

When recorded, return to:

TATUM RANCH COMMUNITY ASSOCIATION  
29811 N. Tatum Boulevard  
Cave Creek, Arizona 85331  
Attention: Sean Bodkin



OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL  
2002-1240651 11/22/02 15:39  
1 OF 1

GONZALES.J

**FIFTH CERTIFICATE OF AMENDMENT TO  
AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR TATUM RANCH**

THIS FIFTH CERTIFICATE OF AMENDMENT TO AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TATUM RANCH (this "Certificate of Amendment") is made as of this 7th day of November, 2002, by TATUM RANCH COMMUNITY ASSOCIATION, an Arizona non-profit corporation (the "Association").

RECITALS:

A. Suncor Development Partners, an Arizona general partnership, as Declarant, previously recorded that certain Declaration of Covenants, Conditions and Restrictions, dated February 19, 1988, and recorded as Instrument No. 88-090390, Official Records of Maricopa County, Arizona (the "Original Declaration"). Thereafter, Declarant amended the Original Declaration pursuant to the terms of a First Amendment to Declaration of Covenants, Conditions and Restrictions for Tatum Ranch, dated May 16, 1988, and recorded as Instrument No. 88-239882, Official Records of Maricopa County, Arizona (the "First Amendment to Original Declaration"). Thereafter, Declarant appointed Suncor Development Company as successor Declarant ("Successor Declarant") as set forth in the Designation of Successor Declarant for Tatum Ranch, dated November 10, 1988, and recorded as Instrument No. 88-602338, Official Records of Maricopa County, Arizona. Thereafter, Successor Declarant caused the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Tatum Ranch, dated December 21, 1988, to be recorded as Instrument No. 88-625068, Official Records of Maricopa County, Arizona (the "Amended and Restated Declaration"). Thereafter, Successor Declarant amended the Amended and Restated Declaration pursuant to the terms of a First Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions for Tatum Ranch, dated September 22, 1998, and recorded as Instrument No. 98-0845209 (the "First Amendment to Amended and Restated Declaration"). Thereafter, the Association amended the Amended and Restated Declaration, as previously amended by the First Amendment to Amended and Restated Declaration, pursuant to the terms of a Second Certificate of Amendment to Amended and Restated Declaration for Tatum Ranch, dated December 20, 2000, and recorded as Instrument No. 2001-005626 (the "Second Certificate of Amendment to Amended and Restated Declaration"). Thereafter, Successor Declarant amended the Amended and Restated Declaration, as previously amended by the First Amendment to



Amended and Restated Declaration and Second Certificate of Amendment to Amended and Restated Declaration, pursuant to the terms of a Third Amendment to the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Tatum Ranch, dated March 1, 2001, and recorded as Instrument No. 2001-0160158 (the "**Third Amendment to Amended and Restated Declaration**"). Thereafter, the Association amended the Amended and Restated Declaration, as previously amended by the First Amendment to Amended and Restated Declaration, the Second Certificate of Amendment to Amended and Restated Declaration, and the Third Amendment to Amended and Restated Declaration, pursuant to the terms of a Fourth Certificate of Amendment to Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Tatum Ranch, dated November 14, 2000 and recorded as Instrument No. 2001-1139440 (the "**Fourth Certificate of Amendment to Amended and Restated Declaration**"). The Amended and Restated Declaration, as amended by the First Amendment to Amended and Restated Declaration, the Second Certificate of Amendment to Amended and Restated Declaration, the Third Amendment to Amended and Restated Declaration and the Fourth Certificate of Amendment to Amended and Restated Declaration shall be collectively referred to herein as the "**Declaration**".

B. Pursuant to the terms of Article XIII, Section 2 of the Declaration, the Declaration may be amended if Members casting seventy five percent (75%) of the authorized votes vote in favor of the amendment at an election held for such purpose.

C. Pursuant to the terms of Article XIII, Section 2 of the Declaration, if the necessary votes and approvals are obtained for the amendment to the Declaration, the Board of Directors of the Association may record with the County Recorder of Maricopa County, Arizona, a Certificate of Amendment, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. The Certificate of Amendment shall set forth in full the amendment adopted and shall certify that at an election duly called and held for such purpose pursuant to the Articles and Bylaws of the Association, the Members casting seventy-five percent (75%) of the votes cast at the election voted affirmatively for the adoption of the amendment.

D. The necessary votes for an amendment of the Declaration pursuant to the terms of this Certificate of Amendment have been obtained in accordance with the terms of Article XIII, Section 2 of the Declaration and the Association desires to amend the Declaration pursuant to the terms and conditions of this Certificate of Amendment.

NOW, THEREFORE, in consideration of the mutual agreements set forth herein, the Declaration is hereby amended as follows:

1. Architectural Committee. There shall be only one (1) Architectural Committee and any references in the Declaration to the "Residential Architectural Committee," the "Commercial Architectural Committee" or to two (2) Architectural Committees shall be amended to refer to the one (1) Architectural Committee authorized pursuant to this Certificate of Amendment. The Architectural Committee shall administer the Architectural Guidelines and Design Guidelines with respect to Commercial Areas and Residential Areas.



