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**TRACT DECLARATION**  
**CORAL CANYON, PHASE 1**  
**(5300 Series)**

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**TRACT DECLARATION  
CORAL CANYON, PHASE 1  
(5300 Series)**

**THIS TRACT DECLARATION** is dated March 1st, 2000 and is made by **SUNCOR DEVELOPMENT COMPANY**, an Arizona corporation and **THE STATE OF UTAH, ACTING THROUGH THE SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION**.

**RECITALS**

A. The Covered Property is subject to the Master Declaration and, pursuant to **Section 3.2** of the Master Declaration, Declarant is recording this Tract Declaration with respect to the Covered Property. Capitalized terms used in this Tract Declaration and not otherwise defined in the Tract Declaration shall have the meanings given to such terms in the Master Declaration.

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

C. Declarant intends that the Covered Property shall be held, sold, and conveyed subject to the easements, restrictions, covenants, and conditions in this Tract Declaration, which: (1) are for the purpose of protecting the value, desirability, attractiveness, and character of the Covered Property; (2) shall run with the land; (3), shall be binding upon all parties having any right, title, or interest in any part of the Covered Property; and (4) shall inure to the benefit of all parties having any right, title, or interest in any part of the Covered Property, and their successors and assigns.

D. As of the date of recordation of this Tract Declaration, the Covered Property consists of the following:

Lots 21-73, inclusive, 81-91, inclusive; and HOA Tracts 3-4, inclusive, 6-13, inclusive, 17-18, inclusive, and 20-21, inclusive, **CORAL CANYON, PHASE 1**, recorded in Book 1363, page 1078 records of Washington County, Utah

**NOW, THEREFORE, DECLARANT** declares, covenants and agrees as follows:

**ARTICLE 1  
DEFINITIONS**

1.1 "Annual Assessment" means the regular annual assessments levied by the Board pursuant to Section 8.2.

1.2 "Articles" means the Articles of Incorporation of the Subsidiary Association, as amended from time to time.

1.3 "Assessment" or "Assessments" means an Annual Assessment, Special Assessment, Special Use Fee, or any other fees, fines or charges assessed by the Board pursuant to this Tract Declaration.

- 1.4 "Assessment Lien" means the lien created and imposed by Section 8.1.
- 1.5 "Assessment Period" means the term set forth in Section 8.4.
- 1.6 "Board" means the Board of Directors of the Subsidiary Association.
- 1.7 "Bylaws" means the Bylaws of the Subsidiary Association, as amended from time to time.
- 1.8 "Covered Property" means the real property described in Recital D.
- 1.9 "Declarant" means SunCor Development Company, an Arizona corporation and the successors and assigns of Declarant's rights and powers hereunder. Any assignment of all or any portion of Declarant's rights and powers shall be made by a recorded instrument executed by the assignor Declarant and the assignee. The term Declarant shall also include an affiliate of Declarant taking title from SITLA or Declarant for the purpose of conveying a Lot to an Owner. The term Declarant shall include SITLA, but only as specifically provided in Section 2.5.
- 1.10 "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.
- 1.11 "Dwelling Unit" means any building or portion of a building situated upon a Lot which is designed and intended for use and occupancy as a residence by a Single Family.
- 1.12 "Exempt Property" means the Subsidiary Common Areas, for as long as the Subsidiary Association or Declarant is the owner thereof.
- 1.13 "Lot" means each portion of the Covered Property that is designated as a lot on a recorded subdivision plat of a portion of the Covered Property.
- 1.14 "Master Declaration" means the Residential Declaration of Covenants, Conditions, and Restrictions for Coral Canyon, dated March 1st, 2000 and recorded March 21st, 2000, as Entry No. 679603, Book 1363, beginning at page 1079, records of Washington County, Utah, as amended or supplemented from time to time.
- 1.15 "Member" means any person holding a Membership in the Subsidiary Association pursuant to this Tract Declaration.
- 1.16 "Membership" means a membership in the Subsidiary Association and the rights granted to the Members pursuant to this Tract Declaration and the Articles and Bylaws of the Subsidiary Association.
- 1.17 "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 2.5. 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.*, legal title shall be deemed to be the Owner. 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. 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.

1.18 "Resident" means:

- (a) Each tenant or lessee of an Owner actually residing on any Lot, and
- (b) Members of the immediate family of each Owner, lessee, and tenant actually living in the same household with such Owner, lessee, or tenant.

Subject to such rules and regulations as the Board may specify (including the imposition of special nonresident fees for use of Subsidiary Common Areas if the Subsidiary Association shall so direct), the term Resident also shall include the onsite guests or invitees of any such Owner, lessee, or tenant, if and to the extent the Board in its absolute discretion by resolution so directs.

1.19 "Subsidiary Association" means the Utah non-profit corporation formed by Declarant to serve as the Subsidiary Association under this Declaration, its successors and assigns.

1.20 "Rules" means the rules and regulations for the Covered Property adopted by the Board pursuant to this Tract Declaration.

1.21 "Single Family" means an individual living alone, a group of two or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three persons not all so related, who maintain a common household in a Dwelling Unit.

1.22 "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.

1.23 "Special Assessment" means any assessment levied and assessed pursuant to Section 8.3.

1.24 "Special Use Fees" means any fees charged by the Subsidiary Association for the use of the Subsidiary Common Areas.

1.25 "Subsidiary Common Areas" means the following, to the extent located within the Covered Property and intended for the exclusive use and enjoyment of all of the Owners and Residents of the portion of the Covered Property: All real property and the improvements or amenities thereon and all personal property and facilities, including but not limited to areas used for landscaping, flood control, drainage, bicycle or jogging paths, parks, recreational areas, open spaces, walkways, and pedestrian and vehicular ingress and egress, including real property to be dedicated to the public upon expiration of a period of time, but only until such real property is dedicated, and real property with respect to which the Subsidiary Association has been granted and accepted easements or other obligations for construction, maintenance or repair, during the time as the Subsidiary Association has such easements or other obligations. As of the date of this Declaration, the Subsidiary Common Areas consist of HOA Tracts 3-4, inclusive, 6-13, inclusive, 17-18, inclusive, and 20-21, inclusive, **CORAL CANYON, PHASE 1**, recorded in Book 1363 page 1078 records of Washington County, Utah.

1.26 "Tract Declaration" means this Tract Declaration, as it may be amended from time to time.

1.27 "Visible From Neighboring Property" means, with respect to any given object, that such object is or would be visible to a person six feet tall standing at normal grade level on neighboring property.

