shall have the right to excavate or conduct construction activities upon the Common Area, if necessary, in connection with the installation, operation, maintenance, repair, replacement, relocation and removal of any Separate Utility Line, subject, however, to the provisions of Section 3.3(c), so long as such excavation or construction activities shall be prosecuted diligently to completion. The person causing such excavation or construction activities to be made shall forthwith, upon completion thereof, restore any portion of the Common Area affected thereby to the same condition as existed prior to the commencement of such installation or construction activities using the same type and quality of materials as previously used.

ARTICLE 5

REAL PROPERTY TAXES AND ASSESSMENTS

5.1 Real Estate Taxes and Assessments. Each Owner shall pay, prior to delinquency, all taxes and assessments on the Lot owned by it. If an Owner shall fail to pay such taxes and assessments prior to delinquency, Declarant may, but shall not be obligated to, pay such taxes and assessments (and thereby create an obligation of the Owner to Declarant for reimbursement) and bill the delinquent Owner therefor. If the delinquent Owner does not pay such bill within fifteen (15) days of its receipt thereof, Declarant shall have all remedies and rights available in law or equity for collection of the obligation, including, without limitation, a lien on the Lot of such Owner for the amount of such bill pursuant to Section 9.3. Any obligation of an Owner to Declarant hereunder shall bear interest at the rate of twelve percent (12%) per annum from the date of the advance by Declarant until paid in full. Such lien may be foreclosed by Declarant as provided in Section 9.3 hereof. Until such time as the Lots may be assessed as separate tax parcels, each Owner shall pay or cause to be paid its Pro Rata Share of real estate taxes and assessments in the ratio that the total land area of such Owner's Lot bears to the total land area within the Property. Notwithstanding the foregoing sentence, if the Lots of two or more Owners constitute a single tax parcel and the tax statement relating thereto attributes a portion of the total tax due thereunder to land and a portion to improvements, then the total tax due thereunder shall be apportioned among, and paid by, the Owners of the applicable Lots in the following manner: (i) the portion of the tax amount attributable to land shall be apportioned among such Owners in the ratio that the total land area of each Owner's Lot bears to the total land area within the entire tax parcel; and (ii) the portion of the tax amount attributable to improvements shall be apportioned among such Owners in the ratio that the total square footage of improvements of each Owner's Lot bears to the total square footage of improvements within the entire tax parcel.

ARTICLE 6

DEVELOPMENT AND MAINTENANCE OF LOTS

6.1 Architectural Review.

(a) Approval Required. No construction (which term shall include, without limitation, staking, clearing, excavation, grading and other site work) or improvements (which term shall include, without limitation, buildings, streets, driveways, parking areas, sidewalks, lighting, curbs, gutters, utilities, facilities, fences, walls, plantings, stairs, decks, poles, signs (including freestanding signs), fixtures and all other structures, features, equipment and landscaping installations of every type and kind) shall be commenced, erected, placed, altered or repaired below, on or above the Property until an application for approval of such construction and improvements and the final plans and specifications therefor ("Final Plans") have been approved in writing by Declarant. This Article applies to original construction and to any modifications, alterations, repairs and remodeling. The Final Plans shall include, without limitation, complete and detailed plans, specifications and drawings as to structural design, exterior elevations, exterior materials and colors of all primary and accessory structures, signage, nature and location of landscaping materials, drainage, lighting, irrigation, parking, paving and curb cut layout and screening of outdoor equipment.

(b) Design Guidelines. Declarant shall prepare Design Guidelines which shall apply to all construction activities within the Property. The Design Guidelines shall set forth the procedure for, and any additional information required in connection with, submission and review of the Final Plans. Before the Owner may begin the proposed activity, the application must be approved in writing by Declarant in accordance with the procedures described in the Design Guidelines. The Design Guidelines are intended to provide guidance to Owner regarding matters of particular concern in considering the applications hereunder. The Design Guidelines shall not be the exclusive basis for decisions of Declarant and compliance with the Design Guidelines shall not guarantee approval of any application. Declarant shall have sole and full authority to amend the Design Guidelines from time to time in the exercise of its reasonable business judgment. Any amendments to the Design Guidelines shall apply to construction and modifications commenced after the date of such amendment only and shall not apply to require modifications to or removal of structures previously approved in writing once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines. The Design Guidelines may be amended to add requirements not previously imposed, to remove requirements previously imposed or otherwise to make the Design Guidelines more or less restrictive.

