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2002 JUL 23 15:33 PM FEE \$48.00 BY RS
FOR: CORAL CANYON

**AMENDED AND RESTATED TRACT DECLARATION
CORAL CANYON, PHASE 1
(5300 SERIES)**

THIS AMENDED AND RESTATED TRACT DECLARATION, CORAL CANYON, PHASE 1 (5300 SERIES) (the "Restated Tract Declaration") is dated as of July 16, 2002 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. Declarant previously recorded the Tract Declaration, Coral Canyon, Phase 1 (5300 Series), dated March 1, 2000, and recorded March 21, 2000, as Entry No. 00679604, in Book 1363, beginning at page 1124, records of Washington County, Utah (the "Original Tract Declaration"). The Original Tract Declaration was recorded pursuant to **Section 3.2** of the Master Declaration.

B. The Original Declaration provided for the formation of a separate Subsidiary Association to perform certain duties as set forth in the Original Tract Declaration. As of the date of this Restated Tract Declaration, the Subsidiary Association has not been formed.

C. Pursuant to **Section 3.9** of the Master Declaration, the Master Residential Association (defined and referred to in this Restated Tract Declaration as the Association) is empowered to act as a subsidiary association for property that is subject to a Tract Declaration if the Tract Declaration so provides.

D. Declarant intends to develop the Covered Property as a planned unit development that will qualify for Government Backed Financing through the Federal Housing Administration (the "FHA") and the Veterans Administration (the "VA"). In order to obtain FHA and VA approval of the Covered Property, the FHA and the VA require that a property owner's association be formed and have certain duties. To simplify administration of the Covered Property, Declarant intends for the Association to act as the Subsidiary Association for the Covered Property in accordance with the terms of this Restated Tract Declaration and **Section 3.9** of the Master Declaration, thus satisfying the requirements of the FHA and the VA. Declarant is authorized to enter into this First Amendment pursuant to the authority in **Section 10.4** of the Original Tract Declaration.

E. SITLA is joining in this Restated Tract Declaration pursuant to **Section 5.8(c)** of the Development Lease and **Section 2.5** of the Master Declaration.

F. Declarant intends that the Covered Property shall be held, sold, and conveyed subject to the easements, restrictions, covenants, and conditions in this Restated 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.

G. Capitalized terms used in this Restated Tract Declaration and not otherwise defined in the Restated Tract Declaration shall have the meanings given to such terms in the Master Declaration.

H. As of the date of recordation of this Restated 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 (collectively, the "**5300 Series HOA Tracts**"), CORAL CANYON, PHASE 1, recorded in Book 1363, page 1078, records of Washington County, Utah.

NOW, THEREFORE, DECLARANT declares, covenants and agrees that the Original Tract Declaration is hereby amended and restated in its entirety as follows, with the Original Tract Declaration, as amended and restated in this Restated Tract Declaration being ratified and confirmed and continuing in full force and effect:

ARTICLE 1 DEFINITIONS

1.1 "**5300 Series Member**" means any Owner holding a 5300 Series Membership in the Association.

1.2 "**5300 Series Membership**" means a membership in the Association and the rights granted to the 5300 Series Members pursuant to this Restated Tract Declaration, the Master Declaration, and the Articles and Bylaws.

1.3 "**Annual Assessment**" means the regular annual assessments levied by the Board with respect to the Covered Property pursuant to **Section 8.2**.

1.4 "**Articles**" means the Articles of Incorporation of the Association, as amended from time to time.

1.5 "**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 Restated Tract Declaration with respect to the Covered Property.

1.6 "**Assessment Lien**" means the lien created and imposed by **Section 8.1**.

1.7 "**Assessment Period**" means the term set forth in **Section 8.4**.

1.8 "**Association**" means Coral Canyon Master Residential Owners Association, a Utah nonprofit corporation.

1.9 "**Board**" means the Board of Directors of the Association.

1.10 "Bylaws" means the Bylaws of the Association, as amended from time to time.

1.11 "Class A 5300 Series Member" means all 5300 Series Members other than the Class B 5300 Series Member.

1.12 "Class A 5300 Series Membership" means a 5300 Series Membership held by a Class A 5300 Series Member.

1.13 "Class B 5300 Series Member" means Declarant, as the Owner of Lots within the Covered Property.

