

AFTER RECORDING PLEASE RETURN TO:

Greg R. Nielsen, Esq.
Snell & Wilmer
15 West South Temple, Suite 1200
Salt Lake City, Utah 84101

00734232 Bk 1425 Pg 1400
RUSSELL SHIRTS * WASHINGTON CO RECORDER
2001 SEP 06 12:03 PM FEE \$40.00 BY KD
FOR: SNELL & WILMER

AMENDED AND RESTATED TRACT DECLARATION PETROGLYPHS OF CORAL CANYON, PHASE 1

THIS AMENDED AND RESTATED TRACT DECLARATION (the "Tract Declaration") is dated as of August 30, 2001 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 is the owner of that portion of Coral Canyon Property that is legally described on Exhibit A to this Tract Declaration (the "Petroglyphs Property"). The Petroglyphs Property has been subdivided and is now legally described as follows:

Lots 368 through 411, inclusive (collectively, the "Petroglyphs Lots"), and HOA Tracts "A", "B", and "C" (such tracts being referred to herein as the "Petroglyphs HOA Tracts"), according to the Final Plat of Petroglyphs of Coral Canyon, recorded February 22, 2001, as Entry No. 711818, in Book 1396, page 1622, records of Washington County, Utah, as amended by SunCor Development Co. recorded SEPTEMBER 5, 2001, as Entry No. 734056, in Book 1425, page 0812, records of Washington County, Utah.

B. Pursuant to a Declaration of Annexation, Petroglyphs of Coral Canyon, dated February 20, 2001 and recorded February 22, 2001, as Entry No. 00711819, Book 1396, beginning at page 1623, records of Washington County, Utah, as amended by an Amendment to the Declaration of Annexation, Petroglyphs of Coral Canyon Phase 1, dated July 25, 2001 and recorded July 25, 2001, as Entry No. 00729062, Book 1418, beginning at page 2768, records of Washington County, Utah (collectively, the "Original Petroglyphs Tract Declaration"), the Petroglyphs Property was subjected to the Master Declaration.

C. Declarant is currently the lessee of all of the Petroglyphs Property pursuant to the Development Lease and entered into the Original Petroglyphs Tract Declaration pursuant to Section 5.8(c) of the Development Lease. As current fee owner of the Petroglyphs Property, SITLA joined in the Original Petroglyphs Tract Declaration pursuant to Section 5.8(c) of the Development Lease.

D. Declarant currently owns all of the Petroglyphs Lots and is currently the sole Petroglyphs Member with respect to the Petroglyphs Property. Pursuant to the terms of the Original Petroglyphs Tract Declaration and Section 11.2 of the Master Declaration, Declarant desires to amend and restate the Original Petroglyphs Tract Declaration as set forth in this Tract Declaration. SITLA is joining in this Tract Declaration pursuant to Section 5.8(c) of the Development Lease and Section 2.6 of the Master Declaration.

Nielseg\SLC\178277.2

E. Declarant intends that the Petroglyphs 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 Petroglyphs 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 Petroglyphs Property; and (4) shall inure to the benefit of all parties having any right, title, or interest in any part of the Petroglyphs Property, and their successors and assigns.

F. 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.

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

ARTICLE 1 DEFINITIONS

1.1 "Annual Petroglyphs Assessment" means the regular annual assessments levied by the Board with respect to the Petroglyphs Property pursuant to **Section 7.2**.

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

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

1.4 "Board" means the Board of Directors of the Association.

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

1.6 "Class A Petroglyphs Member" means all Petroglyphs Members other than the Class B Petroglyphs Member.

1.7 "Class B Petroglyphs Member" means Declarant, as the Petroglyphs Owner of Petroglyphs Lots within the Petroglyphs Property.

1.8 "Class A Petroglyphs Membership" means a Petroglyphs Membership held by a Class A Petroglyphs Member.

1.9 "Class B Petroglyphs Member" means a Petroglyphs Membership held by a Class B Petroglyphs Member.

1.10 "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 Petroglyphs Lot to a Petroglyphs Owner. The term Declarant shall include SITLA, but only as specifically provided in **Section 2.4**.

1.11 **"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.

