

When recorded, return to:

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

**DOC # 20080020523**

Restrictive Page 1 of 12  
Russell Shirts Washington County Recorder  
05/19/2008 04:44:04 PM Fee \$ 32.00  
By SOUTHERN UTAH TITLE CO



**SUPPLEMENTAL DECLARATION OF COVENANTS AND RESTRICTIONS**

This Supplemental Declaration of Covenants and Restrictions (this "Supplemental Declaration") is made as of the 13th day of May, 2008, by SUNCOR UTAH, INC., a Utah corporation ("SunCor"), and CORAL SPRINGS II, LLC, a Utah limited liability company ("Parcel Owner").

**RECITALS**

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

B. Parcel Owner is the owner of the real property located in the City of Hurricane, Washington County, Utah, described on Exhibit "B" (the "Owner's Parcel") pursuant to a Real Estate Sales Agreement between SunCor and Galen Nelson and C. Thomas Sainsbury dated July 10, 2007, the Buyer's interest under which was assigned to Coral Springs, LLC (the "Sales Agreement").

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

D. The Property is subject to that certain Declaration of Covenants, Conditions, Restrictions and Easements dated December 7, 2005, recorded on December 12, 2005 in the official records of Washington County, Utah in Book 1823, Pages 2394 - 2419 as Document No. 00990935, which has been imposed upon the Property and runs with the land (the "Declaration").

E. SunCor and Parcel Owner are sometimes together referred to herein as "Owner(s)." The parties desire to establish additional covenants and restrictions upon the Owner's Parcel for the purpose of enhancing and protecting the value, desirability and attractiveness of the Parcels.

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

**SOUTHERN UTAH TITLE COMPANY  
ACCOMMODATION RECORDING ONLY  
NOT EXAMINED**

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*W*  
*J*

**AGREEMENT**

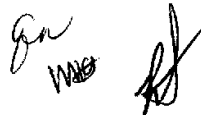
1. Use. The Owner's Parcel shall be used initially to expand the Coral Springs Condo project. Parcel Owner shall not change the use of the Owner's Parcel such that it would (i) result in a violation of the Declaration, or (ii) violate any exclusive use restrictions identified in Exhibit "C", which are then in full force and effect and by their terms applicable to the Owner's Parcel.

2. Improvements.

2.1 Plan Approval. Prior to Parcel Owner commencing construction of any building or improvements on the Owner's Parcel, Parcel Owner shall have received SunCor's approval of its proposed buildings, improvements, and landscaping plans (the "Improvement Plans").

2.2 Maintenance. At all times prior to construction on the Owner's Parcel, Parcel Owner shall maintain the Owner's Parcel in a clean condition, free of dust and debris, and if construction has not commenced within six (6) months of the date of this Supplemental Declaration, the Owner's Parcel shall be covered with decomposed granite or planted with grass and said grass shall be irrigated and mowed to maintain it in a condition consistent with the first class operation of the Property. Parcel Owner shall not permit the roads or any driveways, sidewalks or other rights-of-way to be unreasonably obstructed or disturbed with machinery, equipment, or personnel used in connection with the development of the Owner's Parcel.

2.3 Indemnity. Parcel Owner further agrees to indemnify and hold SunCor harmless against any loss, damage, or injury to people or property resulting from the acts of Parcel Owner or its employees, agents, contractors or any other person involved in the construction of any improvements on the Owner's Parcel. In the event of any damage to real or personal property not owned by Parcel Owner, as a result of, or connected with, any work being performed by or at the request of Parcel Owner, then upon written notice from SunCor, Parcel Owner shall have twenty (20) days thereafter to undertake to repair such damage and restore the damaged property to its condition immediately prior to such damage; and thereafter Parcel Owner shall diligently pursue such repairs to completion. Should Parcel Owner 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 Parcel Owner the cost therefore plus interest thereon at the rate of one percent (1%) per month from the date such cost was incurred until paid; provided, however, that SunCor shall first obtain three (3) bids for such work from qualified bidders and shall award the work to the lowest responsible bidder. Parcel Owner shall have the right to examine the bids and bid documents submitted in connection with the work. Likewise, SunCor agrees to indemnify Parcel Owner and hold it harmless against any loss, damages, or injury to people or property resulting from the acts of SunCor, or those of its employees, agents, or contractors arising from SunCor's construction activity at the Property.