## ARTICLE 2 PROPERTY SUBJECT TO DECLARATION

2.1 General Declaration. Declarant declares that all of the Covered 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 the Master Declaration and this Tract Declaration. This Tract Declaration shall be deemed a "Tract Declaration" pursuant to the terms and conditions of the Master Declaration and is subsidiary and supplemental to the Master Declaration. This Tract Declaration is declared and agreed to be in furtherance of a general plan for the subdivision, development, improvement and sale of the Covered Property and is established for the purpose of enhancing and perfecting the value, desirability and attractiveness of each portion of the Covered Property. This Tract Declaration shall run with the Covered Property for all purposes and shall be binding upon and inure to the benefit of Declarant, the Subsidiary Association, all Owners and Residents and their respective successors in interest.

2.2 Exempt Property. All Exempt Property shall be exempt from Assessments (except as provided in **Section 8.8**) and Membership in the Subsidiary Association and its associated privileges and responsibilities, but shall nevertheless be subject to all other provisions of this Tract Declaration. The Board may restrict or prohibit the use of the Subsidiary Common Areas (except any rights-of-way or drainage areas owned by the Subsidiary Association) by the Owners of Exempt Property. This Section may not be amended without the approval of any and all Owners of Exempt Property affected by the amendment.

2.3 Subsidiary Association Bound. Upon incorporation of the Subsidiary Association, this Tract Declaration shall be binding upon and shall inure to the benefit of the Subsidiary Association.

2.4 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 Tract Declaration, the Rules, the Articles and the Bylaws. Any violation of these documents shall be default under the lease. An Owner shall notify the Subsidiary Association regarding the existence of all leases. The Owner shall remain liable for compliance with the Tract Declaration, Articles, Bylaws, and the Rules and shall be responsible for any violations thereof by such Owner's tenant or such Owner's tenant's family and guests. All notices pursuant to this Tract Declaration shall be sent to the Owner. The Development Lease is not subject to the terms of this **Section 2.4**.

2.5 SITLA. By executing this Tract Declaration, SITLA joins in and consents to this Tract Declaration pursuant to **Section 5.8(c)** of the Development Lease, for the purpose of subjecting the fee ownership interest in the Covered Property to all of the terms, covenants, conditions, easements, restrictions, servitudes, and other provisions of this Tract Declaration, subject to the limitations of **Section 8.10**. Any other provision of this Tract Declaration to the contrary notwithstanding, unless Declarant specifically assigns to SITLA, and SITLA specifically assumes, the rights and obligations of Declarant under this Tract Declaration, SITLA shall have no rights, obligations or liabilities as Declarant. Upon a termination of the Development Lease, 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, including, without limitation, the rights of Declarant as the Class B Member, and shall be subject to all of the obligations of Declarant under this Declaration, including those under **Section 8.9**. From time to time, as requested by Declarant, SITLA will join in such documents and instruments, including Tract Declarations, as are necessary or appropriate to effectuate or further the intents and purposes of this Tract Declaration. At such times as the Development Lease is in effect as to any portion of the Covered Property and Declarant is the lessee of such portion of the Covered Property, Declarant shall, solely for the purposes of this Tract Declaration, be deemed to be the fee owner such Covered Property and the Owner of such Covered Property for all purposes of this Tract Declaration. At such time as Declarant is no longer the lessee of any portion of the Covered Property and SITLA is the fee owner of such portion of the Covered Property, SITLA shall be deemed the Owner of such portion of the Covered Property.

2.6 Incorporation of Recitals. The Recitals above are incorporated into and are a part of this Tract Declaration.

### ARTICLE 3 LAND USE CLASSIFICATIONS

3.1 Land Use Classifications. The permitted Land Use Classifications within the Covered Property are as follows:

(a) Single Family Residential. A Land Use Classification of "Single Family Residential" is intended for land to be developed as Single Family detached residential housing units and related uses, with the following Covered Property having a Land Use Classification of Single Family Residential:

Lots 21-73, inclusive, and 81-91, inclusive, **CORAL CANYON, PHASE 1**, recorded in Book 1363 page 1078, records of Washington County, Utah

(b) Subsidiary Common Area. A Land Use Classification of "Subsidiary Common Area" is intended for Subsidiary Common Areas, with the following Covered Property having a Land Use Classification of Subsidiary Common Area:

HOA Tracts 3-4, 6-13, inclusive, 17-18, inclusive, and 20-21, inclusive, **CORAL CANYON, PHASE 1**, recorded in Book 1363, page 1078 records of Washington County, Utah.

The Land Use Classifications established by a Tract Declaration shall not be changed except as provided in **Section 10.2**.

3.2 Conveyance of Common Areas. Following recordation of this Tract Declaration, Declarant shall convey the Subsidiary Common Areas to the Subsidiary Association. From time to time, Declarant may convey easements, leaseholds, or other real property within the Covered Property to the Subsidiary Association and upon such conveyance or dedication to the Subsidiary Association, such property shall be deemed a part of the Subsidiary Common Areas accepted by the Subsidiary Association and thereafter shall be maintained by the Subsidiary Association at its expense for the benefit of all its Members.

**ARTICLE 4**  
**COMMON AREAS; EASEMENTS**

4.1 Easements and Rights of Enjoyment. Every Owner shall have a nonexclusive easement for the use and enjoyment in and to the Subsidiary Common Areas, which nonexclusive easement shall be appurtenant to and shall pass with the title to every Lot. All Residents, other than Owners, shall have a nonexclusive, nontransferable temporary license to use and enjoy the Subsidiary Common Areas so long as they remain Residents. The foregoing grant and rights are subject to the following limitations:

(a) The right of the Subsidiary Association to charge reasonable Special Use Fees for the use of the Subsidiary Common Areas. Special Use Fees shall be set by the Board from time to time, in its absolute discretion. Special Use Fees shall be charged only for actual entry upon or utilization of those Subsidiary Common Areas selected by the Board to be subject to Special Use Fees and shall be intended to collect revenue from the actual users of such selected Subsidiary Common Areas so that all of the costs of operating such selected Subsidiary Common Areas are not borne by all of the owners through Annual Assessments, but rather are borne, at least in part, by the Owners and Residents utilizing such selected Subsidiary Common Areas. Special Use Fees assessed against an Owner or Resident on such Owner's Lot shall also become part of the Assessments to which such Owner and such Owner's Lot is subject and shall be secured by the Assessment Lien.

(b) The right of the Subsidiary Association to suspend the voting rights and right to use and enjoy the recreational portions of the Subsidiary Common Areas by any Owner or Resident (i) for any period during which any Assessment against such Owner's or Resident's Lot remains delinquent; (ii) for a period not to exceed 60 days for any infraction of this Tract Declaration, a Tract Declaration, or the Rules; and (iii) for successive 60 day periods if any such action is not corrected during any preceding 60 day suspension period.