1.12 **"Master Declaration"** means the Residential Declaration of Covenants, Conditions, and Restrictions for Coral Canyon, dated March 1, 2000 and recorded March 21, 2000, as Entry No. 00679603, Book 1363, beginning at page 1079, records of Washington County, Utah, as amended or supplemented from time to time.

1.13 **"Petroglyphs Assessment" or "Petroglyphs Assessments"** means an Annual Petroglyphs Assessment, Petroglyphs Special Assessment, Petroglyphs Special Use Fee, or any other fees, fines or charges assessed by the Board pursuant to this Tract Declaration with respect to the Petroglyphs Property.

1.14 **"Petroglyphs Assessment Lien"** means the lien created and imposed by Section 7.1.

1.15 **"Petroglyphs Assessment Period"** means the term set forth in Section 7.4.

1.16 **"Petroglyphs Common Areas"** means the following, to the extent located within the Petroglyphs Property and intended for the exclusive use and enjoyment of the Petroglyphs Owners and Petroglyphs 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 Tract Declaration, the Petroglyphs Common Areas consist of the Petroglyphs HOA Tracts.

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

1.18 **"Petroglyphs Lot"** means each portion of the Petroglyphs Property that is designated as a lot on a recorded subdivision plat of a portion of the Petroglyphs Property.

1.19 **"Petroglyphs Member"** means any Petroglyphs Owner holding a Petroglyphs Membership in the Association.

1.20 **"Petroglyphs Membership"** means a membership in the Association and the rights granted to the Members pursuant to this Tract Declaration, the Master Declaration, and the Articles and Bylaws.

1.21 **"Petroglyphs Owner"** means the record holder of legal, beneficial or equitable title to the fee simple interest of any Petroglyphs Lot, including, without limitation, one who is buying a Petroglyphs Lot under a recorded installment land sales contract, but excluding others who hold such title merely as security for the performance of an obligation. Petroglyphs Owner shall not include a lessee or tenant of a Petroglyphs Lot except as provided in Section 2.4. 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 Petroglyphs 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 Petroglyphs Owner. An Petroglyphs Owner shall include any person who holds record title to a Petroglyphs Lot in joint ownership with any other person or holds an undivided fee interest in any Petroglyphs Lot. Petroglyphs 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 "Petroglyphs Resident" means:

- (a) Each tenant or lessee of a Petroglyphs Owner actually residing on any Petroglyphs Lot, and
- (b) The members of the immediate family of each Petroglyphs Owner, lessee, and tenant actually living in the same household with such Petroglyphs 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 Petroglyphs Common Areas if the Association shall so direct), the term Petroglyphs Resident also shall include the onsite guests or invitees of any such Petroglyphs Owner, lessee, or tenant, if and to the extent the Board in its absolute discretion by resolution so directs.

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

1.24 "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.

1.25 "Petroglyphs Special Assessment" means any assessment levied and assessed with respect to any of the Petroglyphs Property pursuant to Section 7.3.

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

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

ARTICLE 2 PROPERTY SUBJECT TO DECLARATION

2.1 General Declaration. Declarant declares that all of the Petroglyphs 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, and the Petroglyphs Property is "Covered Property" within the meaning of 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 Petroglyphs Property and is established for the purpose of enhancing and perfecting the value, desirability and attractiveness of each portion of the Petroglyphs Property. This Tract Declaration shall run with the Petroglyphs Property for all purposes and shall be binding upon and inure to the benefit

of Declarant, the Association, all Petroglyphs Owners and Petroglyphs Residents and their respective successors in interest.

2.2 **Petroglyphs Exempt Property.** All Petroglyphs Exempt Property shall be exempt from Petroglyphs Assessments (except as provided in Section 7.8) and membership in the 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 Petroglyphs Common Areas (except any rights-of-way or drainage areas owned by the Association) by the Petroglyphs Owners of Petroglyphs Exempt Property. This Section may not be amended without the approval of any and all Petroglyphs Owners of Petroglyphs Exempt Property affected by the amendment.

2.3 **Association Bound.** This Tract Declaration shall be binding upon and shall inure to the benefit of the Association.