3. Repurchase Agreement.

3.1 Failure to Open for Business. If Parcel Owner fails to complete construction of one (1) or more of its buildings to be constructed by Parcel Owner on the Owner's Parcel within eighteen (18) months after the date this Supplemental Declaration is recorded, SunCor may, by delivering written notice to Parcel Owner (the "Election Notice") within twenty-four (24) months after the date this Supplemental Declaration is recorded, elect to repurchase the Owner's Parcel in the manner set forth in this Supplemental Declaration unless, within thirty (30) days after Parcel Owner receives the Election Notice, the building(s) are completed.

3.2 Repurchase Price. The repurchase price for the Owner's Parcel (the "Repurchase Price") shall be ninety-five percent (95%) of the purchase price paid by Parcel Owner to SunCor to acquire the Owner's Parcel pursuant to the Sales Agreement.

3.3 Failure to Elect to Repurchase the Owner's Parcel. If SunCor fails to timely give the Election Notice to repurchase the Owner's Parcel in a manner set forth before the expiration of the 24-month period following recordation of this Supplemental Declaration, then this Supplemental Declaration shall be deemed automatically terminated and shall become null and void and of no future force and effect, and the parties hereto shall be relieved of all their respective rights and obligations hereunder.

4. Escrow. Within fifteen (15) days after delivery of the Election Notice, an escrow (the "Escrow") for this transaction shall be established with Southern Utah Title Company, Washington, Utah, Attention: Linda Wilson (the "Escrow Agent"). Within such 15-day period, SunCor shall deposit with Escrow Agent a copy of the Election Notice delivered to Parcel Owner along with a copy of this Supplemental Declaration, the terms of which shall constitute Escrow Instructions for the sale of the Owner's Parcel. The Escrow so established shall provide for a closing (the "Close of Escrow" or "Closing") on or before the thirtieth (30<sup>th</sup>) day following the deposit of the Election Notice.

5. Title. At the Close of Escrow, Parcel Owner shall convey fee simple title to the Owner's Parcel and all improvements, if any, located on the Owner's Parcel to SunCor by special warranty deed, subject only to the Approved Exceptions as determined pursuant to Section 8 below, current real estate taxes which are a lien, but not yet due and payable, and any other matters previously approved in writing by SunCor. The Repurchase Price shall be payable in cash by SunCor to Parcel Owner, except that SunCor may offset against the Repurchase Price any amounts owed by Parcel Owner to SunCor and the amount of any monetary liens or encumbrances against the Owner's Parcel.

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6. Closing Costs.

6.1 The cost of the standard owner's title insurance policy insuring SunCor's title to the Owner's Parcel in the amount of the Repurchase Price shall be allocated between the parties consistent with local custom.

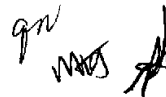
6.2 Real estate taxes and all assessments shall be prorated through Escrow between Parcel Owner and SunCor as of the Closing, based upon the latest available information. Any other closing costs shall be paid by SunCor.

7. Escrow Cancellation Charges. In the event that the election to repurchase is made and the Escrow shall fail to close by reason of SunCor's default under this Supplemental Declaration, SunCor shall pay all Escrow cancellation charges. In the event that the Escrow shall fail to close for any other reason, Parcel Owner shall be liable for all Escrow cancellation charges. Nothing contained in this Section 7, 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 Supplemental Declaration.

8. Title Report and Approved Exceptions. Parcel Owner hereby covenants to SunCor that Parcel Owner shall not, after the date of the Election Notice, without the prior written consent of SunCor, and except as provided in the Escrow Instructions: (i) further encumber the Owner's Parcel; (ii) grant any easement on the Owner's Parcel; (iii) seek, impose, or allow any dedication, plat, subdivision, restrictive covenant, or any other matter to occur which could affect the title to the Owner's Parcel. Parcel Owner hereby agrees to cause, at its sole cost and expense, any other matters affecting title to be removed at or prior to the Close of Escrow.