(c) The right of the Subsidiary Association to regulate the use of the Subsidiary Common Areas through the Rules and to prohibit access to those Subsidiary Common Areas, such as landscaped areas, not intended for use by the Owners or Residents.

(d) The right of the Subsidiary Association to change the use of Subsidiary Common Areas and to change the size, shape or location of the Subsidiary Common Areas as provided in **Section 4.2.**

4.2 Procedure for Changes to Subsidiary Common Areas. Upon (1) adoption of a resolution by the Board stating that in the Board's opinion the action proposed to be taken by the Board with respect to the Subsidiary Common Areas is in the best interests of the Members, and (2) the approval of such resolution by a majority of the votes of each class of Members who are voting at a meeting duly called for such purpose, the Board shall have the power and right to:

(a) Change the use of any of the Subsidiary Common Areas (and in connection therewith, construct, reconstruct, alter or change the buildings, structures and improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use (i) shall be for the benefit of the Owners and Residents, and (ii) shall be consistent with any deed restrictions and zoning regulations restricting or limiting the use of the land;

(b) Dedicate or transfer all or any part of the Subsidiary Common Areas to any public authority or utility; and

(c) Change the size, shape or location of the Subsidiary Common Areas, to exchange the Subsidiary Common Areas for other property or interests which become Subsidiary Common Areas, and to abandon or otherwise transfer Subsidiary Common Areas.

Alternatively, the Board, upon satisfaction of the requirements of **clause (1)** above may, in lieu of calling a meeting, notify in writing all Owners of the proposed change of use and of their right to object thereto, and the proposed change shall be deemed approved by the Members (and a meeting of the Members shall not be necessary) unless, within 30 days after receipt of such notice, the proposed change is disapproved in writing by the Class B Member or more than 10% of the Class A Members eligible to vote.

4.3 Easements for Encroachments. Each Lot, the Subsidiary Common Areas, and all other areas within the Covered Property shall be subject to an easement of not more than eighteen inches for encroachments of walls, ledges, roofs and other structures created by construction, settling and overhangs as originally designed and constructed by Declarant or other developer. If any such improvement on the Subsidiary Common Areas encroaches upon any Lot or other area, or if any such improvement on any Lot or other area encroaches upon any portion of the Subsidiary Common Areas, or if any such improvement on any Lot or other area encroaches upon another Lot or other area, a valid easement for said encroachments and for the maintenance thereof shall exist. If any structure on any Lot, Subsidiary Common Area or other area is repaired, altered or reconstructed in accordance with the original plans and specifications, similar encroachments shall be permitted and a valid easement for said encroachments and for the maintenance thereof shall exist.

4.4 Right of Ingress and Egress. The Declarant, the Subsidiary Association, and the Board shall each have an easement upon, across, over and under the Lots and all other areas in the Covered Property for the purpose of performing and exercising all of the Declarant's, the Subsidiary Association's, and the Board's respective rights, duties and obligations under this Tract Declaration, including repairing, maintaining and replacing the Subsidiary Common Areas, the improvements thereon, and other areas maintained by the Subsidiary Association.

4.5 Waiver of Use. No Owner shall be exempted from personal liability for Assessments, or the Owner's Lot released from liens or charges arising under this Tract Declaration or any Tract Declaration, by waiver of any rights of use or enjoyment of the Subsidiary Common Areas.

## ARTICLE 5 USE RESTRICTIONS

5.1 General Covenants. Except as otherwise expressly provided in this Tract Declaration, the following covenants, conditions, restrictions, reservations, easements and rights shall apply to each Lot and to all of the Owners and Residents thereof.

(a) Architectural Control. Without the prior written approval of the Design Review Committee established pursuant to the Master Declaration: (i) no improvements (whether temporary or permanent), alterations, repairs, excavation, grading, lighting, landscaping or other work (including, without limitation, exterior painting) which in any way alters the exterior appearance of any Lot or any improvements thereon from its natural or improved state existing on the date hereof shall be made or done; and (ii) no building, fence, exterior wall, residence or other structure shall be commenced, erected, maintained, improved, altered or made on any Lot. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including exterior color scheme, and all changes in the grade, lighting or landscaping of any Lot shall be subject to the prior written approval of the Design Review Committee. No changes or

deviations in or from the plans and specifications once approved by the Design Review Committee shall be made without the prior written approval of the Design Review Committee. Once construction of an improvement has been commenced on a Lot, the Owner thereof shall diligently pursue completion of such improvement in accordance with approved plans. Declarant shall be exempt from the requirements of this **Section 5.1(a)** and therefore all improvements, alterations, repairs, excavation, grading, lighting, landscaping or other work performed, constructed or installed by Declarant shall be deemed approved by the Design Review Committee.

(b) Fences. No fences or walls of any type shall be permitted on any Lot, except that the rear patio area of the residence constructed on a Lot may be fenced, subject to the Design Guidelines established pursuant to the Master Declaration.

(c) Landscaping. Each Owner shall maintain all landscaping on such Owner's Lot in a good and viable condition and state of repair, complete with an automatic water irrigation system. Notwithstanding the foregoing, the Subsidiary Association, from time to time, may elect, by written notice to each of the Owners, to maintain some or all of the landscaping in the front and rear yards of the Lots, and in connection therewith, the Subsidiary Association may enter into landscape maintenance contracts with third parties to perform such landscape maintenance. The costs incurred by the Subsidiary Association pursuant to this **Section 5.1(c)** are authorized Subsidiary Association expenses.

## ARTICLE 6 THE SUBSIDIARY ASSOCIATION

6.1 Formation of Subsidiary Association. The Subsidiary Association shall be a nonprofit Utah corporation. Upon incorporation, the Subsidiary Association shall be charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Tract Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Tract Declaration.

6.2 Board of Directors and Officers. The affairs of the Subsidiary Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. The Board may also appoint various committees and appoint a manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Subsidiary Association. The Board shall determine the compensation to be paid to the manager and any employees of the Subsidiary Association. The initial Board and each Board thereafter for so long as there is a Class B Member shall consist of three Members or other persons, and such Board shall be appointed by the Class B Member without any other vote, consent or approval whatsoever. Commencing with the first annual meeting of the Members when there is no longer a Class B Member, the Board shall consist of, and the Members shall elect, five directors, all of whom must be Members or an individual designated by a corporate, partnership, or other non-individual Member. The foregoing reference to five directors shall be subject to increase in the number of directors as provided in the Bylaws. The initial terms for the elected directors shall be one director for a one-year term, two directors for a two-year term, and two directors for a three-year term, thus establishing a staggered Board. In succeeding years, all directors shall be elected for a three year term.