2.4 **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 Petroglyphs Property to all of the terms, covenants, conditions, easements, restrictions, servitudes, and other provisions of this Tract Declaration, subject to the limitations of Section 7.10. 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 Petroglyphs Member, and shall be subject to all of the obligations of Declarant under this Declaration, including those under Section 7.9. 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 Petroglyphs Property and Declarant is the lessee of such portion of the Petroglyphs Property, Declarant shall, solely for the purposes of this Tract Declaration, be deemed to be the fee owner of such Petroglyphs Property and the Petroglyphs Owner of such Petroglyphs Property for all purposes of this Tract Declaration. At such time as Declarant is no longer the lessee of any portion of the Petroglyphs Property and SITLA is the fee owner of such portion of the Petroglyphs Property, SITLA shall be deemed the Petroglyphs Owner of such portion of the Petroglyphs Property.

2.5 **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 Petroglyphs Property are established as follows:

(a) **Cluster Residential.** The Land Use Classification for the Petroglyphs Lots is "Cluster Residential".

(b) Petroglyphs Common Area. The Land Use Classification for the Petroglyphs HOA Tracts is "Petroglyphs Common Area".

The Land Use Classifications established by this Tract Declaration shall not be changed except as provided in Section 9.2.

ARTICLE 4 PETROGLYPHS COMMON AREAS; EASEMENTS

4.1 Conveyance of Petroglyphs Common Areas. Following recordation of this Tract Declaration, Declarant shall convey the Petroglyphs Common Areas to the Association and the Association shall hold such Petroglyphs Common Areas as Petroglyphs 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 Petroglyphs Property to the Association and upon such conveyance or dedication to the Association, such property shall be deemed a part of the Petroglyphs Common Areas accepted by the Association and thereafter shall be maintained by the Association for the benefit of all the Petroglyphs Members.

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

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

(b) The right of the Association to suspend the voting rights and right to use and enjoy the recreational portions of the Petroglyphs Common Areas by any Petroglyphs Owner or Petroglyphs Resident (i) for any period during which any Petroglyphs Assessment against such Petroglyphs Owner's or Petroglyphs Resident's Petroglyphs Lot remains delinquent; (ii) for a period not to exceed 60 days for any infraction of this Tract Declaration, the Master Declaration, or the Petroglyphs 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 Petroglyphs Common Areas through the Petroglyphs Rules and to prohibit access to those Petroglyphs Common Areas,

such as landscaped areas, not intended for use by the Petroglyphs Owners or Petroglyphs Residents.

(d) The right of the Association to change the use of Petroglyphs Common Areas and to change the size, shape or location of the Petroglyphs Common Areas as provided in Section 4.3.

4.3 Procedure for Changes to Petroglyphs Common Areas. Subject to the provisions of Section 4.4, 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 Petroglyphs Common Areas is in the best interests of the Petroglyphs Member, and (2) the approval of such resolution by a majority of the votes of each class of Petroglyphs Members who are voting at a meeting of the Petroglyphs Members duly called for such purpose, the Board shall have the power and right to:

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

(c) Change the size, shape or location of the Petroglyphs Common Areas, to exchange the Petroglyphs Common Areas for other property or interests which become Petroglyphs Common Areas, and to abandon or otherwise transfer Petroglyphs 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 Petroglyphs Owners of the proposed change of use and of their right to object thereto, and the proposed change shall be deemed approved by the Petroglyphs Members (and a meeting of the Petroglyphs 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 Petroglyphs Member or more than 10% of the Class A Petroglyphs Members eligible to vote.

4.4 Restrictions on Encumbering or Conveying Petroglyphs Common Area. Any other provision of this Tract Declaration to the contrary notwithstanding, none of the Petroglyphs 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 Petroglyphs 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.

4.5 Easements for Encroachments. Each Petroglyphs Lot, the Petroglyphs Common Areas, and all other areas within the Petroglyphs 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 Petroglyphs Common Areas encroaches upon any Petroglyphs Lot or other area, or if any such improvement on any Petroglyphs Lot or other area encroaches upon any portion of the Petroglyphs Common Areas, or if any such improvement on any Petroglyphs Lot or other area encroaches upon another Petroglyphs Lot or other area, a valid easement for said encroachments and for the maintenance thereof shall exist. If any structure on any Petroglyphs Lot, Petroglyphs 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.