(c) Review. In reviewing each submission, Declarant may consider quality of workmanship and design, visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, harmony of external design with surrounding structures and environment, and location in relation to surrounding structures and plant life, including those within Coral Canyon. Declarant may require relocation of native plants within the construction site, the installation of an irrigation system for the landscaping or the inclusion of natural plant life on the Property as a condition of approval of any submission. Declarant shall not require permits or other approvals by local government entities other than those issued by such entities in the usual course of business.

(d) Withdrawal of Approval. If construction does not commence on a project for which Final Plans have been approved before the commencement deadline specified in such approval or in the Design Guidelines, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the Final Plans to Declarant for reconsideration. If construction is not completed on a project for which Final Plans have been approved within the period set forth in the Design Guidelines or in the approval, such approval shall be deemed withdrawn, and such incomplete construction shall be deemed to be in violation of this Article.

(e) Approval in Writing. Approval of proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring approval, must be in writing, and shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings or other matters subsequently or additionally submitted for approval.

(f) No Deviations. No changes or deviations in or from the Final Plans once approved may be made without the prior written approval of Declarant. Except as otherwise agreed in writing by Declarant and Owner, all construction on the Property shall be at the sole expense of the Owner.

(g) Consultants; Fees. Declarant may retain architects, engineers or similar professionals to assist in reviewing applications hereunder. Declarant may charge reasonable fees for review of applications and may require such fees to be paid in full prior to such review.

(h) Non-Liability of Declarant. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and Declarant shall bear no responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither Declarant, nor its officers, directors employees, agents or representatives shall be held liable for defects in any plans or specifications submitted, revised or approved hereunder, nor any structural or other defects in work done according to approved plans, nor for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to the Property or improvements thereon. The Owner requesting approval shall be obligated to defend, indemnify and hold Declarant, its officers, directors, employees, agents and representatives, free and harmless for, from and against any and all claims, damages, losses and/or liabilities in connection with any Final Plans approved by Declarant and any improvements constructed pursuant thereto, including court costs and reasonable attorneys' fees. The Owner shall be responsible for obtaining all permits, licenses and other governmental approvals required in connection with any improvements to be constructed on the Property.

(i) Nonconforming Work. Any construction, alteration or other work done in violation of this Article or the Design Guidelines shall be deemed to be nonconforming. Upon written request from Declarant, the Owner shall, at its own cost and expense, either cure such nonconformance to the satisfaction of Declarant or remove such construction, alteration or other work and restore the Property to substantially the same condition as existed prior to the construction, alteration or other work. Should the Owner fail to cure or to remove and restore as required hereunder within thirty (30) days after receipt of Declarant's request therefor, Declarant or its designees shall, in addition to all other rights and remedies available hereunder, at law or in equity, have the right but not the obligation to enter the Property, remove the violation and restore the Property to substantially the same condition as existed prior to the nonconforming construction, alteration or other work and/or to erect barriers to screen any uncompleted improvements, and/or to take other actions deemed reasonably necessary by Declarant to minimize the impact of the default, and Declarant may assess any and all costs incurred in connection therewith (including, without limitation, overhead and administrative costs) against such Owner in the manner provided herein and shall have a lien on the portion of the Property owned by the defaulting Owner pursuant to Section 9.3.

6.2 Construction. All improvements shall be constructed substantially in accordance with the Final Plans as approved. Construction on a particular Lot pursuant to Final Plans shall be commenced and completed in accordance with the commencement and completion deadlines set forth in the Design Guidelines and the approval of Declarant.

6.3 Compliance with Laws. All improvements to be constructed on the Property shall be constructed in compliance with all applicable laws, statutes, codes, ordinances, rules, regulations and standards, including, without limitation, the Americans with Disabilities Act, as such matters may be amended from time to time (collectively "Laws"). Any improvements to be constructed on the Property shall comply with all applicable zoning and other governmental

standards, including, without limitation, those relating to size, height and parking availability. The Owner shall not seek to modify the zoning for the Property or any portion thereof without Declarant's prior written consent, which consent may be withheld in Declarant's sole discretion. Notwithstanding anything contained in this Declaration to the contrary, Declarant shall have the right to impose requirements pursuant to this Declaration and the Design Guidelines which are stricter or more restrictive than applicable Laws and other governmental standards, and the Owner shall be obligated to comply with the requirements imposed by Declarant.

