


P-12

When recorded, return to:

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

**DOC # 20060016699**

Supplemental Declaration Page 1 of 12  
Russell Shirts Washington County Recorder  
4/27/06 2:02 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 25 day of April, 2006, by SunCor Development Company, an Arizona corporation ("SunCor"), and CORAL RIDGE DEVELOPMENT, LC, a Utah limited liability company ("Coral").

**RECITALS**

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

B. Coral is the owner of the real property located in the City of Washington, Washington County, Utah, described on Exhibit "B" (the "Coral Parcel") pursuant to a Real Estate Sales Agreement between SunCor and Coral dated October 4, 2005, which was amended by that certain First Amendment to Real Estate Sales Agreement dated December 15, 2005 (collectively, the "Purchase Agreement").

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

D. The Property is subject to that certain Amended and Restated Residential Declaration of Covenants, Conditions, and Restrictions for Coral Canyon dated February 21, 2002, and recorded on April 3, 2002, in the Official Records of Washington County, Utah in Book 1459, Page 1213, as Document No. 00759602, as amended by that certain First Amendment to Amended and Restated Residential Declaration of Covenants, Conditions and Restrictions for Coral Canyon dated July 16, 2002 and recorded in the Official Records of Washington County, Utah in Book 1477, Page 0121, as Document No. 00774326, which has been imposed upon the Property and runs with the land (the "Declaration").

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

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

80421

**AGREEMENT**

1. Use. The Coral Parcel shall be used initially for the construction and operation of a townhome project. Coral shall not change the use of the Coral 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 Coral Parcel.

2. Improvements.

2.1 Plan Approval. Prior to Coral commencing construction of any building or improvements on the Coral Parcel, Coral 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 Coral Parcel, Coral shall maintain the Coral 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 Coral 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. Coral 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 Coral Parcel.

2.3 Indemnity. Coral further agrees to indemnify and hold SunCor harmless against any loss, damage, or injury to people or property resulting from the acts of Coral or its employees, agents, contractors or any other person involved in the construction of any improvements on the Coral Parcel. In the event of any damage to real or personal property not owned by Coral, as a result of, or connected with, any work being performed by or at the request of Coral, then upon written notice from SunCor, Coral shall have 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 Coral shall diligently pursue such repairs to completion. In the event Coral fails to comply with the terms of this section, SunCor shall have the right to repair the damage and charge Coral the cost therefor plus interest thereon at the rate of one percent (1%) per month from the date such damage occurred 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. Coral shall have the right to examine the bids and bid documents submitted in connection with the work. Likewise, SunCor agrees to indemnify Coral 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 Coral fails to complete construction of one (1) or more of its buildings to be constructed by Coral on the Coral Parcel within eighteen (18) months after the date this Supplemental Declaration is recorded, SunCor may, by delivering written notice to Coral (the "Election Notice") within twenty-four (24) months after the date this Supplemental Declaration is recorded, elect to repurchase the Coral Parcel in the manner set forth in this Supplemental Declaration unless, within thirty (30) days after Coral receives the Election Notice, the building(s) are completed.

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

3.3 Failure to Elect to Repurchase the Coral Parcel. If SunCor fails to timely give the Election Notice to repurchase the Coral 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, 2303 North Coral Canyon Blvd., Suite 101, Washington, Utah, 84780, 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 Coral along with a copy of this Supplemental Declaration, the terms of which shall constitute Escrow Instructions for the sale of the Coral 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, Coral shall convey fee simple title to the Coral Parcel and all improvements, if any, located on the Coral 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 Coral, except that SunCor may offset against the Repurchase Price any amounts owed by Coral to SunCor and the amount of any monetary liens or encumbrances against the Coral Parcel.

6. Closing Costs.

6.1 The cost of the standard owner's title insurance policy insuring SunCor's title to the Coral 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 Coral 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, Coral 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. Coral hereby covenants to SunCor that Coral 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 Coral Parcel; (ii) grant any easement on the Coral 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 Coral Parcel. Coral 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 Coral 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 Coral Parcel in favor of the Property; (iii) will constitute covenants running with the land; (iv) will bind or inure to the benefit of every person having any fee, leasehold, or other interest in any portion of the Coral Parcel or the 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 right to enjoin such violation or threatened violation in any court of competent jurisdiction.

11. Specific Performance; Remedies. If either Coral 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, or any of 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 Coral 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 said party's address as evidenced, if necessary, by the proof of delivery, the request for return receipt or other receipt. Any party hereto may change its address by giving notice of such change to the other parties in accordance with the provisions of this section.

Coral: Coral Ridge Development, LC  
Attention: Richard Clayton  
1694 N. Sonoran Drive  
St. George, UT 84770

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

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

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 Coral 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 DEVELOPMENT COMPANY,  
an Arizona corporation

CORAL:  
CORAL RIDGE DEVELOPMENT, LC  
a Utah limited liability company

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

By: *Richard M. Clayton*  
Richard M. Clayton, Manager

By: *M. Kent Clayton*  
M. Kent Clayton, Manager

By: *John M. Ames*  
John M. Ames, Manager

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

On this 19<sup>th</sup> day of April, 2006, before me, the undersigned Notary Public, personally appeared Duane S. Black, Executive Vice President and Chief Operating Officer of SunCor Development Company, an Arizona corporation, known to me or proven to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purpose therein contained.