4.6 Right of Ingress and Egress. The Declarant, the Association, and the Board shall each have an easement upon, across, over and under the Petroglyphs Lots and all other areas in the Petroglyphs 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 Tract Declaration, including repairing, maintaining and replacing the Petroglyphs Common Areas, the improvements thereon, and other areas maintained by the Association.

4.7 Waiver of Use. No Petroglyphs Owner shall be exempted from personal liability for Petroglyphs Assessments, or the Petroglyphs Owner's Petroglyphs 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 Petroglyphs Common Areas.

4.8 Disposition on Dissolution of Association. Any other provision of the 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 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 THE ASSOCIATION

5.1 Association's Rights and Powers As Set Forth the Tract Declaration, the Articles and Bylaws. The Association shall have such rights and powers as are set forth in this 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 Tract Declaration.

5.2 Petroglyphs Property Funds.

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

(b) Obligation to Maintain Petroglyphs Property Funds Separately. All Petroglyphs 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 Petroglyphs 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 Petroglyphs Members who are voting at a meeting duly called for such purpose.

(d) Association's Rights in Spending Petroglyphs Property Funds From Year to Year. The Association shall not be obligated to spend in any year all Petroglyphs Property Funds received by it in such year (whether by way of Annual Petroglyphs Assessments, Petroglyphs 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 Petroglyphs 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 Tract Declaration and the accomplishment of its purposes as they relate to the Petroglyphs Property.

5.3 Maintenance.

(a) Maintenance by the Association.

(i) The Association, or its duly delegated representative, shall maintain and otherwise manage all Petroglyphs Common Areas and the improvements thereon.

(ii) The Board shall use a reasonably high standard of care in providing for the repair, management and maintenance of the Petroglyphs Common Areas, but the Board shall be the sole judge as to the appropriate maintenance of all such areas. The Petroglyphs 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 Petroglyphs Common Areas, structures and other property maintained by the Association is caused through the intentional or negligent act of any Petroglyphs Owner, or that Petroglyphs Owner's family, guests or tenants or any Petroglyphs Resident on such Petroglyphs Owner's Petroglyphs Lot, the cost of such maintenance or repairs shall be added to and become a part of the Petroglyphs Assessment to which such Petroglyphs Owner and the Petroglyphs Owner's Petroglyphs Lot is subject and shall be secured by the Petroglyphs Assessment Lien.

5.4 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 Petroglyphs Common Areas, or as a result of Association activities pursuant to this Tract Declaration, in a total amount of not less than \$1,000,000. The Association may also maintain property insurance with respect to the Petroglyphs Common Area improvements, as the Association may determine from time to time.

(b) Individual Responsibility. It shall be the responsibility of each Petroglyphs Owner and Petroglyphs Resident to provide for such Petroglyphs Owner's or Petroglyphs Resident's own insurance with respect to (i) such Petroglyphs Owner's or Petroglyphs Resident's

property interests within the Petroglyphs Property, including, but not limited to, such Petroglyphs Owner's or Petroglyphs Resident's additions and improvements thereon, furnishings and personal property therein, (ii) such Petroglyphs Owner's or Petroglyphs 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 Petroglyphs 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 Petroglyphs Owners to adjust all claims arising under insurance policies purchased by the Association with respect to the Petroglyphs Property and its activities under this 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 5.4(a) shall be payable to the Association. Any proceeds resulting from damage to the Petroglyphs Common Areas shall be used to repair the damage, unless otherwise approved by a majority of the votes of each class of Petroglyphs 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 Petroglyphs Assessments or, if distributed to the Petroglyphs Members, such proceeds shall be distributed to the Petroglyphs Members and their mortgagees as their interests may appear at a uniform rate per Petroglyphs Membership.

5.5 **Reserve Funds.** From the Annual Petroglyphs 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 Petroglyphs Common Areas and for other Association purposes relating to the Petroglyphs Property.