6.4 Contractors. All acts by any contractor, subcontractor, agent, employee or invitee of an Owner shall be deemed to be an act done by or on behalf of such Owner. Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded from the Property. In such event, Declarant shall not be liable to any Person for exercising the rights granted by this Section.

6.5 Maintenance.

(a) **Unimproved Lots.** All Lots on which buildings are not under construction shall be covered by a one inch asphalt dust cap or other material approved by Declarant and kept weed-free and clean at the Owner's sole expense until such time as buildings are constructed thereon.

(b) **During Construction.** During the course of construction on a Lot, the Owner of such Lot shall keep the Lot in a reasonably neat and orderly condition and shall promptly remove all trash and other construction debris. The Owner shall also take such reasonable steps as are necessary to control dust emissions from the Lot during the course of construction. All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any building or other improvement to a Lot shall be effected as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct or delay (i) access to or from the Property (or any part thereof), (ii) customer vehicular parking in the improved portions of the Property, or (iii) access to service facilities within the Property. Staging for the construction, replacement, alteration or expansion of any building or other improvements located on a Lot, including, without limitation, the location of any temporary buildings or construction sheds, the storage of building materials, and the parking of construction vehicles and equipment shall be limited to the Owner's Lot. The Owner shall use and shall cause its employees, contractors and agents to use reasonable diligence and due care to avoid damaging any improvements located on other portions of the Property other than the Lot of such Owner, and such Owner shall, at its sole cost and expense, promptly repair and restore or cause to be promptly repaired and restored to its prior condition all buildings and other improvements damaged or destroyed in the performance of such work.

(c) **Following Construction.** Each Owner shall maintain the exterior of any building located on such Owner's Lot in a quality and condition comparable to that of first class commercial centers of comparable size and nature located in the same geographic area as the Property. All service facilities shall be attractively screened from view from the customer parking areas. In addition, each Owner shall, as to such Owner's Lot, be responsible for the

proper maintenance and upkeep of the portion of such Owner's Lot not improved with a building, at the sole cost and expense of such Owner, such maintenance to include:

- (i) Maintaining, repairing, resurfacing, and re-striping, when necessary, all paved surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability;
- (ii) Removing all snow, ice, papers, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;
- (iii) Maintaining, repairing and replacing, when necessary, all traffic directional signs, markers and lines;
- (iv) Operating, maintaining, repairing and replacing, when necessary, artificial outside lighting facilities as shall be reasonably required including, but not limited to, poles, pole bases, wiring, lamps, ballasts, lenses, photocells, time clocks, and contactors;
- (v) Maintaining and watering all landscaped areas; maintaining, repairing and replacing, when necessary, automatic landscape sprinkler systems and water lines; and replacing shrubs and other landscaping as is necessary;
- (vi) Maintaining, repairing and replacing, when necessary, all fences, screen walls, retaining walls or barricades;
- (vii) Maintaining, repairing and replacing, when necessary, all storm drains, detention pond and drainage facilities located on such Lot; and
- (viii) Maintaining, repairing and replacing, when necessary, sewers and other utility lines and facilities not dedicated to the public or conveyed to any public or private utility which are necessary for the operation of the Lot.

Notwithstanding the foregoing provisions of this Section 6.5, to the extent that, in the future, a particular Lot is subject to a recorded common area maintenance agreement (a "CAMA") that covers more than one (1) Lot within the Property, to the extent that the CAMA provides for the performance of any of the maintenance responsibilities in this Section 6.5 pursuant to the CAMA, then to the extent that such maintenance responsibilities are performed pursuant to the CAMA, the Lot Owner shall be relieved of its obligations with respect thereto under this Section 6.5.

6.6 Casualty. If all or any portion of any building or other improvement on a Lot is damaged or destroyed by fire or other casualty, the Owner of such building or other improvement shall promptly restore or cause to be restored the remaining portion of such building or improvement or, in lieu thereof, shall remove the damaged portion of such building or improvement, together with all rubble and debris related thereto. All Lots on which buildings are not reconstructed following a casualty shall be graded or caused to be graded by the Owner thereof to the level of the adjoining property and in such a manner as not to adversely affect the

drainage of the Property or any portion thereof, shall be covered by a one inch asphalt dust cap and shall be kept weed free and clean at the Owner's sole cost and expense until buildings are reconstructed thereon.