1.14 "Class B 5300 Series Membership" means a 5300 Series Membership held by a Class B 5300 Series Member.

1.15 "Common Areas" means the following, to the extent located within the Covered Property and intended for the exclusive use and enjoyment of the Owners and Residents: 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 Association has been granted and accepted easements or other obligations for construction, maintenance or repair, during the time as the Association has such easements or other obligations. As of the date of this Restated Tract Declaration, the Common Areas consist of the 5300 Series HOA Tracts.

1.16 "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.

1.17 "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.

1.18 "Exempt Property" means the Common Areas, for as long as the Association is the owner thereof.

1.19 "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.

1.20 "Master Declaration" means the Amended and Restated Residential Declaration of Covenants, Conditions, and Restrictions for Coral Canyon, dated February 21, 2002, and recorded April 3, 2002, as Entry No. 00759602, Book 1459, beginning at page 1213, records of Washington County, Utah, as amended by First Amendment to Amended and Restated Residential Declaration of Covenants, Conditions, and Restrictions for Coral Canyon, dated _____, 2002, and recorded _____, 2002, as Entry No. _____, Book _____, beginning at page _____, records of Washington County, Utah, as further amended or supplemented from time to time.

1.21 **"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. A 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.

1.22 **"Resident"** means:

- (a) Each tenant or lessee of an Owner actually residing on any Lot, and
- (b) The 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 Common Areas if the 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.

1.23 **"Restated Tract Declaration"** means this Restated Tract Declaration, as it may be amended from time to time.

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

1.25 **"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.

1.26 **"Special Assessment"** means any assessment levied and assessed with respect to any of the Covered Property pursuant to **Section 8.3**.

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

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 Restated Tract Declaration. This Restated 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, and the Covered Property is "Covered Property" within the meaning of the Master Declaration. This Restated

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 Restated Tract Declaration shall run with the Covered Property for all purposes and shall be binding upon and inure to the benefit of Declarant, the 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 Association and its associated privileges and responsibilities, but shall nevertheless be subject to all other provisions of this Restated Tract Declaration. The Board may restrict or prohibit the use of the Common Areas (except any rights-of-way or drainage areas owned by the 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 Association Bound. This Restated Tract Declaration shall be binding upon and shall inure to the benefit of the 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 Restated Tract Declaration, the Master Declaration, the Rules, the Articles and the Bylaws. Any violation of these documents shall be default under the lease. A Owner shall notify the Association regarding the existence of all leases. The Owner shall remain liable for compliance with the Restated Tract Declaration, the Master Declaration, the 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 Restated 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 Restated Tract Declaration, SITLA joins in and consents to this Restated 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 Restated Tract Declaration, subject to the limitations of **Section 8.10**. Any other provision of this Restated Tract Declaration to the contrary notwithstanding, unless Declarant specifically assigns to SITLA, and SITLA specifically assumes, the rights and obligations of Declarant under this Restated 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 5300 Series 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 Restated 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 Restated Tract Declaration, be deemed to be the fee owner of such Covered Property and the Owner of such Covered Property for all purposes of this Restated 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 Restated Tract Declaration.

**ARTICLE 3
LAND USE CLASSIFICATIONS**

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

- (a) Single Family Residential. The Land Use Classification for the Lots is "Single Family Residential".
- (b) Common Area. The Land Use Classification for the 5300 Series HOA Tracts is "Subsidiary Common Area".

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

3.2 Conveyance of Common Areas. Following recordation of this Restated Tract Declaration, Declarant shall convey the Common Areas to the Association and the Association shall hold such Common Areas as Subsidiary Common Areas and not as Coral Canyon Residential Common Areas, as provided in **Section 3.9** of the Master Declaration. From time to time, Declarant may convey easements, leaseholds, or other real property within the Covered Property to the Association and upon such conveyance or dedication to the Association, such property shall be deemed a part of the Common Areas accepted by the Association and thereafter shall be maintained by the Association for the benefit of all the 5300 Series 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 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 Common Areas so long as they remain Residents. The foregoing grant and rights are subject to the following limitations:

(a) The right of the Association to charge reasonable Special Use Fees for the use of the 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 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 Common Areas so that all of the costs of operating such selected 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 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 Association to suspend the voting rights and right to use and enjoy the recreational portions of the 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 Restated Tract Declaration, the Master 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 Association to regulate the use of the Common Areas through the Rules and to prohibit access to those Common Areas, such as landscaped areas, not intended for use by the Owners or Residents.