5.6 **Petroglyphs 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 the Petroglyphs Rules. The Petroglyphs Rules may restrict and govern the use of the Petroglyphs Common Areas by any Petroglyphs Owner or Petroglyphs Resident, by the family of such Petroglyphs Owner or Petroglyphs Member, or by any invitee, licensee or tenant of such Petroglyphs Owner or Petroglyphs Member, and such Petroglyphs Rules may also deal with and regulate all other aspects of the Association's rights, activities, and duties with respect to the Petroglyphs Property; *provided, however*, that the Petroglyphs Rules shall not discriminate among Petroglyphs Members and shall not be inconsistent with this Tract Declaration, the Master Declaration, the Articles or the Bylaws. Upon adoption, the Petroglyphs 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 Petroglyphs Rules shall be available for inspection at the office of the Association during reasonable business hours.

5.7 **Right of Entry and Inspection.** During reasonable hours and upon reasonable notice to the Petroglyphs Owner or other occupant of a Petroglyphs 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 Petroglyphs 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 and the Petroglyphs 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 Petroglyphs 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 6 VOTING

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

(a) The date that the total votes outstanding in the Class A Petroglyphs Membership of the Class A Petroglyphs Members equals the total votes outstanding in the Class B Petroglyphs Membership of the Class B Petroglyphs Member; or

(b) Five (5) years from the date of the recording of this Tract Declaration.

ARTICLE 7 COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

7.1 Creation of Lien and Personal Obligation for Petroglyphs Assessments and Maintenance Charges. Declarant, for each Petroglyphs Lot, hereby covenants and agrees, and each Petroglyphs 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 Petroglyphs Assessments levied against such Petroglyphs Owner's Petroglyphs Lot. Each Petroglyphs Assessment which is the obligation of a Petroglyphs 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 Tract Declaration, shall be a charge and continuing servitude and Petroglyphs Assessment Lien upon the Petroglyphs Lot against which each such Petroglyphs Assessment is made and against the Petroglyphs Lot of a Petroglyphs Owner or Petroglyphs Resident liable for a Petroglyphs Special Use Fee or other charge and, in addition, shall be the personal obligation of the Petroglyphs Owner of such Petroglyphs Lot at the time when such payment becomes due and payable. The Annual Petroglyphs Assessments and Petroglyphs Special Assessments against each Petroglyphs Lot shall be based on the number of Petroglyphs Members appurtenant to the Petroglyphs Lot. The personal obligation for delinquent Petroglyphs Assessments and other charges shall not pass to the successors in title of the Petroglyphs Owner unless expressly assumed by them, but the Petroglyphs Lot shall remain subject to the lien of the delinquent assessment except as provided in Section 8.3. No Petroglyphs Owner may waive or otherwise exempt such Petroglyphs Owner from liability for Petroglyphs Assessments, including, but not limited to, by non-use of Petroglyphs Common Areas or abandonment of such Petroglyphs Owner's Petroglyphs Lot. The obligation to pay Petroglyphs Assessments is a separate and independent covenant on the part of each Petroglyphs Owner. No diminution, abatement or set-off shall be allowed by reason of any action or failure to act of the Board or Association.

7.2 Annual Petroglyphs Assessments.

(a) Establishment of Annual Petroglyphs Assessments. In order to provide funds for the uses and purposes specified in Article 5 or otherwise in this Tract Declaration, in each year, commencing with the first Petroglyphs Assessment Period, the Board shall prepare and adopt a budget and shall assess against each Petroglyphs Lot an Annual Petroglyphs Assessment. Subject to the provisions of Section 7.2(b), the amount of the Annual Petroglyphs 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 Tract Declaration and providing for the uses and purposes specified in Article 5 and elsewhere in this Tract Declaration.

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

7.3 Petroglyphs Special Assessments for Capital Improvements and Extraordinary Expenses. In addition to the Annual Petroglyphs Assessment authorized above, the Association may levy a Petroglyphs 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 Petroglyphs Common Areas, including fixtures and personal property related thereto, or for the purpose of defraying other extraordinary expenses related to the Petroglyphs Common Areas, provided that any such assessment shall have the assent of at least two-thirds of the votes of each class of Petroglyphs 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 Petroglyphs Assessments for the aforesaid purposes.

7.4 Establishment of Petroglyphs Assessment Period. The period for which the Annual Petroglyphs Assessment is to be levied (the "Petroglyphs Assessment Period") shall be the calendar year, except that the first Petroglyphs 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 Petroglyphs Assessment Period.