6.3 Subsidiary Association's Rights and Powers As Set Forth the Tract Declaration, the Articles and Bylaws. In addition to the rights and powers of the Subsidiary Association set forth in this Tract Declaration, the Subsidiary Association shall have such rights and powers as are set forth in its

Articles and Bylaws, which shall include all rights and powers as may be reasonably necessary in order to effect the purposes of the Subsidiary Association as set forth in this Tract Declaration. After incorporation of the Subsidiary Association, a copy of the Articles and Bylaws of the Subsidiary Association shall be available for inspection by Members, prospective purchasers, mortgagees and other persons or entities with an interest in the Covered Property at the office of the Subsidiary Association during reasonable business hours.

6.4 Contracts with Others for Performance of Subsidiary Association's Duties. Subject to the restrictions and limitations contained in this Tract Declaration, the Subsidiary Association may enter into contracts and transactions with others, including Declarant and its affiliated companies, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one or more directors or officers of the Subsidiary Association or members of any committee, are employed by or otherwise connected with Declarant or its affiliates, provided that the fact of such interest shall be disclosed or known to the other directors acting upon such contract or transaction, and provided further that the transaction or contract is fair and reasonable. Any such director, officer or committee member may be counted in determining the existence of a quorum at any meeting of the Board or committee of which he is a member which shall authorize any contract or transaction described above or grant or deny any approval sought by Declarant, its affiliated companies or any competitor thereof and may vote thereat to authorize any such contract, transaction or approval with like force and effect as if he were not so interested. Notwithstanding anything to the contrary herein, during the period when Declarant is the Class B Member, any professional management contract entered into by the Subsidiary Association must be terminable with or without cause, upon no more than 90 days written notice and without payment of any penalty.

6.5 Association Funds.

(a) Purposes for Which Subsidiary Association's Funds May Be Used. The Subsidiary Association shall apply all funds and property collected and received by it (including the Annual and Special Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the purposes and uses authorized by this Tract Declaration or otherwise for the common good and benefit of the Covered Property and the Owners and Residents. Subject to this Tract Declaration and the Articles and Bylaws, the Subsidiary Association may expend its funds in any manner permitted under the laws of the State of Utah.

(b) Borrowing Power. The Subsidiary Association may borrow money in such amounts, at such rates, upon such terms and security, and for such periods of time as is necessary or appropriate; *provided, however*, no loan in an amount in excess of \$10,000 shall be contracted until approved by at least two-thirds of the votes of each class of Members who are voting at a meeting duly called for such purpose.

(c) Subsidiary Association's Rights in Spending Funds From Year to Year. The Subsidiary Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of Annual Assessments, Special Assessments, fees or otherwise), and may carry forward as surplus any balances remaining. The Subsidiary Association shall not be obligated to reduce the amount of an Assessment in the succeeding year if a surplus exists from a prior year, and the Subsidiary Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Subsidiary Association and the accomplishment of its purposes.

6.6 Eminent Domain. The term "taking" as used in this Section means condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened taking of all or any portion of the Subsidiary Common Areas, the Owners hereby appoint the Board and such persons as the Board may delegate to represent all of the Owners in connection with the taking. The Board shall act in its sole discretion with respect to any awards made or to be made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Any awards received on account of the taking shall be paid to the Subsidiary Association. In the event of a total or partial taking, the Board may, in its sole discretion, retain any award in the general funds of the Subsidiary Association or distribute prorata all or a portion thereof to the Owners and all holders of liens and encumbrances, as their interests may appear of record, at a uniform rate per Membership.

6.7 Maintenance.

(a) Maintenance by the Subsidiary Association.

(i) The Subsidiary Association, or its duly delegated representative, shall maintain and otherwise manage all Subsidiary Common Areas and the improvements thereon. Notwithstanding anything to the contrary herein, the Board shall have discretion to enter into an agreement or agreements with governmental entities to permit the Subsidiary Association to upgrade and/or maintain landscaping on property owned by such entities, whether or not such property is within the Covered Property, if the Board determines such an agreement or agreements benefit(s) the Subsidiary Association.

(ii) The Board shall use a reasonably high standard of care in providing for the repair, management and maintenance of the Subsidiary Common Areas and other properties maintained by the Subsidiary Association, but the Board shall be the sole judge as to the appropriate maintenance of all such areas. The Subsidiary Common Areas, including, but not limited to, playground or other play areas or equipment finished or maintained by the Subsidiary Association shall be used at the risk of the user; and Declarant and the Subsidiary Association shall not be liable to any person or entity for any claim, damage, or injury occurring thereon or related to the use thereof.

(b) Assessment of Certain Maintenance Costs. If the need for maintenance or repair of Subsidiary Common Areas, structures and other property maintained by the Subsidiary Association is caused through the intentional or negligent act of any Owner, or that Owner's family, guests or tenants or any Resident on such Owner's Lot, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Owner and the Owner's Lot is subject and shall be secured by the Assessment Lien.

6.8 Insurance.

(a) Authority to Purchase. The Subsidiary Association shall maintain insurance against liability incurred as a result of death or injury to persons or damage to property on the Subsidiary Common Areas or upon other areas maintained by the Subsidiary Association, or as a result of Subsidiary Association activities, in a total amount of not less than \$1,000,000. If reasonably available, the Subsidiary Association shall obtain officers and directors liability insurance in an amount deemed prudent by the Board. In addition, the Subsidiary Association may carry any other insurance coverage which the Board in its discretion deems necessary or desirable.

(b) Individual Responsibility. It shall be the responsibility of each Owner and Resident to provide for such Owner's or Resident's own insurance with respect to (i) such Owner's or Resident's property interests within the Covered Property, including, but not limited to, such Owner's or Resident's additions and improvements thereon, furnishings and personal property therein, (ii) such Owner's or Resident's personal liability, and (iii) such other risks with respect to which such person desires insurance. No person shall maintain any insurance which would limit or reduce in any manner the insurance proceeds payable under the casualty insurance maintained by the Subsidiary Association in the event of damage to the improvements or fixtures on the Subsidiary Common Areas. Neither the Subsidiary Association nor any Board member nor Declarant shall be liable to any person or mortgagee if any risks or hazards are not covered by the insurance obtained by the Subsidiary Association or if the amount of insurance is not adequate.