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

4.2 Procedure for Changes to Common Areas. Subject to the provisions of **Section 4.3**, 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 Common Areas is in the best interests of the 5300 Series Member, and (2) the approval of such resolution by a majority of the votes of each class of 5300 Series Members who are voting at a meeting of the 5300 Series Members duly called for such purpose, the Board shall have the power and right to:

(a) Change the use of any of the 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 Common Areas to any public authority or utility; and

(c) Change the size, shape or location of the Common Areas, to exchange the Common Areas for other property or interests which become Common Areas, and to abandon or otherwise transfer 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 5300 Series Members (and a meeting of the 5300 Series 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 5300 Series Member or more than 10% of the Class A 5300 Series Members eligible to vote.

4.3 Restrictions on Encumbering or Conveying Common Area. Any other provision of this Restated Tract Declaration to the contrary notwithstanding, none of the Common Areas shall be subjected to the lien of any mortgage or deed of trust nor conveyed by the Association to any other person or entity unless such action has first been approved by at least 67% of the authorized votes of each class of 5300 Series Members (including votes otherwise eligible to be cast but not represented personally or by valid proxy at such meeting) at a meeting duly called for such purpose.

4.4 Easements for Encroachments. Each Lot, the 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 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 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, 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.

4.5 Right of Ingress and Egress. The Declarant, the 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 Association's, and the Board's respective rights, duties and obligations under this Restated Tract Declaration, including repairing, maintaining and replacing the Common Areas, the improvements thereon, and other areas maintained by the Association.

4.6 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 Restated Tract Declaration or any Tract Declaration, by waiver of any rights of use or enjoyment of the Common Areas.

4.7 Disposition on Dissolution of Association. Any other provision of the Restated Tract Declaration, the Articles, or the Bylaws to the contrary notwithstanding, upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which the Association was empowered pursuant to this Restated Tract Declaration. If such dedication is refused acceptance, the assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust, or other organization to be devoted to such similar purposes.

ARTICLE 5 USE RESTRICTIONS

5.1 General Covenants. Except as otherwise expressly provided in this Restated 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 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 Association may enter into landscape maintenance contracts with third parties to perform such landscape maintenance. The costs incurred by the Association pursuant to this **Section 5.1(c)** are authorized Association expenses.

ARTICLE 6 THE ASSOCIATION

6.1 Association's Rights and Powers As Set Forth the Restated Tract Declaration, the Articles and Bylaws. The Association shall have such rights and powers as are set forth in this Restated Tract Declaration, which shall include all rights and powers as may be reasonably necessary in order to effect the purposes of the Association as set forth in this Restated Tract Declaration.

6.2 Contracts with Others for Performance of Association's Duties. Subject to the restrictions and limitations contained in this Restated Tract Declaration, the Association may enter into contracts and transactions with others, including Declarant and its affiliated companies, with respect to the Common Areas, 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 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 5300 Series Member, any professional management contract entered into by the Association with respect to the Common Areas must be terminable with or without cause, upon no more than 90 days written notice and without payment of any penalty.

6.3 Covered Property Funds.

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

(b) Obligation to Maintain Covered Property Funds Separately. All Covered Property Funds shall be maintained in accounts separate from, and shall be accounted for separately from, all other Association funds.

(c) Borrowing Power. The Association may borrow money in connection with its obligations with respect to the Covered Property 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 5300 Series Members who are voting at a meeting duly called for such purpose.

(d) Association's Rights in Spending Covered Property Funds From Year to Year. The Association shall not be obligated to spend in any year all Covered Property Funds 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 Association shall not be obligated to reduce the amount of a Assessment in the succeeding year if a surplus exists from a prior year, and the 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 Association, with respect to its duties and obligations pursuant to this Restated Tract Declaration and the accomplishment of its purposes as they relate to the Covered Property.

6.4 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 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 Association for the benefit of the Owners. 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 Association, for the benefit of the Owners, or distribute pro rata 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 5300 Series Membership.

6.5 Maintenance.

(a) Maintenance by the Association.

(i) The Association, or its duly delegated representative, shall maintain and otherwise manage all 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 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 Association and the Owners.

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

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 Common Areas, structures and other property maintained by the 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.