7.5 Billing and Collection Procedures. The Board shall have the right to adopt procedures for the purpose of making, billing and collecting the Petroglyphs Assessments, provided that said procedures are not inconsistent with the provisions hereof. Annual Petroglyphs Assessments may be collected on a monthly, quarterly, semi-annual or annual basis as determined by the Board, and Petroglyphs Special Assessments may be collected as specified by the Board unless otherwise determined by the resolution of the Members approving the Petroglyphs Special Assessment. The failure of the Association to send a bill to a Petroglyphs Member shall not relieve any Petroglyphs Member of such Petroglyphs Member's liability for any Petroglyphs Assessment or charge under this Tract Declaration, but the Petroglyphs Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Petroglyphs Member has been given not less than 15 days written notice prior to such foreclosure or enforcement at the address of the Petroglyphs Member on the records of the Association, that the Petroglyphs 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 Petroglyphs 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 Petroglyphs Membership changes during a Petroglyphs Assessment Period. Successor Petroglyphs

Owners shall be given credit for prepayments, on a prorated basis, made by prior Petroglyphs Owners. In case the Petroglyphs Owner of a Petroglyphs Membership becomes liable for payment of an increased sum pursuant to Section 7.2(b) during the Petroglyphs Assessment Period, such Petroglyphs Owner shall notify the Association but such Petroglyphs Owner's failure to notify the Association shall not relieve such Petroglyphs Owner of the liability for such amounts.

7.6 Collection Costs and Interest on Delinquent Petroglyphs Assessment. Any Petroglyphs 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 Petroglyphs 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 Petroglyphs Lot as to which a Petroglyphs Assessment is delinquent and constitutes a Petroglyphs 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 Petroglyphs Assessment Lien. The Association shall not be obligated to release any notice recorded pursuant to this Section until all delinquent Petroglyphs 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.

7.7 Evidence of Payment of Petroglyphs 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 Petroglyphs Assessments and Petroglyphs Special Assessments and Petroglyphs Special Use Fees (including interest, costs and attorneys' fees, if any, as provided in Section 7.6) have been paid with respect to any specified Petroglyphs 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 Petroglyphs Lot in question.

7.8 Petroglyphs Exempt Property. Petroglyphs Exempt Property shall be exempt from the payment of Annual Petroglyphs Assessments and Petroglyphs Special Assessments, but such property shall not be exempt from fines, Petroglyphs Special Use Fees, attorneys' fees, costs and expenses as described in Section 7.6; or from the Petroglyphs Assessment Lien to secure said amounts; *provided, however,* that if any change of ownership or use of Petroglyphs 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 Petroglyphs Assessments and Petroglyphs Special Assessments (prorated as of the date it became Assessable Property), and the Petroglyphs Assessment Lien therefor. The Petroglyphs Owner of Petroglyphs Exempt Property shall not be entitled to any Petroglyphs Memberships for such Petroglyphs Exempt Property.

7.9 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 Petroglyphs Assessments upon Petroglyphs Lots owned by Declarant. Nor shall Declarant be liable for the payment of any Petroglyphs Assessments for any Petroglyphs 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 Petroglyphs Assessments, Declarant agrees that it shall pay, for any given Petroglyphs Assessment Period in which Declarant has paid or contributed to the Association less than the full Annual Petroglyphs Assessment for each Petroglyphs 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 Petroglyphs Common Areas, but only up to the full Annual Petroglyphs Assessment for each such Petroglyphs 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 Petroglyphs 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 Petroglyphs Assessments from those charged during any prior year nor for any shortfall or deficiency incurred after expiration of the Class B Petroglyphs 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 Petroglyphs Assessment for each Petroglyphs Lot owned by Declarant instead. The obligations of Declarant pursuant to this Section 7.9 are not Petroglyphs Assessments and are not subject to any Petroglyphs Assessment Lien.

7.10 **SITLA Exemption.** Anything in this Declaration to the contrary notwithstanding, SITLA shall not be liable for and shall not be required to pay Petroglyphs Assessments upon Petroglyphs Lots or Parcels owned by SITLA (regardless of whether or not SITLA is the "Petroglyphs Owner" thereof, as provided in Section 2.4, and regardless of whether or not SITLA is the Declarant, as provided in Section 2.4) and Petroglyphs Lots and Parcels owned by SITLA shall not be subject to any Petroglyphs Assessment Lien.