6.7 Condemnation. If all or any portion of any building or other improvement on a Lot is taken or damaged as a result of the exercise of the power of eminent domain or any transfer in lieu thereof ("Condemnation"), the Owner thereof shall have the same obligations with respect to restoration or removal as are set forth in Section 6.6.

6.8 Decisions in Writing. Except as provided in Section 6.9, all decisions of Declarant with respect to an Owner's request for consent or approval of a matter under this Declaration shall be in writing, delivered to such Owner.

6.9 Matters affecting Declarant. To the extent that Declarant, in its capacity as the Owner of its Lot, needs the approval or consent of Declarant as to a particular matter under this Declaration, such Owner, as Declarant, shall initially decide such matter, but such decision shall be subject to review by the Review Committee as provided in this Section **Error! Reference source not found.** Within five (5) days of rendering any decision pursuant to this Section 6.8, Declarant shall give written notice of such decision to each of the other Owners.

(a) Effective Date of Declarant Decisions. Subject to the provisions of Section 6.9(b), decisions of Declarant shall not be effective until, in the case of decisions under Section 6.8, fifteen (15) days after notice of such decision is given to the Owner requesting the approval or consent; and, in the case of decisions under Section 6.8, fifteen (15) days after the five (5)-day notice required in that Section is given.

(b) Right to Seek Review of Declarant's Decision. If, in the case of a decision under Section 6.8, the Owner making the request objects to Declarant's decision in the matter or if, in the case of a decision under Section 6.8, any Owner other than Declarant objects to Declarant's decision in the matter, the dissatisfied Owner (a "Dissatisfied Owner") shall be entitled to have the matter reviewed and decided by the Review Committee in accordance with the following procedures.

(i) The Dissatisfied Owner shall notify Declarant and each member of the Review Committee of such objection in writing within the fifteen (15)-day time period specified in Section 6.8 or 6.8, as applicable (an "Objection Notice"). Such notice shall include a reasonable explanation of why the Dissatisfied Owner objects to the decision of the Declarant. If no Objection Notice is given with respect to a particular matter within the fifteen (15)-day time period provided above, then the prior decision of the Declarant as to such matter shall be final and not subject to any further review.

(ii) If an Objection Notice is timely given, then the matter shall be resolved by action of the Review Committee, and the decision of the Review Committee on the matter shall be final and not subject to any further review. The Review Committee may, but is not required to, meet to review and consider any matter raised in an Objection Notice. The Review Committee shall keep a record of the minutes of its meetings. A quorum at any such meeting shall be a majority of the regular members of the Review

Committee, and the concurrence of a majority of the regular members of the Review Committee shall constitute the decision of the Review Committee. Notwithstanding any of the foregoing, any action required or permitted to be taken at any Review Committee meeting may be taken without a meeting, without prior notice, and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by a majority of the regular members of the Review Committee's members.

(iii) The Review Committee shall be entitled to consider the matter as if the Review Committee were the Declarant and to make whatever decision it deems appropriate in the matter, consistent with the terms of this Declaration and the Design Guidelines and without regard to the decision of the Declarant in the matter.

(iv) If the Review Committee does not reach a decision on a particular matter that is referred to it within twenty (20) days of receipt of the Objection Notice, then the decision of the Declarant in the matter shall stand and shall be final and not subject to any further review.

ARTICLE 7

USE RESTRICTIONS

7.1 Occupants Bound. All provisions of this Declaration governing activities on and use of the Property shall also apply to all occupants, tenants and invitees of the Property.

7.2 Restricted Activities. The Property shall be used only for commercial offices, hotels and motels, restaurants, including fast food restaurants, and retail stores. The Property may not be used for any use not permitted by applicable zoning codes and ordinances. In addition, the following activities and uses are prohibited within the Property:

(a) Funeral homes; cemeteries, or crematoriums;

(b) Any production, manufacturing, industrial, or storage use of any kind or nature, except for storage and/or production of products incidental to the retail sale thereof from the Property;