(c) Insurance Claims. The Subsidiary Association is hereby irrevocably appointed and authorized by the Owners to adjust all claims arising under insurance policies purchased by the Subsidiary Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Board has full and complete power to act for the Subsidiary Association in this regard and may, at its discretion, appoint an authorized representative or committee, or enter into an insurance trust agreement wherein the trustee shall have authority, to negotiate losses under any policy purchased by the Subsidiary Association. All proceeds from insurance acquired by the Subsidiary Association shall be payable to the Subsidiary Association. Any proceeds resulting from damage to the Subsidiary Common Areas shall be used to repair the damage, unless otherwise approved by a majority of the votes of each class of Members who are voting at a meeting called for such purpose. Any excess proceeds may be retained by the Subsidiary Association as reserves or to reduce future Assessments or, if distributed to Members, such proceeds shall be distributed to Members and their mortgagees as their interests may appear at a uniform rate per Membership.

6.9 Reserve Funds. From the Annual Assessments received by the Subsidiary Association, the Board shall establish such reserve funds in such amounts as the Board deems reasonably prudent, for the maintenance, repair and replacement of the Subsidiary Common Areas and for other Subsidiary Association purposes.

6.10 Subsidiary Association Rules. The Board may, from time to time and subject to the provisions of this Tract Declaration, adopt, amend and repeal rules and regulations, which may be known as Subsidiary Association Rules and Regulations. The Rules may restrict and govern the use of the Subsidiary Common Areas by any Member or Resident, by the family of such Member, or by any invitee, licensee or tenant of such Member, and such Rules may also deal with and regulate all other aspects of the Subsidiary Association's rights, activities, and duties; *provided, however*, that the Rules shall not discriminate among Members and shall not be inconsistent with this Tract Declaration, the Articles or the Bylaws. Upon adoption, the Rules shall have the same force and effect as if they were set forth in and were a part of this Tract Declaration. Copies of the Rules shall be available for inspection at the office of the Subsidiary Association during reasonable business hours.

6.11 Personal Liability. No Board member, committee member, officer or employee of the Subsidiary Association shall be personally liable to any Member or to any other person or entity, including the Subsidiary Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence; *provided, however*, the limitations set forth in this Section 6.11 shall not apply to any person who has failed to act in good faith or has engaged in intentional or willful misconduct. The Subsidiary Association shall indemnify its committee members, directors and officers when acting on behalf of the Subsidiary Association, to the full extent permitted by law.

6.12 Delinquency or Violation by Board or Committee Member. Notwithstanding any other provision of this Tract Declaration or of the Articles, the Bylaws or the Rules, but subject to applicable law, a member of the Board or of any committee of the Board shall not be entitled to cast any vote at a meeting of the Board or committee, as applicable, or otherwise participate in any such meeting or other action of the Board or committee during any period when: (a) such member is delinquent in payment of any Assessments or other amounts owed by such member to the Subsidiary Association; or (b) such member, such member's Lot, or any Resident, tenant or occupant of such member's Lot, or any other person for whom such member is legally responsible is in breach or violation of this Tract Declaration, the Articles, the Bylaws, or the Rules and such breach or violation has not been cured or corrected after reasonable written notice. This Section shall not apply to any member of the Board or of any committee who was appointed or designated for appointment by Declarant. The provisions of this Section are in addition to, and not in lieu of or in substitution for any other rights or remedies the Subsidiary Association may have with respect to such delinquency or such breach or violation.

6.13 Right of Entry and Inspection. During reasonable hours and upon reasonable notice to the Owner or other occupant of a Lot, Declarant, any member of the Board, or any authorized representative of any of them, shall have the right to enter upon and inspect any Lot, and the improvements constructed or being constructed thereon (except for the interior portions of any completed and occupied Dwelling Unit), to determine compliance with this Tract Declaration or the Rules, and such persons shall not be deemed guilty of trespass by reason of such entry. In addition, the Subsidiary Association shall have an easement and right of entry upon any Lot at any time or times without notice in order to perform emergency repairs. Failure to respond to Board demands to comply may be deemed an emergency.

#### ARTICLE 7 MEMBERSHIPS AND VOTING

7.1 Members; Memberships. Every Owner of a Lot which is subject to assessment shall be a Member of the Subsidiary Association. Each Owner shall have one Membership for each Lot owned by the Member.

7.2 Memberships Appurtenant to Ownership. Each Membership shall be appurtenant to and may not be separated from ownership of the Lot to which the Membership is attributable. There shall be only be the number of Membership specified in **Section 7.1** for each Lot, which Memberships shall be shared by any joint owners of, or owners of undivided interests in, a Lot. Any other provision of this Tract Declaration to the contrary notwithstanding, if an Owner of two adjoining Lots, or an Owner of a Lot and a portion of an adjoining Lot, combines said areas for use as one residence, the combined Lots or the combined Lot and adjoining property, as the case may be, shall be treated as one Lot hereunder and shall be entitled to one Membership and charged only one Annual Assessment.

7.3 Tenants. Tenants shall not be Members of the Subsidiary Association.

7.4 Voting. The Subsidiary Association shall have two classes of voting Memberships:

(a) Class A. Class A Memberships shall be all Memberships except the Class B Memberships. Subject to the authority of the Board to suspend the Owner's voting rights for violations of this Tract Declaration as provided in this Tract Declaration, an Owner shall be entitled to one vote for each Class A Membership held by the Owner.



(b) Class B. The Class B Membership shall be all Memberships held by Declarant, determined on the basis of the number of Lots owned by Declarant. Except as otherwise provided in this Tract Declaration, Declarant shall be entitled to three votes for each Class B Membership owned. The Class B Membership shall cease and be converted to Class A Memberships, determined on the basis of the number of Lots owned by Declarant, on the happening of the first of the following events:

- (i) 120 days after the date that the Class B Member no longer owns any Lots within the Covered Property,
- (ii) 15 years from the date of the recording of this Tract Declaration, or
- (iii) When Declarant notifies the Subsidiary Association, at Declarant's sole option, in writing, that it relinquishes its Class B Membership.

7.5 Right to Vote. No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The Membership votes for each Lot must be cast as a unit. If a Membership is owned by more than one person or entity and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Membership, it will thereafter be conclusively presumed that such Member was acting with the authority and consent of all other Owners of the same Membership unless objection thereto is made to the Board, in writing, at or prior to the time the vote is cast. If more than one vote is cast for a particular Membership, all said votes shall be deemed void.

7.6 Membership Rights. Each Member shall have the rights, duties and obligations set forth in this Tract Declaration and such other rights, duties and obligations as are set forth in the Articles, Bylaws and the Rules as the same may be amended from time to time.