9. Possession. Possession of the Owner's Parcel shall be delivered to SunCor upon the Close of Escrow.

10. 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 Owner's 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 Owner's Parcel or the Property at any time or from time to time to the extent that such portion is bound by or benefitted 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 Property 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

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right to enjoin such violation or threatened violation in any court of competent jurisdiction.

11. Specific Performance; Remedies. If either Parcel Owner or any Owner fail to perform in a timely manner any duty or obligation under this Supplemental Declaration, the other party shall be entitled to the remedies for breach of contract that are available under applicable law.

12. Further Documentation. Promptly upon the request of the other party, or upon the request of the Escrow Agent, each party agrees to execute and have acknowledged and delivered to the other or to Escrow Agent, as may be appropriate, any and all further instruments reasonably requested or appropriate to evidence or give effect to the provisions of this Supplemental Declaration and which are consistent with the provisions of this Supplemental Declaration.

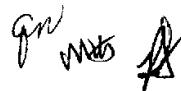
13. Recordation. The parties agree that this Supplemental Declaration shall be recorded in the official records of Washington County, Utah.

14. 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.

15. Modification and Termination. This Supplemental Declaration may not be modified in any respect whatsoever or terminated, in whole or in part, except with the written consent of the owner of the SunCor Parcel and the owner of the Owner's Parcel. Any such modification or termination must be by written instrument duly executed and acknowledged by all of the required owners and recorded in the office of the Washington County Recorder.

16. Default. The owner of a 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 another Parcel specifying the particulars in which such person has failed to observe the obligations of this Supplemental Declaration, unless the owner of such 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.

17. 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

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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.

Buyer: Coral Springs II, LLC  
Attn: Rodney D. Sainsbury and/or Quenalee Nelson  
504 North 4000 East  
Rigby, Idaho 83442

SunCor: SunCor Utah, Inc.  
Attn: Michael T. Gardner  
2303 North Coral Canyon Blvd., Suite 200  
Washington, Utah 84780

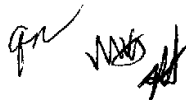
With copy to: SunCor Development Company  
Attn: Legal Dept.  
80 East Rio Salado Parkway, Suite 410  
Tempe, Arizona 85281

18. 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.

19. 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.

20. 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.

21. 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 Owner's Parcel.



22. Counterparts. This Supplemental Declaration may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute but one and the same instrument.

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

SUNCOR:

SUNCOR UTAH, INC.,  
a Utah corporation

By: *Michael T. Gardner*  
Name: Michael T. Gardner  
Title: President

PARCEL OWNER:

CORAL SPRINGS II, LLC,  
a Utah limited liability company

By: *Quenalee Nelson*  
Name: Quenalee Nelson  
Title: Manager

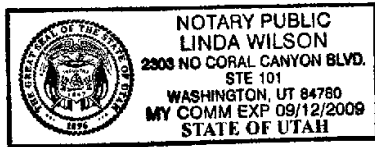
By: *Rod Sainsbury*  
Name: Rod Sainsbury  
Title: Manager

STATE OF UTAH                    )  
  ) ss.  
County of Washington        )

On this 14<sup>th</sup> day of May, 2008, before me, the undersigned Notary Public, personally appeared Michael T. Gardner, President of SunCor Utah, Inc., a Utah corporation, known to me or proven to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purpose therein contained.

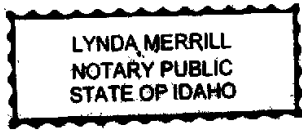
*Linda Wilson*  
Notary Public

My Commission Expires:  
Sept. 12, 2009



STATE OF IDAHO )  
 )ss.  
County of )

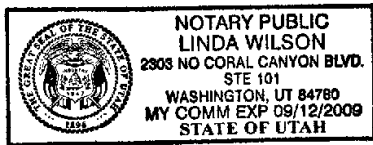
On this 13<sup>th</sup> day of May, 2008, before me, the undersigned Notary Public, personally appeared Qucnalee Nelson, the Manager of Coral Springs II, LLC, a Utah Limited Liability Company, known to me or proven to me to be the person shows name is subscribed to the within instrument, and acknowledged that she executed the same for the purpose therein contained.