6.6 Insurance.

(a) Authority to Purchase. The Association shall maintain insurance against liability incurred as a result of death or injury to persons or damage to property on the Common Areas, or as a result of Association activities pursuant to this Restated Tract Declaration, in a total amount of not less than \$1,000,000. The Association may also maintain property insurance with respect to the Common Area improvements, as the Association may determine from time to time.

(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 Association in the event of damage to the improvements or fixtures on the Common Areas. Neither the 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 Association or if the amount of insurance is not adequate.

(c) Insurance Claims. The Association is hereby irrevocably appointed and authorized by the Owners to adjust all claims arising under insurance policies purchased by the Association with respect to the Covered Property and its activities under this Restated Tract Declaration 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 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 Association. All proceeds from insurance acquired by the Association pursuant to **Section 6.6(a)** shall be payable to the Association. Any proceeds resulting from damage to the Common Areas shall be used to repair the damage, unless otherwise approved by a majority of the votes of each class of 5300 Series Members who are voting at a meeting called for such purpose. Any excess proceeds may be retained by the Association as reserves or to reduce future Assessments or, if distributed to the 5300 Series Members, such proceeds shall be distributed to the 5300 Series Members and their mortgagees as their interests may appear at a uniform rate per 5300 Series Membership.

6.7 Reserve Funds. From the Annual Assessments received by the 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 Common Areas and for other Association purposes relating to the Covered Property.

6.8 Rules. The Board may, from time to time and subject to the provisions of this Restated Tract Declaration, adopt, amend and repeal rules and regulations, which may be known as the Rules. The Rules may restrict and govern the use of the Common Areas by any Owner or Resident, by the family of such Owner or 5300 Series Member, or by any invitee, licensee or tenant of such Owner or 5300 Series Member, and such Rules may also deal with and regulate all other aspects of the Association's rights, activities, and duties with respect to the Covered Property; *provided, however*, that the Rules shall not discriminate among 5300 Series Members and shall not be inconsistent with this Restated Tract Declaration, the Master 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 Restated Tract Declaration. Copies of the Rules shall be available for inspection at the office of the Association during reasonable business hours.

6.9 Personal Liability. No Board member, committee member, officer or employee of the Association shall be personally liable to any 5300 Series Member or to any other person or entity, including the 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 6.9 shall not apply to any person who has failed to act in good faith or has engaged in intentional or willful misconduct.

6.10 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 Restated Tract Declaration and the Rules, and such persons shall not be deemed guilty of trespass by reason of such entry. In addition, the 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 VOTING

7.1 Voting. Voting with respect to any matters relating to the Covered Property and this Restated Tract Declaration shall be limited to only the 5300 Series Members but shall otherwise be in accordance with the provisions of Article 8 of the Master Declaration and the Articles and Bylaws, as if such provisions only applied to the 5300 Series Members, with the following exception: Solely for the purposes of voting with respect to any matters relating to the Covered Property and this Restated Tract Declaration, the Class B 5300 Series Membership of the Class B 5300 Series Member shall cease and be converted to Class A 5300 Series Membership on the happening of the first of the following events:

- (a) The date that the total votes outstanding in the Class A 5300 Series Membership of the Class A 5300 Series Members equals the total votes outstanding in the Class B 5300 Series Membership of the Class B 5300 Series Member; or
- (b) Five (5) years from the date of the recording of this Restated Tract Declaration.

7.2 Memberships Appurtenant to Ownership. Each 5300 Series Membership shall be appurtenant to and may not be separated from ownership of the Lot to which the 5300 Series Membership is attributable. There shall be only be the number of 5300 Series Memberships for each Lot, which 5300 Series Memberships shall be shared by any joint owners of, or owners of undivided interests in, a Lot.

Any other provision of this Restated 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 5300 Series Membership and charged only one Annual Assessment.

**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 pay to the Association all Assessments levied against such Owner's Lot. Each Assessment which is the obligation of an Owner hereunder, together with interest, costs, collection agency fees, and reasonable attorneys' fees of the Association incurred in connection with the enforcement and collection thereof or in otherwise enforcing this Restated Tract Declaration, shall be a charge and continuing servitude and Assessment Lien upon the Lot against which each such Assessment 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 5300 Series 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 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 Association.