(c) Entertainment or recreational facilities ("entertainment or recreational facilities" includes, but are not limited to, a skating rink, electronic or mechanical games arcade, billiard room or pool hall, turkish baths, massage parlor, discotheque, dance hall, banquet hall, (provided that such prohibitions shall not prohibit or limit the service of food during events held at the Property) night club, bar or tavern, "head shop", pornographic or "adult" store (including without limitation a video store or production studio producing or selling "x-rated" or "NC-17-rated" movies or videos), racquetball court or gymnasium, or other place of public amusement);

(d) Training or educational facilities ("training or educational facilities" includes, but are not limited to, a beauty school, barber college, library, reading room, church, school, place of instruction, or any other operation catering primarily to students or trainees rather than to customers);

- (e) Car washes, gasoline or service stations (except in those areas designated on Exhibit B or as designated from time to time in a recorded amendment to this Declaration), body shops, spray painting shops, equipment rental services, or the displaying, repairing, renting, leasing, or sale of any motor vehicle, boat or trailer;
- (f) Dry cleaner with on-premises cleaning;
- (g) Second-hand or thrift stores, pawn shops, swap meets, or flea markets;
- (h) Any use involving Hazardous Material, except as may be customary in first class commercial/retail centers in the metropolitan area where the Property is located and then only in full compliance with Environmental Laws;
- (i) Kennels, carnivals or fairs, or mini-storage facilities;
- (j) Any activity which tends to cause an unclean, unhealthy or untidy condition to exist outside of enclosed structures on the Property;
- (k) Any activity which emits foul or objectionable odors, fumes, dust, smoke, or pollution or which creates unreasonable noise, risk of fire or explosion, or other conditions which tend to disturb the peace or threaten the safety of the occupants and invitees of neighboring property;
- (l) Any activity which constitutes a nuisance, is obnoxious, or violates local, state or federal laws or regulations;
- (m) Outside burning of trash, leaves, debris or other materials; and/or
- (n) Use of the Property in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substances of any kind.

ARTICLE 8

INDEMNIFICATION

8.1 **Indemnification.** Each Owner shall indemnify, defend and hold harmless the other Owners and occupants of the Lots on the Property from any and all liabilities, claims, damages, expenses (including, without limitation, reasonable attorney's fees and reasonable attorney's fees on any appeal), judgments, proceedings, and causes of action of any kind whatsoever for injury to or death of any person or damage to any property resulting from the willful misconduct or negligent act or omission of the indemnifying Owner.

ARTICLE 9

DEFAULT AND REMEDIES; LIENS

9.1 **Default.** An Owner or Declarant (a "Defaulting Person") shall be deemed to be in default of this Declaration only upon the expiration of thirty (30) days (fifteen [15] days in the

event of failure to pay money) from receipt of written notice from Declarant or any non-defaulting Owner specifying the particulars in which such Defaulting Person has failed to perform the obligations of this Declaration unless such Defaulting Person, prior to the expiration of said thirty (30) days (fifteen [15] days in the event of failure to pay money), has cured the particulars specified in said notice of default. However, such Defaulting Person shall not be deemed to be in default if such failure (except a failure to pay money) is curable but cannot reasonably be cured within said thirty (30) day period and such Defaulting Person is using good faith and its commercially reasonable efforts diligent to cure the default and does cure the default within a reasonable time.

9.2 Remedies. Declarant and the non-defaulting Owners shall have all rights and remedies at law or in equity with respect to a Defaulting Person, including the right to sue for and collect damages and to obtain injunctive relief. In addition, Declarant or any non-defaulting Owner (a “**Curing Party**”) may incur any expenses necessary to perform the obligations of the Defaulting Person, and the Defaulting Person shall pay such amounts to the Curing Party within thirty (30) days of receipt of a written statement documenting such expenses. Amounts so incurred shall bear interest from the date of the expense until paid at a rate equal to twelve percent (12%) per annum. Furthermore, the Curing Party shall have a lien on the portion of the Property owned by the Defaulting Person for the amount of said expenses plus accrued interest as set forth above.

9.3 Liens.

(a) **Establishment of the Lien.** The liens provided for in Sections 4.1(d), 5.1, 6.1(i) and 9.2 shall only be effective when filed for record by the party entitled to such lien (the “**Lien Claimant**”) as a claim of lien against the defaulting Owner or defaulting Maintaining Holder (the “**Lien Obligor**”) in the office of the recorder of the county in which the Property is located, signed and acknowledged, which shall contain at least:

- (i) An itemized statement of all amounts due and payable pursuant hereto;
- (ii) A description sufficient for identification of that portion of the Property of the Lien Obligor which is the subject of the lien;
- (iii) The name of the Lien Obligor; and
- (iv) The name and address of the Lien Claimant.