*Sherrie L. Mack*  
Notary Public

My Commission Expires:  
March 29, 2009



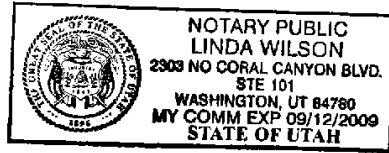
(BUYER'S NOTARIAL ACKNOWLEDGEMENTS ON THE FOLLOWING PAGE)

STATE OF UTAH )  
County of Washington ) ss.

On this 25<sup>th</sup> day of April, 2006, before me, the undersigned Notary Public, personally appeared Richard M. Clayton, a Manager of Coral Ridge Development, LC, a Utah limited liability company, 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

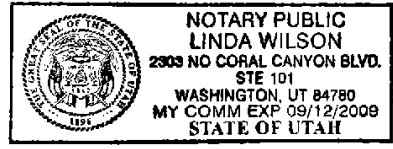


STATE OF UTAH )  
County of Washington ) ss.  
25<sup>th</sup> day

On this 25<sup>th</sup> day of April, 2006, before me, the undersigned Notary Public, personally appeared M. Kent Clayton, a Manager of Coral Ridge Development, LC, a Utah limited liability company, 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

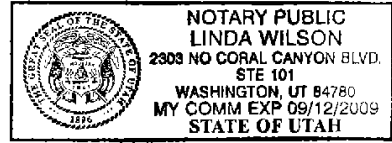


STATE OF UTAH )  
County of Washington ) ss.

On this 25<sup>th</sup> day of April, 2006, before me, the undersigned Notary Public, personally appeared John M. Ames, a Manager of Coral Ridge Development, LC, a Utah limited liability company, 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