2. Definitions. Certain definitions set forth in the Declaration shall be amended as follows:

(a) Article I, Section E is hereby deleted in its entirety and replaced with the following:

"E. "Architectural Committee" shall mean the committee of the Association created pursuant to Article XI below."

(b) Article I, Section F is hereby deleted in its entirety and replaced with the following:

"F. "Architectural Guidelines" or "Design Guidelines" shall be established by the Architectural Committee and shall include design standards for the appearance and development of property in Tatum Ranch as well as the review and approval procedures for the Architectural Committee. The Architectural Guidelines or Design Guidelines shall be subject to review, approval and revision by the Board of Directors of the Association."

3. Establishment of Architectural Committee. Article XI, Section 1 of the Declaration is hereby deleted in its entirety and replaced with the following:

"1. Establishment. An Architectural Committee shall be established to perform the functions set forth in this Declaration. The Architectural Committee shall adopt rules, regulations and guidelines for the performance of its duties including procedures for the preparation, submission and determination of the application for any approvals required by this Declaration or any Tract Declaration, known as the Architectural Guidelines or Design Guidelines. Such Architectural Guidelines or Design Guidelines or any rule or regulation whatsoever adopted by the Architectural Committee, and any revisions thereto, must be approved by the Board, and are subject to review and revision by the Board from time to time in its sole discretion. The Architectural Committee shall have sole and exclusive authority with respect to all approvals and use decisions regarding Residential Areas and Commercial Areas within Tatum Ranch. Members of the Architectural Committee need not be architects, and Owners or Residents who are members of the Architectural Committee need not possess any special qualifications of any type.

(a) Election of Architectural Committee. The Architectural Committee shall consist of five regular members and one or more alternate members, all of whom must be Members of the Association. The members of the Architectural Committee shall be elected by a vote of all the Memberships in the Association. Election of the members of the Architectural Committee shall occur at the same time and in the same manner as the annual election of the Board. Except as set forth herein with respect to the first year of the election of the Committee Members, Committee Members shall be elected to serve two (2) year



terms (or for terms ending on the date of the election occurring in the second calendar year following election of the Committee Member or until replaced). These terms shall be rotating terms with three (3) Committee Members being elected one (1) year and two (2) Committee Members being elected the next year. In the first year only of the elections held pursuant to these provisions, the three (3) Committee Members elected who received the most votes will serve two (2)-year terms and the other two (2) elected Committee Members will serve one (1)-year terms. In the event of a temporary or permanent vacancy on the Architectural Committee, an alternate member selected by the Board shall serve as a replacement until the next election or until the regular member is again available. Members of the Architectural Committee may be removed with or without cause by the Board.

4. Architectural Committee Meetings, Guidelines and Rights of Appeal.

Article XI, Section 2 of the Declaration is hereby deleted in its entirety and replaced with the following:

"2. Meetings; Guidelines; Right of Appeal. The Architectural Committee shall keep a record of the minutes of all meetings. A quorum for any meeting shall consist of a majority of the regular members of the Architectural Committee and the concurrence of a majority of the regular committee members present at a meeting of the Architectural Committee shall be necessary for any decision of the Architectural Committee. Alternate member(s) may participate at any meeting in lieu of any absent regular member(s), may be counted for purposes of determining whether a quorum is present at the meeting and shall have all of the authority of a regular member while so participating. As provided in Article V, Section 3 herein and subject to the review, approval and revision by the Board, the Architectural Committee shall promulgate Architectural Guidelines to be used in rendering decisions, including procedures for the preparation, submission and determination of applications for approval. Subject to the appeal rights available to Owners, Residents, and parties as hereinafter provided, the decision of the Architectural Committee shall be final on all matters submitted to it. Any Owner, Resident, or party aggrieved by any decision of the Architectural Committee, may appeal the decision to the Board in writing within fifteen (15) days following the date on delivery of the written notification of the decision of the Architectural Committee to the affected party and otherwise in accordance with procedures established by the Board. If the decision of the Architectural Committee is overruled by the Board, the decision of the Architectural Committee shall be deemed modified to the extent specified by the Board and, for purposes of this Declaration, such decision, as so modified, shall thereafter be deemed the decision of the Architectural Committee and shall be final. Members of the Architectural Committee shall not be entitled to compensation for their services, unless otherwise approved by the Board."

5. Responsibility of Board. The last sentence of Article XI, Section 3 of the Declaration, as modified by the Second Certificate of Amendment to Amended and Restated



Declaration and the Fourth Certificate of Amendment to Amended and Restated Declaration, is hereby deleted in its entirety and replaced with the following:

"In connection with any action taken by the Board set forth in Article XI herein, the Board, each member of the Board, and each officer of the Board as may be appointed by the Board from time to time, shall be afforded the same rights and protections as are set forth in this Article XI, Section 3 for the Architectural Committee and members of the Architectural Committee."