8.2 Annual Assessments.

(a) Establishment of Annual Assessments. In order to provide funds for the uses and purposes specified in this Restated 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 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 Association's obligations under this Restated Tract Declaration and providing for the uses and purposes specified in this Restated 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 5300 Series Membership.

8.3 Special Assessments for Capital Improvements and Extraordinary Expenses. In addition to the Annual Assessment authorized above, the 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 Common Areas, including fixtures and personal property related thereto, or for the purpose of defraying other extraordinary expenses related to the Common Areas, provided that any such assessment shall have the assent of at least two-thirds of the votes of each class of 5300 Series 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 Restated 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 5300 Series Members approving the Special Assessment. The failure of the Association to send a bill to a 5300 Series Member shall not relieve any 5300 Series Member of such 5300 Series Member's liability for any Assessment or charge under this Restated Tract Declaration, but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the 5300 Series Member has been given not less than 15 days written notice prior to such foreclosure or enforcement at the address of the 5300 Series Member on the records of the 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 5300 Series Member shall be obligated to inform the Association in writing of any change of address. The Association shall be under no duty to refund any payments received by it even though the ownership of a 5300 Series Membership changes during a Assessment Period. Successor Owners shall be given credit for prepayments, on a prorated basis, made by prior Owners. In case the Owner of a 5300 Series Membership becomes liable for payment of an increased sum pursuant to **Section 8.2(b)** during the Assessment Period, such Owner shall notify the Association but such Owner's failure to notify the 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 5300 Series Member shall be liable for all costs, including attorneys' fees, which may be incurred by the 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 a Assessment is delinquent and constitutes a Assessment Lien and may establish a fixed fee to reimburse the Association for the 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 Association secured by the Assessment Lien. The 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 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 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 Restated 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 5300 Series Memberships for such Exempt Property.

8.9 Declarant's Exemption.

(a) General Exemption. Anything in this Restated 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 Association and the 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 Association are greater than the revenues of the 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 5300 Series 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 8.9** 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.

8.11 Master Declaration Assessments. The Assessments provided for in this Restated Tract Declaration are in addition to any "Assessments" levied and payable pursuant to the Master Declaration.

ARTICLE 9 ENFORCEMENT OF TRACT DECLARATION

9.1 Enforcement of Provisions of This and Other Instruments. The 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 Restated Tract Declaration 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 Restated Tract Declaration, or (b) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association or by Declarant. The 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 Common Areas as provided in this Restated Tract Declaration. If suit is brought or an attorney is retained to enforce the terms of this Restated 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 Association is the prevailing party, the above-described fines and also the 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 Association shall fail or refuse to enforce this Restated 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 Association's Remedies to Enforce Payment of Assessments. If any 5300 Series Member fails to pay any Assessments when due, the 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 Association does not prejudice or waive its right to exercise the other remedy):

- (a) Bring an action at law and recover judgment against the 5300 Series 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 Association may bid on the subject property at such a foreclosure sale.

Notwithstanding subordination of a Assessment Lien as described in **Section 9.3**, the delinquent 5300 Series Member shall remain personally liable for the Assessments and related costs after such Owner's 5300 Series 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 Restated 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 Restated Tract Declaration is and 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 Restated Tract Declaration shall thereupon terminate. Any Association funds relating to the Covered Property remaining following such termination and dissolution shall be distributed to the 5300 Series Members and their mortgagees as their interests may appear at a uniform rate per 5300 Series Membership.

10.2 Amendment of Tract Declaration. This Restated 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 5300 Series 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 5300 Series Member, this Restated 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 Restated Tract Declaration may not be amended to reduce or alter the rights of Declarant without the approval of Declarant. Declarant alone may amend this Restated 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 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 Restated Tract Declaration 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.

10.4 Special Provisions Relating to Government Backed Financing. Any other provision of this Restated Tract Declaration, the Articles, or the Bylaws to the contrary notwithstanding, if any of the Covered Property has been qualified to participate in Government Backed Financing, then at all times thereafter and so long as there is a Class B 5300 Series Membership outstanding with respect to the Covered Property, the following actions shall require the prior written approval of both the FHA and the VA:

- (a) Any amendment to this Restated Tract Declaration;
 - (b) Any dedication of any Common Area to the public;
 - (c) Subjecting any of the Common Area to the lien of any mortgage or deed of trust;
- or
- (d) Annexation of any real property to the Covered Property under the Tract Declaration, other than Coral Canyon Property.