Lynda Merrill  
Notary Public  
Residing at: Parker, ID  
My Commission Expires: 4-4-2004

STATE OF UTAH )  
 )ss.  
County of Washington )

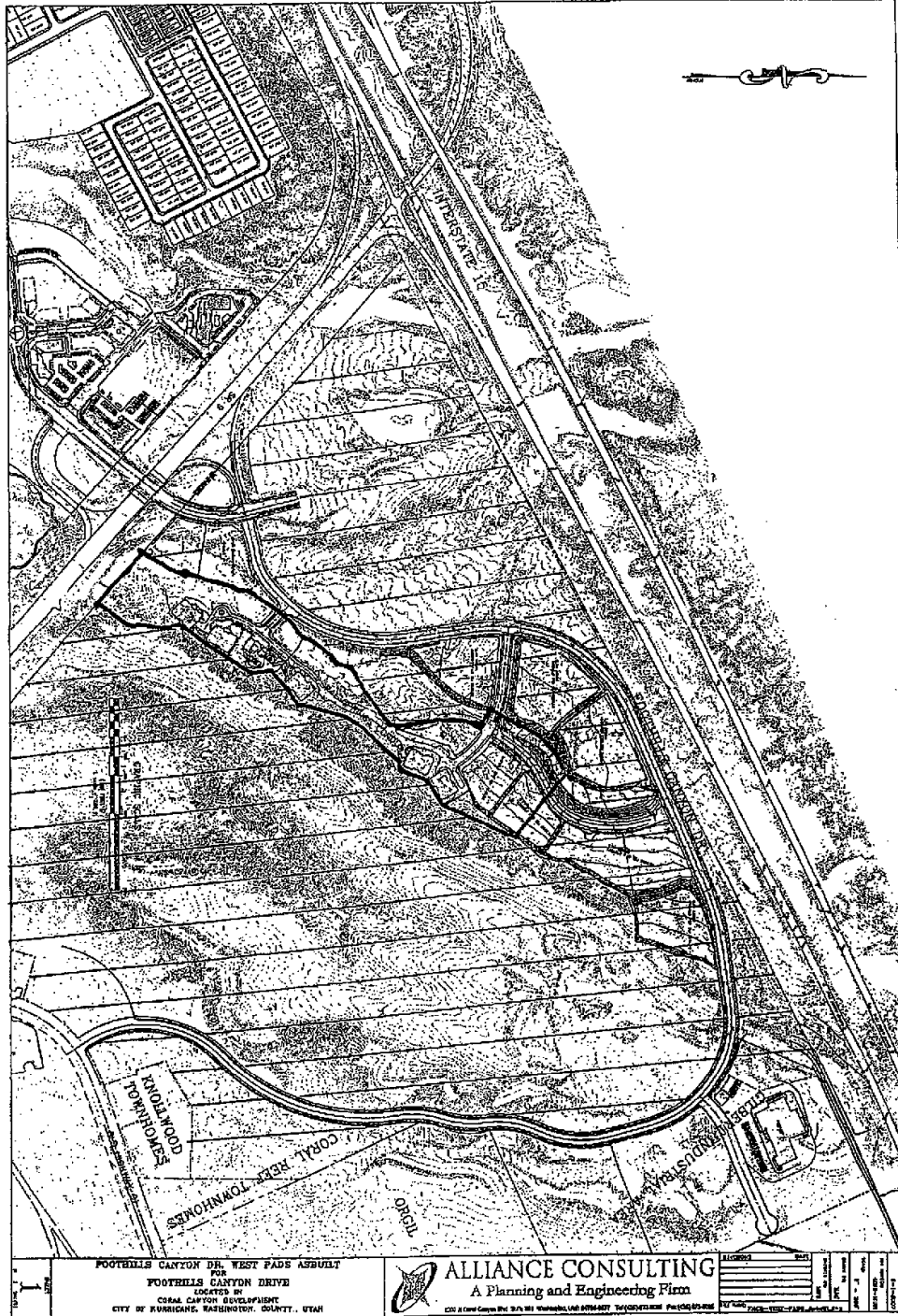
On this 15<sup>th</sup> day of May, 2008, before me, the undersigned Notary Public, personally appeared Rod Sainsbury, the Manager of Coral Springs II, LLC, a Utah Limited Liability Company, known to me or proven to me to be the person shows name is subscribed to the within instrument, and acknowledged that he executed the same for the purpose therein contained.