7.7 Transfer of Membership. The rights and obligations of the Owner of a Class A Membership shall not be assigned, transferred, pledged, delegated, conveyed or alienated in any way except upon transfer of ownership to an Owner's Lot and then only to the transferee thereof. A transfer of ownership of a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record or such other legal process as permitted by Utah law. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership of a Lot shall automatically transfer the Membership(s) appurtenant to said Lot to the new Owner. Upon the transfer of ownership of any Lot (excluding the initial sale by Declarant), the Board, in its discretion, may assess a reasonable transfer fee to cover administrative costs associated with said transfer of ownership.

7.8 Notice and Quorum Requirements. Written notice of any meeting called for the purpose of taking any action authorized under this Tract Declaration shall be sent to all Members no less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast 60% of all the votes (exclusive of suspended voting rights) of each class of Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

7.9 Proxy. A Member may vote at any meeting of Members in person or by proxy, as provided in the Bylaws.

7.10 Right of Declarant to Obtain Membership List. Any other provision of this Declaration, the Articles, the Bylaws, or the Rules to the contrary notwithstanding, so long as Declarant owns any portion of the Covered Property, Declarant shall be entitled to receive from the Board, upon request, a complete list of the names and addresses of all members.

## ARTICLE 8 COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

8.1 Creation of Lien and Personal Obligation for Assessments and Maintenance Charges. Declarant, for each Lot, hereby covenants and agrees, and each Owner by acceptance of a deed therefor (whether or not it shall be so expressed in such deed) is deemed to covenant and agree, to accept and be subject to mandatory Membership in the Subsidiary Association, and to pay to the Subsidiary Association all Assessments levied against such Owner's Lot. The Annual Assessments, Special Assessments, Special Use Fees and other fees, fines and charges which are the obligation of an Owner hereunder, together with interest, costs, collection agency fees, and reasonable attorneys' fees of the Subsidiary Association incurred in connection with the enforcement and collection thereof or in otherwise enforcing this Tract Declaration, shall be a charge and continuing servitude and Assessment Lien upon the Lot against which each such Annual Assessment, Special Assessment, or other charge is made and against the Lot of an Owner or Resident liable for a Special Use Fee or other charge and, in addition, shall be the personal obligation of the Owner of such Lot at the time when such payment becomes due and payable. The Annual Assessments and Special Assessments against each Lot shall be based on the number of Memberships appurtenant to the Lot. The personal obligation for delinquent Assessments and other charges shall not pass to the successors in title of the Owner unless expressly assumed by them, but the Lot shall remain subject to the lien of the delinquent assessment except as provided in **Section 9.3**. No Owner may waive or otherwise exempt such Owner from liability for Assessments, including, but not limited to, by non-use of Subsidiary Common Areas or abandonment of such Owner's Lot. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution, abatement or set-off shall be allowed by reason of any action or failure to act of the Board or Subsidiary Association.

### 8.2 Annual Assessments.

(a) Establishment of Annual Assessments. In order to provide funds for the uses and purposes specified in **Article 6** or otherwise in this Tract Declaration, in each year, commencing with the first Assessment Period, the Board shall prepare and adopt a budget and shall assess against each Lot included as Assessable Covered Property an Annual Assessment. Subject to the provisions of **Section 8.2(b)**, the amount of the Annual Assessment shall be in the sole discretion of the Board but shall be determined with the objective of fulfilling the Subsidiary Association's obligations under this Tract Declaration and providing for the uses and purposes specified in **Article 6** and elsewhere in this Tract Declaration.

(b) Uniform Rate of Annual Assessment. No Annual Assessments or Special Assessments shall be levied on any portion of the Covered Property until any such portion thereof is purchased from Declarant. The amount of any Annual Assessment or Special Assessment against each Lot shall be fixed at a uniform rate per Membership.

8.3 Special Assessments for Capital Improvements and Extraordinary Expenses. In addition to the Annual Assessment authorized above, the Subsidiary Association may levy a Special Assessment for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Subsidiary Common Areas, including fixtures and

personal property related thereto, or for the purpose of defraying other extraordinary expenses, provided that any such assessment shall have the assent of at least two-thirds of the votes of each class of Members who are voting at a meeting duly called for such purpose. The provisions of this Section are not intended to preclude or limit the assessment, collection or use of Annual Assessments for the aforesaid purposes.

8.4 Establishment of Assessment Period. The period for which the Annual Assessment is to be levied (the "**Assessment Period**") shall be the calendar year, except that the first Assessment Period shall commence (a) upon the recordation of this Tract Declaration; or (b) upon such later date as the Board, in its sole discretion, shall determine and shall terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period.

8.5 Billing and Collection Procedures. The Board shall have the right to adopt procedures for the purpose of making, billing and collecting the Assessments, provided that said procedures are not inconsistent with the provisions hereof. Annual Assessments may be collected on a monthly, quarterly, semi-annual or annual basis as determined by the Board, and Special Assessments may be collected as specified by the Board unless otherwise determined by the resolution of the Members approving the Special Assessment. The failure of the Subsidiary Association to send a bill to a Member shall not relieve any Member of such Member's liability for any Assessment or charge under this Tract Declaration, but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Member has been given not less than 15 days written notice prior to such foreclosure or enforcement at the address of the Member on the records of the Subsidiary Association, that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after the delinquency of such payment. Each Member shall be obligated to inform the Subsidiary Association in writing of any change of address. The Subsidiary Association shall be under no duty to refund any payments received by it even though the ownership of a Membership changes during an Assessment Period. Successor Owners shall be given credit for prepayments, on a prorated basis, made by prior Owners. In case the Owner of a Membership becomes liable for payment of an increased sum pursuant to **Section 8.2(b)** during the Assessment Period, such Owner shall notify the Subsidiary Association but such Owner's failure to notify the Subsidiary Association shall not relieve such Owner of the liability for such amounts.

8.6 Collection Costs and Interest on Delinquent Assessment. Any Assessment or installment thereof not paid when due shall be deemed delinquent and shall bear interest from 10 days after the due date until paid at a rate equal to the greater of (a) 18% per annum, or (b) the rate set by the Board, and the Member shall be liable for all costs, including attorneys' fees, which may be incurred by the Subsidiary Association in collecting the same. In addition, the Board may charge a late fee for all delinquent payments. The Board may also record a "**Notice of Delinquency**" against any Lot as to which an Assessment is delinquent and constitutes an Assessment Lien and may establish a fixed fee to reimburse the Subsidiary Association for the Subsidiary Association's cost in recording such Notice, processing the delinquency and recording a notice of payment, which fixed fee shall be treated as a collection cost of the Subsidiary Association secured by the Assessment Lien. The Subsidiary Association shall not be obligated to release any notice recorded pursuant to this Section until all delinquent Assessments, interest and collection costs have been paid in full, whether or not all of such amounts are set forth in the Notice of Delinquency.