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 Restated 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 Restated Tract Declaration.

11.2 Severability. Any determination by any court of competent jurisdiction that any provision of this Restated 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 Restated Tract Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Restated Tract Declaration.

11.4 Declarant's Disclaimer of Representations. Anything to the contrary in this Restated 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 Restated 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 Restated Tract Declaration. Any Owner acquiring a Lot in the Covered Property in reliance on one or more of the provisions in this Restated 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 Restated Tract Declaration by reference to this Restated Tract Declaration; but regardless of whether any such reference is made in any deed or instrument, each and all of the provisions of this Restated 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.

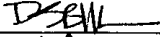
11.7 Gender and Number. Wherever the context of this Restated Tract Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; 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 Restated 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 Restated Tract Declaration to "Articles" and "Sections" are to the Articles and Sections in this Restated Tract Declaration, unless otherwise expressly noted.

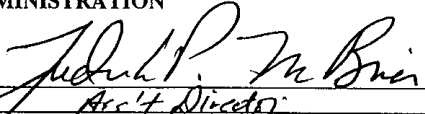
11.9 Notices. If notice of any action or proposed action by the Board or of any committee or of any meeting is required by applicable law, this Restated Tract Declaration or resolution of the Board to be given to any Owner or Resident then, unless otherwise specified herein or in the resolution of the 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 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 Association.

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

SUNCOR DEVELOPMENT COMPANY,
an Arizona corporation,

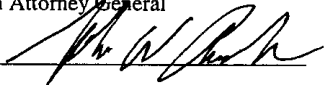
By: 
Its: V.P.

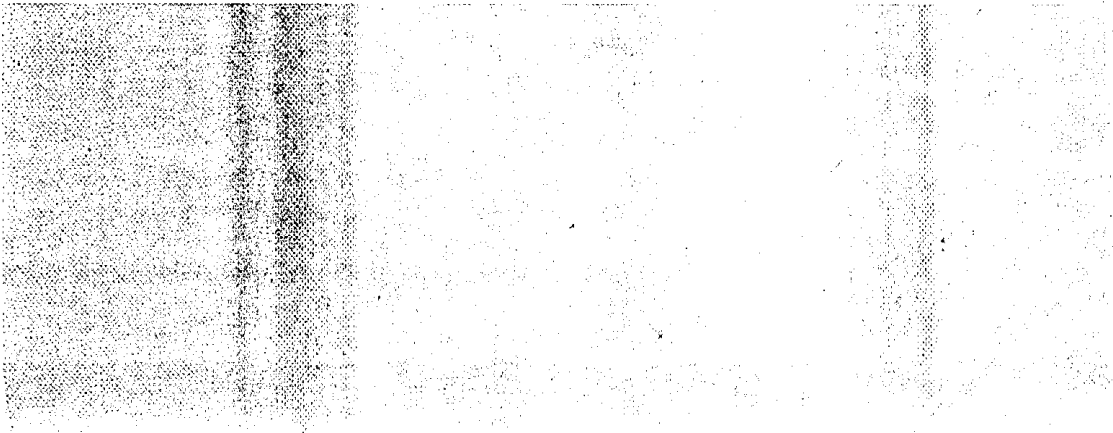
**THE STATE OF UTAH, ACTING THROUGH THE
SCHOOL AND INSTITUTIONAL TRUST LANDS
ADMINISTRATION**

By: 
Its: Asst Director

Approved as to Form:

Mark L. Shurtleff
Utah Attorney General

By: 



STATE OF ARIZONA)
)ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 9th day of July, 2002, by Duane S. Black, the Vice President of SUNCOR DEVELOPMENT COMPANY, an Arizona corporation, on behalf of the corporation.

My Commission Expires: 4-30-05
Gail Sanchez
NOTARY PUBLIC
OFFICE RESIDING at Phoenix, Arizona
GAIL SANCHEZ
NOTARY PUBLIC • STATE OF ARIZONA
MARICOPA COUNTY
My Comm. Expires April 30, 2005

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

The foregoing instrument was acknowledged before me this 16 day of July, 2002, by Frederick P. McBrner, the Acting 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: 5-1-2004
Peggy L. Critchlow
NOTARY PUBLIC
Residing at SLC