(b) **Lien Priority.** The lien, when so established against the real property described in the lien, shall be prior and superior to any right, title, interest, lien or claim which may be or has been acquired or attached to such real property after the time of filing the lien but shall be junior to any right, title, interest, lien or claim which attached to such real property prior to the filing of such lien pursuant to this Section; *provided, however*, that notwithstanding the foregoing, such lien shall in all cases (regardless of when filed) be junior in priority to any first lien on the Lien Obligor’ property given to secure bona fide acquisition and/or construction financing (or the refinancing thereof) for the Lien Obligor’s property from an unrelated, institutional lender. The lien shall be for the use and benefit of the Lien Claimant and may be enforced and foreclosed in a suit or action brought in any court of competent jurisdiction.

9.4 **Breach Shall Not Permit Termination.** It is expressly agreed that no breach of this Declaration shall entitle any Owner to terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Declaration. Any breach of this Declaration shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but this Declaration shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

ARTICLE 10

TERM; AMENDMENTS; TERMINATION

10.1 **Term; Method of Termination.** This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of eighty (80) years from the date this Declaration is recorded. This Declaration may be terminated at any time by a vote of at least seventy-five percent (75%) of the authorized votes of all Owners and the vote of Declarant, with each Owner having that number of votes equal to the number of gross square feet in such Owner's Lot or Lots. The vote may be taken at a meeting of Owners called by Declarant or any Owner; however, no such meeting is required, and an Owner may vote by sending its vote in writing, signed by the Owner, to Declarant and the other Owners. If the necessary votes are obtained, Declarant shall cause to be recorded with the County Recorder of Washington County, Utah, a certificate of termination, duly signed and acknowledged by Declarant. Thereupon this Declaration shall have no further force and effect.

10.2 **Amendment of Declaration.** This Declaration may be amended by recording with the County Recorder of Washington County, Utah, a certificate of amendment, duly signed and acknowledged as required for a certificate of termination in **Section 10.1.** The certificate of amendment shall set forth in full the amendment adopted, and, except as provided hereafter, shall certify that such amendment was approved by at least seventy-five percent (75%) of the authorized votes of all Owners and the vote of Declarant, with each Owner having that number of votes equal to the number of gross square feet in such Owner's Lot or Lots. The vote may be taken at a meeting of Owners called by Declarant or any Owner; however, no such meeting is required, and an Owner may vote by sending its vote in writing, signed by the Owner, to Declarant and the other Owners. Prior to the Turnover Date, this Declaration may be amended or terminated only with the written approval of Declarant, in addition to the required vote. Declarant alone may amend this Declaration at any time to comply with applicable law or to correct any error or inconsistency in the Declaration if the amendment does not adversely affect the rights of any Owner.

ARTICLE 11

GENERAL PROVISIONS

11.1 **Severability.** Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision

which can be given effect without the invalid provision or application, and to this end, the provisions of this Declaration are declared to be severable.

11.2 Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

11.3 Notice. Any notice required or permitted hereunder shall be in writing and shall be deemed to have been given and received at the time the envelope containing such notice, properly addressed and postage prepaid, is deposited with the U.S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given and received at the time of delivery. Any notice to Declarant shall be deemed properly addressed if addressed to Declarant at the address specified in the recorded document designating such Person as Declarant hereunder, unless otherwise directed by Declarant by written notice to the Owners. The notice address for the original Declarant is SunCor Development Company, 80 East Rio Salado Parkway, Suite 410, Tempe, Arizona 85281 Attention: Legal Department. Any notice to an Owner shall be deemed properly addressed if addressed to the Owner at the street address of the Property, unless otherwise directed by the Owner by written notice to Declarant and the other Owners.

11.4 Development of Coral Canyon or the Property. Declarant shall have no obligation to undertake or complete development of Coral Canyon or the Property. If Declarant does undertake such development, Declarant shall have the right to modify its plans for such development from time to time as Declarant deems appropriate, in its sole discretion.

11.5 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public or for the general public or for any public purpose whatsoever, it being the intention of the Declarant that this Declaration shall be strictly limited to and for the purposes herein expressed.