8.7 Evidence of Payment of Assessments. Upon receipt of written request and within a reasonable period of time thereafter, the Subsidiary Association shall issue to the requesting party a written certificate stating (a) that all Annual Assessments and Special Assessments and Special Use Fees (including interest, costs and attorneys' fees, if any, as provided in **Section 8.6**) have been paid with respect to any specified Lot as of the date of such certificate, or (b) if such have not been paid, the amounts due and payable as of such date. The Subsidiary Association may make a reasonable charge for

the issuance of such certificates, which charge must be paid at the time the request for any such certificate is made. Any such certificate shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or lender on, the Lot in question.

8.8 Exempt Property. Exempt Property shall be exempt from the payment of Annual Assessments and Special Assessments, but such property shall not be exempt from fines, Special Use Fees, attorneys' fees, costs and expenses as described in **Section 8.6**; or from the Assessment Lien to secure said amounts; *provided, however*, that if any change of ownership or use of Exempt Property results in all or any part thereof becoming subject to assessment pursuant to this Tract Declaration in any year, the same thereupon shall be subject to the assessment of the Annual Assessments and Special Assessments (prorated as of the date it became Assessable Property), and the Assessment Lien therefor. The Owner of Exempt Property shall not be entitled to any Memberships for such Exempt Property.

8.9 Declarant's Exemption.

(a) General Exemption. Anything in this Tract Declaration to the contrary notwithstanding, Declarant shall not be liable for and shall not be required to pay Assessments upon Lots owned by Declarant. Nor shall Declarant be liable for the payment of any Assessments for any Lot that, having been previously sold to a purchaser, has been deeded back to the Declarant by foreclosure or deed in lieu of foreclosure.

(b) Declarant's Payment Obligations. In consideration for Declarant's exemption from Assessments, Declarant agrees that it shall pay, for any given Assessment Period in which Declarant has paid or contributed to the Association less than the full Annual Assessment for each Lot owned, the actual shortfall or deficiency, if any, in necessary ordinary operating revenue to pay current ordinary expenses for the operation and maintenance of the Subsidiary Association and the Subsidiary Common Areas, but only up to the full Annual Assessment for each such Lot owned. A shortfall or deficiency shall exist if current ordinary expenses of the Subsidiary Association are greater than the revenues of the Subsidiary Association from all sources for the Assessment Period in question; *provided, however*, that Declarant shall not be liable for any shortfall or deficiency created by any decrease in the amounts of the Annual Assessments from those charged during any prior year nor for any shortfall or deficiency incurred after expiration of the Class B Membership. Declarant may at any time at its sole discretion elect to cease paying the shortfall or deficiency, if any, and to pay up to the full Annual Assessment for each Lot owned by Declarant instead. The obligations of Declarant pursuant to this **Section 9.10** are not Assessments and are not subject to any Assessment Lien.

8.10 SITLA Exemption. Anything in this Declaration to the contrary notwithstanding, SITLA shall not be liable for and shall not be required to pay Assessments upon Lots or Parcels owned by SITLA (regardless of whether or not SITLA is the "Owner" thereof, as provided in **Section 2.5**, and regardless of whether or not SITLA is the Declarant, as provided in **Section 2.5**) and Lots and Parcels owned by SITLA shall not be subject to any Assessment Lien.

## ARTICLE 9 ENFORCEMENT OF TRACT DECLARATION

9.1 Enforcement of Provisions of This and Other Instruments. The Subsidiary Association, as the agent and representative of the Owners, shall have the right (without obligation) to enforce, by any proceeding at law or in equity, the terms of this Tract Declaration, the Articles, Bylaws, and the Rules and any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or

easements provided for in any contract, deed, declaration or other instrument which (a) shall have been executed pursuant to, or subject to, the provisions of this Tract Declaration, or (b) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Subsidiary Association or by Declarant. The Subsidiary Association is authorized to impose sanctions for violations without court approval. Such sanctions may include reasonable monetary fines and suspension of the right to vote or use any recreational facilities on the Subsidiary Common Areas as provided in this Tract Declaration. If suit is brought or an attorney is retained to enforce the terms of this Tract Declaration or other document as described in this **Section 9.1**, the prevailing party shall be entitled to recover, in addition to any other remedy, reimbursement for attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith, and if the Subsidiary Association is the prevailing party, the above-described fines and also the Subsidiary Association's administrative costs and fees. Attorneys' fees, costs and expenses adjudged against an Owner shall be the personal liability of the breaching Owner and shall also be secured by the Assessment Lien against said Owner's Lot. If the Subsidiary Association shall fail or refuse to enforce this Tract Declaration or any provision hereof for an unreasonable period of time after written request by an Owner to do so, then any Owner may enforce the provisions of the Tract Declaration at such Owner's own expense by any appropriate action, whether in law or in equity.

9.2 Subsidiary Association's Remedies to Enforce Payment of Assessments. If any Member fails to pay any Assessments when due, the Subsidiary Association may enforce the payment thereof by taking either or both of the following actions, concurrently or separately (and by exercising either of the remedies hereinafter set forth, the Subsidiary Association does not prejudice or waive its right to exercise the other remedy):

- (a) Bring an action at law and recover judgment against the Member personally obligated to pay the Assessment; or
- (b) Foreclose the Assessment Lien against the Lot in accordance with the then prevailing Utah law relating to the foreclosure of realty mortgages (including any right to recover a deficiency), and the Lot may be redeemed after foreclosure sale as provided by law. The Subsidiary Association may bid on the subject property at such a foreclosure sale.

Notwithstanding subordination of an Assessment Lien as described in **Section 9.3**, the delinquent Member shall remain personally liable for the Assessments and related costs after such Owner's Membership is terminated by foreclosure or deed in lieu of foreclosure or otherwise.

9.3 Subordination of Assessment Lien. The Assessment Lien provided for in this Tract Declaration shall be subordinate to any first mortgage lien held by, or first deed of trust of which the beneficiary is a lender who has lent funds, with the Lot as security, or held by the lender's successors and assigns, and shall also be subject and subordinate to liens for taxes and other public charges which by applicable law are expressly made superior. Except as above provided, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Lot. Sale or transfer of any Lot shall not affect the Assessment Lien; **provided, however**, that if the sale or transfer is pursuant to foreclosure of a mortgage or a deed of trust to which the Assessment Lien is subordinate, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage foreclosure or deed of trust sale, or any grantee taking by deed in lieu of foreclosure, shall take the Lot free of the Assessment Lien for all Assessments that have accrued up to the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure; **provided, further, however**, that such mortgage or deed of trust foreclosure sale purchaser or grantee shall take title subject to all Assessments accruing subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure.