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

ARTICLE 8 ENFORCEMENT OF TRACT DECLARATION

8.1 **Enforcement of Provisions of This and Other Instruments.** The Association, as the agent and representative of the Petroglyphs Owners, shall have the right (without obligation) to enforce, by any proceeding at law or in equity, the terms of this Tract Declaration and the Petroglyphs 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 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 Petroglyphs 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 8.1, 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 a Petroglyphs Owner shall be the personal liability of the breaching Petroglyphs Owner and shall also be secured by the Petroglyphs Assessment Lien against said Petroglyphs Owner's Petroglyphs Lot. If the Association shall fail or refuse to enforce this Tract Declaration or any provision hereof for an unreasonable period of time after written request by a Petroglyphs Owner to do so, then any Petroglyphs

Owner may enforce the provisions of the Tract Declaration at such Petroglyphs Owner's own expense by any appropriate action, whether in law or in equity.

8.2 Association's Remedies to Enforce Payment of Petroglyphs Assessments. If any Petroglyphs Member fails to pay any Petroglyphs 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 Petroglyphs Member personally obligated to pay the Petroglyphs Assessment; or

(b) Foreclose the Petroglyphs Assessment Lien against the Petroglyphs 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 Petroglyphs 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 Petroglyphs Assessment Lien as described in Section 8.3, the delinquent Petroglyphs Member shall remain personally liable for the Petroglyphs Assessments and related costs after such Petroglyphs Owner's Petroglyphs Membership is terminated by foreclosure or deed in lieu of foreclosure or otherwise.

8.3 Subordination of Petroglyphs Assessment Lien. The Petroglyphs 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 Petroglyphs 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 Petroglyphs 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 Petroglyphs Lot. Sale or transfer of any Petroglyphs Lot shall not affect the Petroglyphs 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 Petroglyphs 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 Petroglyphs Lot free of the Petroglyphs Assessment Lien for all Petroglyphs 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 Petroglyphs Assessments accruing subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure.

ARTICLE 9 TERM; AMENDMENTS; TERMINATION

9.1 Term; Method of Termination. This 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 Tract Declaration shall thereupon terminate. Any Association funds relating to the Petroglyphs Property remaining following such termination and dissolution shall be distributed to the Petroglyphs Members and their mortgagees as their interests may appear at a uniform rate per Petroglyphs Membership.

9.2 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 9.1. 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 Petroglyphs 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 Petroglyphs Member, 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 9.4. 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 Petroglyphs Owner.

9.3 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 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 Petroglyphs 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 Petroglyphs Property and all persons having an interest therein.

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

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

**ARTICLE 10
MISCELLANEOUS**

10.1 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.

10.2 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.

10.3 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.

10.4 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 Petroglyphs 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.

10.5 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 Petroglyphs Owner acquiring a Petroglyphs Lot in the Petroglyphs 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 Petroglyphs Lot agrees that Declarant shall have no liability therefor.

10.6 References to the Covenants in Deeds. Deeds or any instruments affecting any part of the Petroglyphs 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 Petroglyphs Owner or other person claiming through any instrument and such Petroglyphs Owner's heirs, executors, administrators, successors and assigns.

10.7 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.

10.8 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 Tract Declaration, unless otherwise expressly noted.

10.9 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 Petroglyphs Owner or Petroglyphs 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 Petroglyphs 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 Petroglyphs 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 Tract Declaration as of the day and year first above written.

SUNCOR DEVELOPMENT COMPANY,
an Arizona corporation,

By: DSB
Its: V.P.