Linda Wilson  
Notary Public  
Residing at: St. George, UT  
My Commission Expires: Sept. 12, 2009



**EXHIBIT "A"**  
The SunCor Parcel



*Jan*  
*MB*  
*[Signature]*

**EXHIBIT "B"**  
Owner's Parcel

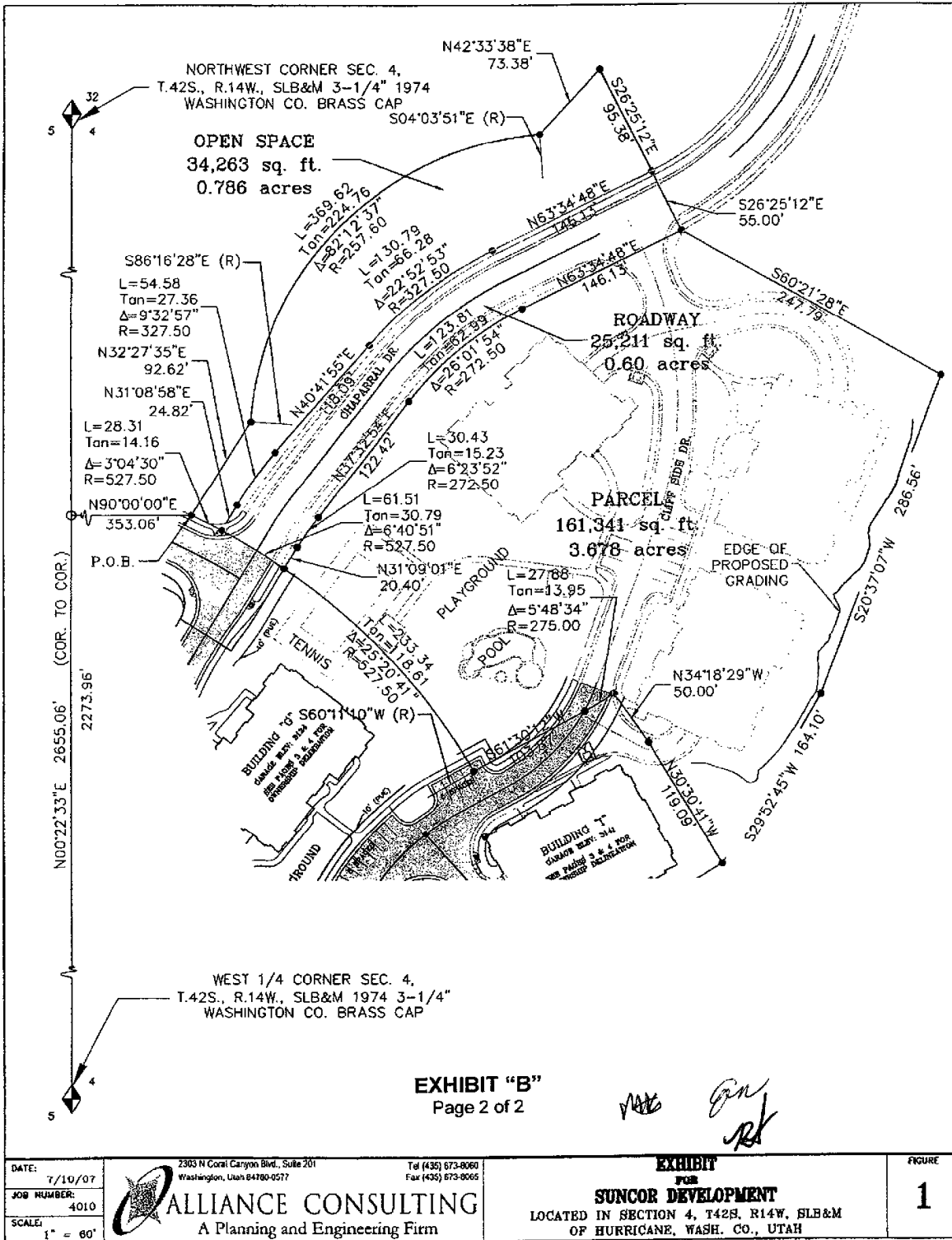
LEGAL DESCRIPTION 3.70 ACRE PARCEL with ROADWAY & OPEN SPACE