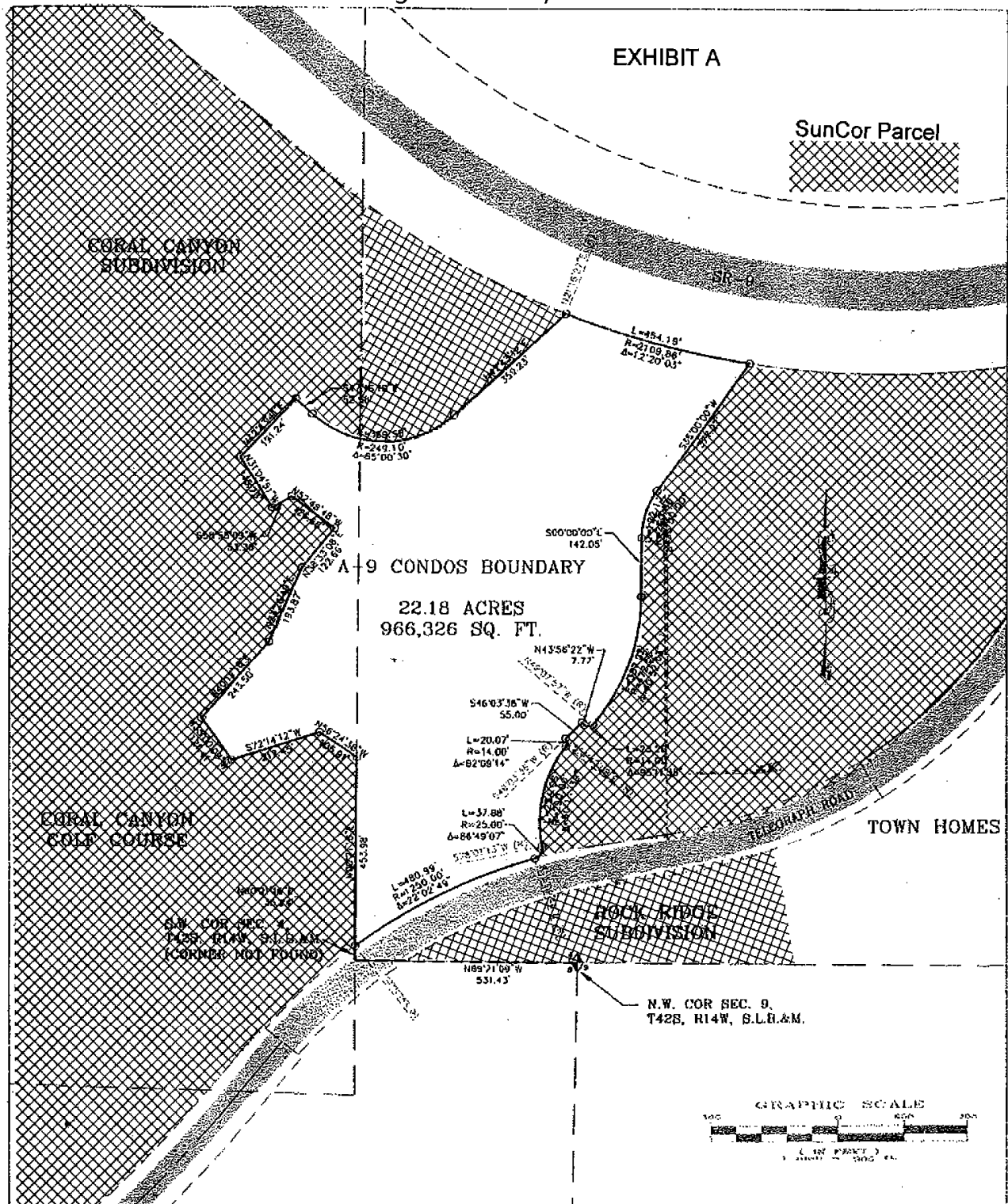




20060016699 04/27/2006 02:02:18 PM  
9 of 12 Washington County

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

**Depiction of the SunCor Parcel**



DATE: 03/22/06  
 JOB NUMBER: 4010  
 SCALE: 1" = 300'

2303 N Coral Canyon Blvd. Suite 231  
 Washington, Utah 84789-0577  
 Tel: (435) 673-5069  
 Fax: (435) 673-6065

**ALLIANCE CONSULTING**  
 A Planning and Engineering Firm

**AREA 9 CONDOS BOUNDARY**  
 FOR  
**CORAL CANYON SUBDIVISION**  
 LOCATED IN SECTION 9, T842S, R14W,  
 S.L.B.&M, HURRICANE, WASHINGTON CO., UTAH

FIGURE  
**A**

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

**Legal Description of the Coral Parcel**

Beginning at a point which is North 89°21'09" West 531.43 feet along the South Section line and North 00°21'16" East 35.24 feet along the West Section line from the Northwest Corner of Section 9, Township 42 South, Range 14 West, Salt Lake Base and Meridian; said point also being on the Coral Canyon Golf Course boundary; thence along said Coral Canyon Golf Course for the following nine (9) courses: North 00°21'16" East 453.98 feet; thence North 56°24'38" West 105.91 feet; thence South 72°14'12" West 217.45 feet; thence North 35°00'03" West 121.41 feet; thence North 40°12'16" East 243.50 feet; thence North 23°26'49" East 193.87 feet; thence North 38°33'08" East 122.69 feet; thence North 52°48'48" West 126.66 feet; thence South 58°55'09" West 53.36 feet; thence North 31°04'51" West 145.73; thence North 42°43'41" East 191.24 feet; thence South 47°16'19" East 52.56 feet to the point of curvature of a 249.10 foot radius curve concave to the left; thence Northeasterly 369.58 feet along the arc of said curve through a central angle 85°00'30" to the point of tangency; thence North 47°43'12" East 359.23 feet to the Southerly Right-of-Way of State Route 9; said point being a point on the arc of a 2109.86 foot radius curve concave to the left, the radius point of which bears North 21°16'27" East; thence Southeasterly along said State Route 9 Right-of-Way 454.19 feet along the arc of said curve through a central angle of 12°20'03" to a point of non-tangency; thence South 35°00'00" West 377.27 feet to the point of curvature of a 200.00 foot radius curve concave to the left, thence Southwesterly 122.17 feet along the arc of said curve through a central angle of 35°00'00" to the point of tangency; thence South 00°00'00" East 142.05 feet to the point of curvature of a 472.50 foot radius curve concave to the right; thence Southwesterly 337.02 feet along the arc of said curve through a central angle of 40°52'03" to the point of compound curvature of a 14.00 foot radius curve concave to the right, the radius point of which bears North 49°07'57" West; thence Southwesterly 23.26 feet along the arc of said curve through a central angle of 95°11'35" to the point of tangency; thence North 43°56'22" West 7.77 feet; thence South 46°03'38" West 55.00 feet to the point of curvature of a 14.00 foot radius curve concave to the right, the radius point of which bears South 46°03'38" West; thence Southwesterly 20.07 feet along the arc of said curve through a central angle of 82°09'14" to the point of reverse curvature of a 290.00 foot radius curve concave to the left, the radius point of which bears South 51°47'08" East; thence Southeasterly 254.06 feet along the arc of said curve through a central angle of 50°11'39" to the point of reverse curvature of a 25.00 foot radius curve concave to the right, the radius point of which bears South 78°01'13" West; thence Southwesterly 37.88 feet along the arc of said curve through a central angle of 86°49'07" to a point on the Highway 91 Realignment recorded on October 14, 1997 as entry No. 579572, Book 1141, Page 84, in the office of the Washington County Recorder in said County State of Utah, said point being a point of reverse curvature of a 1250.00 foot radius curve concave to the left, the radius point of which bears South 15°09'40" East; thence Southwesterly 480.99 feet along the arc of said curve through a central angle of 22°02'49" the radius point of which bears South 37°12'28" East, said point also being the point of beginning.  
Containing 22.18 Acres

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

**Existing Exclusive Uses**

NONE