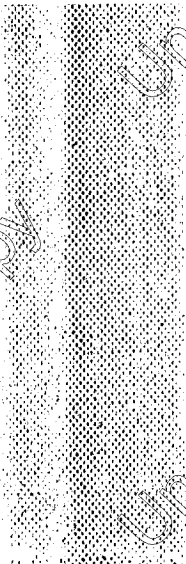
**THE STATE OF UTAH, ACTING THROUGH THE
SCHOOL AND INSTITUTIONAL TRUST LANDS
ADMINISTRATION**

By: [Signature]
Its: Acting Director

Approved as to Form:

Mark L. Shurtleff
Utah Attorney General

By: [Signature]

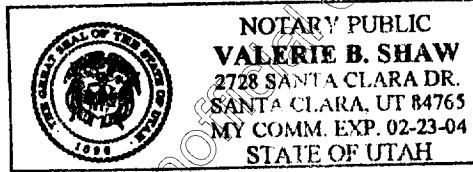


STATE OF ARIZONA)
)ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 30 day of August, 2001, by Duane Black, the V.P. of SUNCOR DEVELOPMENT COMPANY, an Arizona corporation.

My Commission Expires:
2-23-04

Valerie B. Shaw
NOTARY PUBLIC
Residing at Santa Clara



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

The foregoing instrument was acknowledged before me this 28 day of August, 2001, by Kevin S. Carter, 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

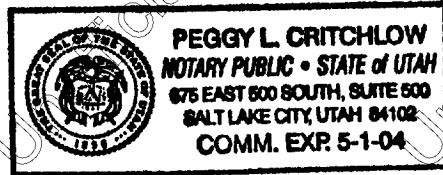


EXHIBIT A**LEGAL DESCRIPTION:**

The basis of bearings for the following legal description, recorded document, and subdivision is the west line of Section 5, Township 42 South, Range 14 West of the Salt Lake Base and Meridian from the southwest corner to the west quarter corner, both being brass caps. The bearing is North $01^{\circ}11'11''$ West and measures 2615.35 feet corner to corner.

All of Parcel "D" as shown on the official plat of "Coral Canyon Development, Phase I" recorded as Entry No. 679602 on March 21, 2000 in Book 1363, Page 1078 in office of the Washington County Recorder and that portion of Lot #288 of said subdivision which was removed from said lot by Washington City Resolution 2000-16 recorded as Entry No. 692353 on August 01, 2000 in Book 1375, Pages 2355-2357 in office of the Washington County Recorder, being more particularly described as follows:

Beginning at the northerly property corner common to Parcel "D" and Lot #289 of said subdivision, said point being North $00^{\circ}00'00''$ West 757.33 feet and North $90^{\circ}00'00''$ East 2,067.93 feet from the west quarter corner of Section 5, Township 42 South, Range 14 West of the Salt Lake Base and Meridian and running thence coincident with the westerly line of said Lot #289 and along the westerly right-of-way line of Desert Willow Lane, a 55.00 foot wide public road, South $26^{\circ}51'07''$ East 410.50 feet to the point of curvature of a 12.00 foot radius curve concave to the west; thence southerly 18.85 feet along the arc of said curve through a central angle of $90^{\circ}00'00''$ to the point of tangency, said point being on the northerly right-of-way line of Sweetwater Springs Drive, a 62.50 foot wide public road; thence along said northerly right-of-way line South $63^{\circ}08'53''$ West 275.48 feet to an angle point, at which point said public road reduces to 55.00 feet wide; thence continuing along said northerly right-of-way line South $63^{\circ}14'28''$ West 252.72 feet to the point of curvature of a 12.00 foot radius curve concave to the north; thence westerly 18.83 feet along the arc of said curve through a central angle of $89^{\circ}54'25''$ to the point of tangency, said point being on the easterly right-of-way line of Red Yucca Lane, a 55.00 foot wide public road; thence along said easterly right-of-way line North $26^{\circ}51'07''$ West 288.10 feet to a point on the northerly right-of-way line of Hidden Springs Drive, a 55.00 foot wide public road; thence along said northerly right-of-way line South $63^{\circ}04'20''$ West 14.03 feet to the southeasterly corner of Lot #288 of said subdivision as created by said resolution (Lot Line Adjustment); thence leaving said northerly right-of-way line, coincident with the adjusted easterly line of said lot North $26^{\circ}51'07''$ West 122.52 feet to the northeasterly corner of said lot; thence North $63^{\circ}08'55''$ East 14.03 feet to the northwesterly corner of said Parcel "D"; thence coincident with the northerly line of said parcel North $63^{\circ}12'04''$ East 552.18 feet to the northeasterly corner of said parcel and point of beginning. Contains 5.396 acres.