Beginning at a point which is North 00°22'33" East 2273.96 feet along the West Section line and North 90°00'00" East 353.06 feet from the West ¼ Corner of Section 4, Township 42 South, Range 14 West, Salt Lake Base and Meridian, said point being on the Northerly boundary line of the Coral Springs, LLC property recorded as document #994604 in Book 1830 on Page 110 in the office of the Washington County Recorder in the State of Utah, and running thence North 32°27'35" East 92.62 feet to the point on the arc of a 257.60 foot radius curve concave to the right, the radius point of which bears South 86°16'28" East; thence Northeasterly along the arc of said curve 369.62 feet through a central angle of 82°12'37" to a point of non-tangency the radius point of which bears South 4°03'51" East; thence North 42°33'38" East 73.38 feet; thence South 26°25'12" East 150.38 feet; thence South 60°21'28" East 247.79 feet; thence South 20°37'07" West 286.56 feet; thence South 29°52'45" West 164.10 feet to the Northeasterly corner of said Coral Springs property; thence along said boundary in the following five (5) courses: North 30°30'41" West 119.09 feet; thence North 34°18'29" West 50.00 feet to a point on the arc of a 275.00 foot radius curve concave to the right, the radius point of which bears North 34°18'29" West; thence Southwesterly along the arc of said curve 27.88 feet through a central angle of 5°48'34"; thence South 61°30'12" West 103.87 feet to a point on the arc of a 527.50 foot radius curve concave to the left, the radius point of which bears South 60°11'10" West; thence Northwesterly along the arc of said curve 323.16 feet through a central angle of 35°06'02" to the point of tangency said point also being the point of beginning.

Contains 5.064 acres.

H-PL

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**EXHIBIT "C"**  
**to Supplemental Declaration of Covenants and Restrictions**

**Existing Exclusive Uses**

Restriction on Certain Hotel Uses. SunCor has entered into an agreement with Byrd Enterprises of Arizona, Inc. ("Byrd") pursuant to which certain use restrictions have been granted in favor of Byrd. Accordingly, until December 31, 2009, Byrd shall have the exclusive use limitations and first right of refusal as hereafter set forth provided that for the entire period Byrd shall continuously operate a Holiday Inn Express and Suites Hotel on the Byrd Property in a manner consistent with hotel industry standards (the "Hotel Use Requirement").

Provided Byrd fully complies with the Hotel Use Requirement set forth above, for the period December 31, 2004 through December 31, 2007, SunCor shall not sell or lease any of its real property within Coral Canyon for use as a hotel of a type that competes with Byrd's use of the Byrd Property as a Holiday Inn Express and Suites Hotel based on providing similar amenities with an actual price range, such as the following: Wingate Hotel, Hampton Inn & Suites Hotel, Marriott Residence Inn, Fairfield Inn, Comfort Inn, Sleep Inn, Hilton Suites or Sheraton's suite-type hotel operations.

For the period January 1, 2008 through January 1, 2010, provided Byrd has been and is in full compliance with the Hotel Use Requirement set forth above, SunCor will not sell or lease any of its real estate within Coral Canyon for a similar hotel use as described above, without first providing Byrd with the opportunity to purchase the property which is the subject of an offer received by SunCor, upon the same terms and conditions as contained in the offer. Byrd shall have thirty (30) days following receipt of the offer within which to accept the offer to purchase on the same terms and conditions. If Byrd does not accept the offer to purchase on the same terms and conditions within said 30-day period, Byrd will be deemed to have declined the first right of refusal, and it will be of no further force or effect.

Notwithstanding the foregoing, the right set forth in this Section shall benefit only Byrd and shall automatically terminate and be of no force or effect upon the earliest occurrence of any of the following events: (i) the Byrd Property is no longer owned by Byrd, (ii) Byrd no longer operates a Holiday Inn Express and Suites Hotel or comparable hotel operation on the Byrd Property, or (iii) the expiration of the applicable time periods set forth above.

*RC*  
*NAB*  
*[Signature]*