6. Antennas. Article IV, Section 2, subsection (h) entitled "Antennas" of the Declaration is hereby deleted in its entirety and replaced with the following:

"(h) Antennas. Unless governed by 47 C.F.R. § 1.4000 (Over-the-Air Reception Devices Rule), as amended, repealed or recodified, any antenna, dish, or other device for the transmission or reception of television, internet or radio signals or any form of electromagnetic radiation and all associated equipment shall not be erected, used or maintained outdoors on any area in Tatum Ranch (whether attached to a building or otherwise) so as to be Visible from Neighboring Property or the Common Areas, unless approved in writing by the Architectural Committee. Any device governed by 47 C.F.R. § 1.4000 as amended, repealed or recodified, shall comply with the applicable Design Guidelines and shall be mounted, to the extent reasonably possible, so as not to be Visible from Neighboring Property or the Common Areas. Devices used to transmit signals to and/or receive signals from multiple customer locations (including, but not limited to non-"customer end antennas", "hub" or "relay" antennas) shall not be permitted unless approved in writing by the Architectural Committee, but in no event shall such devices be permitted on any Lot which is limited to residential use by a Tract Declaration."

7. Machinery and Equipment. Article IV, Section 2, subsection (l) entitled "Machinery and Equipment" of the Declaration is hereby deleted in its entirety and replaced with the following:

"(l) Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained in Tatum Ranch without the prior written approval of the Architectural Committee, except (i) such machinery or equipment as is usual and customary in connection with the use maintenance or construction (during the period of construction) of an approved building, appurtenant structures, or other approved improvements; and (ii) that which the Association may require for the construction, operation and maintenance of Tatum Ranch."

8. Roofs. Article IV, Section 2, subsection (w) entitled "Roofs" of the Declaration is hereby deleted in its entirety and replaced with the following:

"(w) Roofs. No solar energy device, air conditioning unit, evaporative cooler or other apparatus, structure or object shall be placed on the roof of a

Dwelling Unit without the prior written approval of the Architectural Committee.”

9. Certification. This shall certify that at an election duly called pursuant to the Articles and Bylaws of the Association and held for the purpose of amending the Declaration pursuant to the terms of this Certificate of Amendment, the Members casting seventy-five percent (75%) of the votes cast at the election voted affirmatively for the adoption of the amendment.

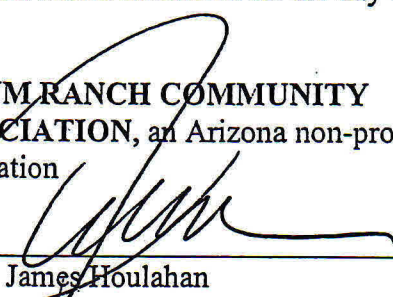
10. Definitions. For purposes of this Certificate of Amendment, unless otherwise defined herein, all terms used herein, including but not limited to, those terms used and/or defined above, shall have the respective meanings assigned to such terms in the Declaration.

11. Effect of this Certificate of Amendment. Except as modified pursuant hereto, the Declaration is hereby specifically ratified, restated and confirmed as of the effective date hereof. To the extent of conflict between the terms of this Certificate of Amendment and the Declaration, the terms of this Certificate of Amendment shall control. The Declaration and this Certificate of Amendment shall be read and construed as one agreement.

12. Counterparts. This Certificate of Amendment may be executed in any number of counterparts, but all of such counterparts shall together constitute but one and the same agreement. In making proof of this Certificate of Amendment, it shall not be necessary to produce or account for more than one counterpart hereof.

IN WITNESS WHEREOF, the Association has executed this Certificate of Amendment through its representatives duly authorized to execute this Certificate of Amendment and bind such entity to the terms and obligations herein contained on the day and year first written above.

TATUM RANCH COMMUNITY ASSOCIATION, an Arizona non-profit corporation

By:   
Name: James Houlahan  
Its: President

ATTEST:

By:   
Name: Martin Bruckner  
Its: Secretary



STATE OF ARIZONA )  
 ) ss:  
County of Maricopa )

The foregoing instrument was acknowledged before me this 7th day of November, 2002, by James Houlihan, the President of TATUM RANCH COMMUNITY ASSOCIATION, an Arizona non-profit corporation, on behalf of the corporation.

Patricia A. Labrie  
Notary Public

My Commission Expires:

 Notary Public State of Arizona  
Maricopa County  
Patricia A. Labrie  
Expires July 14, 2004

STATE OF ARIZONA )  
 ) ss:  
County of Maricopa )

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of Nov., 2002, by Martin Bruckner, the Secretary of TATUM RANCH COMMUNITY ASSOCIATION, an Arizona non-profit corporation, on behalf of the corporation.

Patricia A. Labrie  
Notary Public

My Commission Expires:

 Notary Public State of Arizona  
Maricopa County  
Patricia A. Labrie  
Expires July 14, 2004  
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