**ARTICLE 10**  
**TERM; AMENDMENTS; TERMINATION**

10.1 Term; Method of Termination. This Tract Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect during such time as the Master Declaration is in effect. If the Master Declaration is terminated, then this Tract Declaration shall thereupon terminate. Any Subsidiary Association funds remaining following such termination and dissolution shall be distributed to the Members and their mortgagees as their interests may appear at a uniform rate per Membership.

10.2 Amendment of Tract Declaration. This Tract 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 at an election duly called and held for this purpose pursuant to the provisions of the Articles and Bylaws, such amendment was approved by at least 67% of the authorized votes each class of Members (including votes otherwise eligible to be cast but not present personally or by valid proxy at such meeting) at a meeting duly called for such purpose. So long as there is a Class B Membership, this Tract Declaration may be amended or terminated only with the written approval of Declarant. Thereafter, except as otherwise provided herein, any amendment to a Tract Declaration must be approved by the Board. This Tract Declaration may not be amended to reduce or alter the rights of Declarant without the approval of Declarant. Declarant alone may amend this Tract Declaration at any time (a) to relinquish its right to appoint the members of the Board, or (b) to amend as permitted in **Section 10.4**. In addition, at any time, Declarant alone shall have the right to amend the Tract Declaration to comply with applicable law or to correct any error or inconsistency in the Tract Declaration if the amendment does not adversely affect the rights of any Owner.

10.3 Amendment of Articles and Bylaws. The Articles and Bylaws may only be amended by following the procedure set forth in this Section. The Board shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of Members, which may be either an annual or a special meeting, and if approved by Members holding at least the Applicable Percentage (defined below) of the votes eligible to be cast on the amendment (including votes otherwise eligible to be cast but not represented personally or by valid proxy at such meeting), such amendment shall have been adopted; *provided, however*, that a copy of any such proposed amendment or a summary of the changes to be effected shall have been given to each Member in good standing at least 10 days prior to said meeting of the Members. For purposes, hereof, the "**Applicable Percentage**" means, in the case of an amendment to the Articles, 67%, and in the case of an amendment to the Bylaws, 51%. Any number of amendments may be submitted and voted upon at any one meeting.

10.4 Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institutions. Anything in this Article to the contrary notwithstanding, Declarant reserves the right to amend all or any part of this Tract Declaration and any Tract Declaration, the Articles and/or the Bylaws, to such extent and with such language as may be requested by the Federal Housing Administration, the Veterans Administration, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Corporation (or any successor agency) and to further amend any such documents to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of the Tract Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s) or any portions thereof. Any such amendment shall be effected by the recordation by Declarant of the amendment duly signed by or on behalf of the authorized agents of Declarant with their signatures acknowledged, specifying the federal, state or local governmental agency or the federally

chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment and such amendment, when recorded, shall be binding upon all of the Covered Property and all persons having an interest therein.

#### ARTICLE 11 MISCELLANEOUS

11.1 Interpretation of the Covenants. Except for judicial construction, the Board shall have the exclusive right to construe and interpret the provisions of this Tract Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Board's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by this Tract Declaration.

11.2 Severability. Any determination by any court of competent jurisdiction that any provision of this Tract Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

11.3 Change of Circumstances. Except as otherwise expressly provided in this Tract Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Tract Declaration.

11.4 Declarant's Disclaimer of Representations. Anything to the contrary in this Tract Declaration notwithstanding, and except as otherwise may be expressly set forth on a recorded plat or other instrument recorded in the office of the County Recorder of Washington County, Utah, Declarant makes no warranties or representations whatsoever that the plans presently envisioned or the complete development of the Covered Property can or will be carried out, or that any land now owned or hereafter acquired by Declarant is or will be committed to or developed for a particular (or any) use, or if that land is once used for a particular use, such use will continue in effect.

11.5 No Warranty of Enforceability. While Declarant has no reason to believe that any of the provisions contained in this Tract Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any of the provisions of this Tract Declaration. Any Owner acquiring a Lot in the Covered Property in reliance on one or more of the provisions in this Tract Declaration shall assume all risks of the validity and enforceability thereof and by acquiring any Lot agrees that Declarant shall have no liability therefor.

11.6 References to the Covenants in Deeds. Deeds or any instruments affecting any part of the Covered Property may contain the provisions of this Tract Declaration by reference to this Tract Declaration; but regardless of whether any such reference is made in any deed or instrument, each and all of the provisions of this Tract 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.

11.7 Gender and Number. Wherever the context of this Tract 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.

11.8 Captions and Titles. All captions, titles or headings of the Articles and Sections in this Tract 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 Tract Declaration to "Articles" and "Sections" are to the Articles and Sections in this Agreement, unless otherwise expressly noted.

11.9 Notices. If notice of any action or proposed action by the Board or of any committee or of any meeting is required by applicable law, this Tract Declaration or resolution of the Board to be given to any Owner or Resident then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within Washington County or the Covered Property. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner. If notice is made by mail, it shall be deemed to have been received 24 hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to such person at the address given by that person to the Subsidiary Association for the purpose of service of such notice, or to the address of the Lot owned by such person if no address has been given. Notice to the Board shall be delivered or sent certified mail to the office of the Subsidiary Association.

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

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

By: David T. Tracy  
Its: \_\_\_\_\_

**SUNCOR DEVELOPMENT COMPANY,  
an Arizona corporation,**

By: DEEM  
Its: V.P.

Approved as to Form:

John W. Andrews  
Jan Graham, Utah Attorney General  
by John W. Andrews  
Special Assistant Attorney General



STATE OF ARIZONA )  
 )ss.  
County of Maricopa )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of March, 2000, by Duane J. Black, the Vice President of SUNCOR DEVELOPMENT COMPANY, an Arizona corporation.

My Commission Expires: \_\_\_\_\_  
Gail Sanchez  
NOTARY PUBLIC  
Residing at \_\_\_\_\_



STATE OF UTAH )  
 )ss.  
County of Salt Lake )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of March, 2000, by Doris Terry, 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: \_\_\_\_\_  
Lynda Belnap  
NOTARY PUBLIC  
Residing at \_\_\_\_\_