11.6 Change of Circumstances. No change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

11.7 References to the Covenants in Deeds. Deeds or any instruments affecting any part of the Property may contain the provisions of this Declaration by reference to this Declaration, but regardless of whether any such reference is made in any deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee Owner or other person claiming through any instrument and such Owner's heirs, executors, administrators, successors and assigns.

11.8 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

11.9 Captions and Titles. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be

deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereon. References in this Declaration to "Articles" and "Sections" are to the Articles and Sections in this Agreement, unless otherwise expressly noted.

11.10 Non-Waiver. The failure of Declarant or any Owner to enforce any of the covenants contained herein shall not constitute a waiver of the right to enforce the same thereafter.

11.11 Governing Law. This Declaration and the covenants contained herein shall be governed by the laws of the State of Utah, without giving effect to choice of law principles.

11.12 Additional Declarations. Nothing contained herein shall operate to prevent an Owner of the Property from recording additional covenants, conditions and restrictions against the Property, or portions thereof, provided that such covenants, conditions and restrictions are supplemental to, and not inconsistent with, the covenants contained herein.

IN WITNESS WHEREOF, the undersigned have executed this Declaration to be effective as of the date first set forth above.

SUNCOR DEVELOPMENT COMPANY,
an Arizona corporation,

By: DSB
Its: V.P.

THE STATE OF UTAH, ACTING THROUGH
THE SCHOOL AND INSTITUTIONAL TRUST
LANDS ADMINISTRATION

By: JAS
Its: Director

APPROVED AS TO FORM:

John W. Andrews
John W. Andrews
Special Assistant Attorney General

STATE OF ARIZONA
County of Maricopa)
ss.)

The foregoing instrument was acknowledged before me this 29th day of November,
2005, by Deanne S. Black, the Vice president of SUNCOR
DEVELOPMENT COMPANY, an Arizona corporation, on behalf of the corporation.



My Commission Expires:

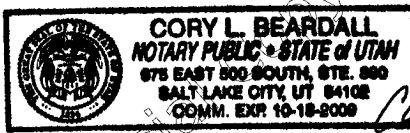
4-30-09

NOTARY PUBLIC

Residing Tempe, Arizona

STATE OF UTAH
County of Salt Lake)
ss.)

The foregoing instrument was acknowledged before me this 7th day of December,
2005, by Kevin S. Carter, the Director of the STATE OF
UTAH, ACTING THROUGH THE SCHOOL AND INSTITUTIONAL TRUST LANDS
ADMINISTRATION, on behalf of the State of Utah, School and Institutional Trust Lands
Administration.



My Commission Expires:

10-18-09

NOTARY PUBLIC

Residing Salt Lake City, Utah

EXHIBIT A

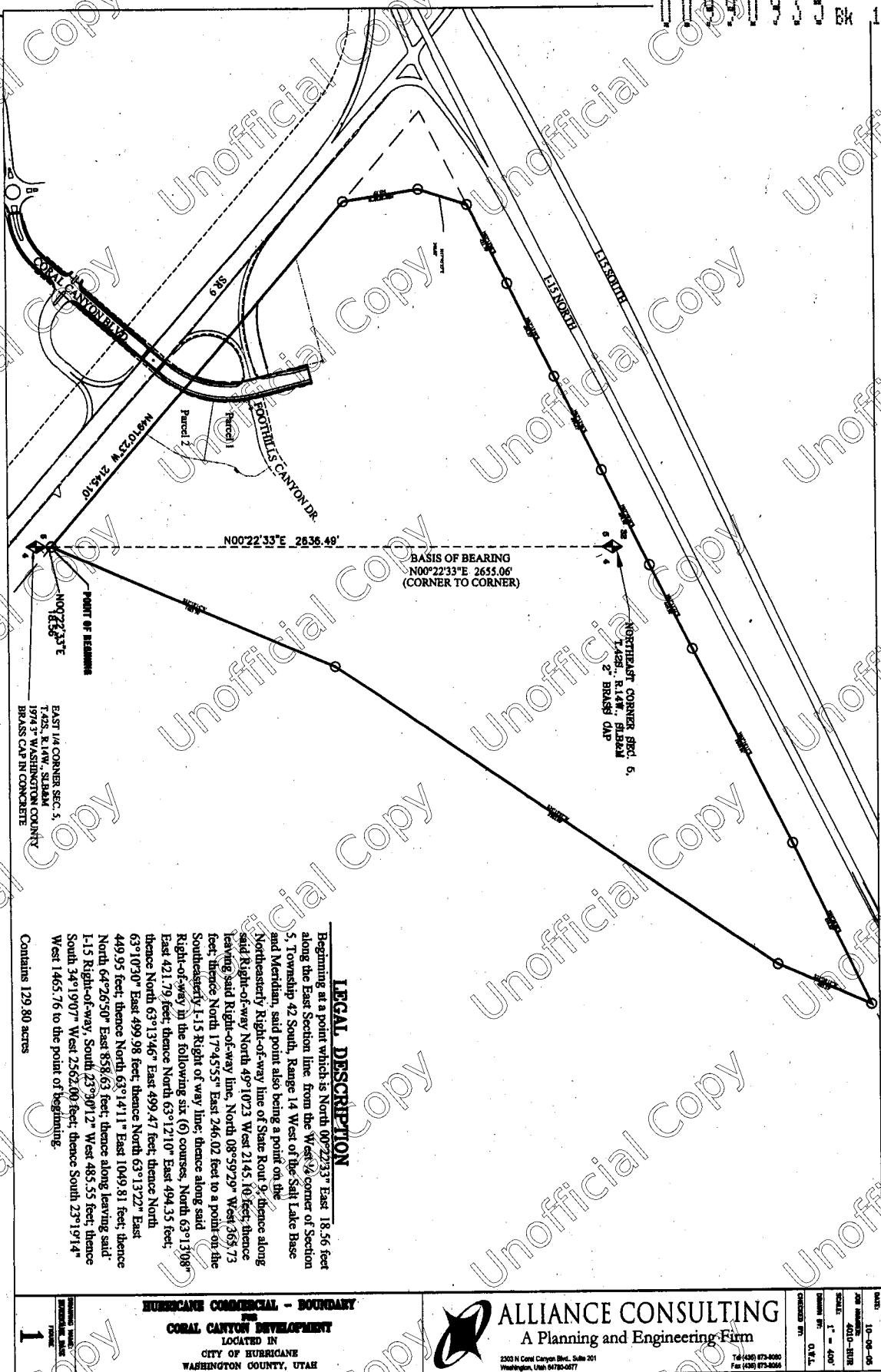
DESCRIPTION OF PROPERTY

Beginning at a point which is North $00^{\circ}22'33''$ East 18.56 feet along the East Section line from the West $\frac{1}{4}$ corner of Section 5, Township 42 South, Range 14 West of the Salt Lake Base and Meridian, said point also being a point on the Northeasterly Right-of-way line of State Rout 9; thence along said Right-of-way North $49^{\circ}10'23''$ West 2145.10 feet; thence leaving said Right-of-way line, North $08^{\circ}59'29''$ West 365.73 feet; thence North $17^{\circ}45'55''$ East 246.02 feet to a point on the Southeasterly I-15 Right of way line; thence along said Right-of-way in the following six (6) courses, North $63^{\circ}13'08''$ East 421.79 feet; thence North $63^{\circ}12'10''$ East 494.35 feet; thence North $63^{\circ}13'46''$ East 499.47 feet; thence North $63^{\circ}10'30''$ East 499.98 feet; thence North $63^{\circ}13'22''$ East 449.95 feet; thence North $63^{\circ}14'11''$ East 1049.81 feet; thence North $64^{\circ}26'50''$ East 858.63 feet; thence along leaving said I-15 Right-of-way, South $23^{\circ}30'12''$ West 485.55 feet; thence South $34^{\circ}19'07''$ West 2562.00 feet; thence South $23^{\circ}19'14''$ West 1465.76 to the point of beginning.

Contains 129.80 acres

EXHIBIT B

SITE PLAN OF PROPERTY



1
HURRICANE COMMERCIAL - BOUNDARY
CORAL CANYON DEVELOPMENT
LOCATED IN
CITY OF HURRICANE
WASHINGTON COUNTY, UTAH



ALLIANCE CONSULTING
A Planning and Engineering Firm

2200 N Corral Canyon Blvd, Suite 201
Washington, Utah 84780-0277

10-08-05

400-000

SCALE:
1" = 400'

SPANNING FT.
0.00

CHUNKED FT.
0.00

10-08-05

400-000

SCALE:
1" = 400'

SPANNING FT.
0.00

CHUNKED FT.
0.00