

**SECOND AMENDED AND RESTATED
DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS
FOR
DIAMOND TAIL SUBDIVISION
PHASES I AND II**

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TABLE OF CONTENTS

Second Amended and Restated Declaration of Covenants, Conditions, Restrictions for Diamond Tail Subdivision Phases I and II

Article 1 - Definitions	1
Article 2 - Structures.....	3
2.1 Permitted Structures	3
2.2 House and Guest House Size and Use.....	3
2.3 Prohibited Structures	4
2.4 Construction and Architectural Style of Structures.....	4
2.4.1 Height Limitations	4
2.4.2 Building Colors.....	4
2.4.3 Building Setbacks	4
2.4.4 Wooden Exteriors	4
2.4.5 Commencement and Completion of Construction.....	4
2.4.6 Conditions for Occupation of House or Guest House.....	5
2.5 Reflective Materials	5
2.6 Exemption from Declaration	5
Article 3 - Architectural Control Committee	5
3.1 Architectural Control Committee.....	5
3.2 Approval Requirements	6
3.3 Review Fee.....	6
3.4 Approval Standards	6
3.5 Subdivision Rules	7
3.6 ACC Inspection: Certificate of Occupancy	7
3.7 Liability.....	7
3.8 Variances.....	8
3.9 Construction Deposit; Remedy for Violation.....	8
3.10 Non-Compliance of Other Projects.....	8
Article 4 - Common Scheme Restrictions and Requirements.....	9
4.1 Native Growth Preservation.....	9
4.2 Water Conservation Measures.....	9
4.3 Fences and Walls	9
4.4 Driveways	9
4.5 Nuisance.....	9
4.6 Garages and Parking of Vehicles	10
4.7 Sheds.....	10
4.8 Stored Items	11
4.9 Storage Tanks	11
4.10 Utilities	11
4.11 Exterior Lights.....	11
4.12 Billboards and Signs.....	11
4.13 Antennas, Wind Generators, and Towers	12
4.14 Animals.....	12
4.15 Home Occupations	12
4.16 Solar and Mechanical Devices	13
4.17 Drainage and Storm Water Detention	13
4.18 Hunting and Firearms	13
4.19 Mining and Drilling	13
4.20 Mailboxes and Newspaper Delivery Receptacles	13
4.21 Motor Vehicles; Off-Road Vehicles.....	13

4.22	Rate of Insurance Increase	13
4.23	Lot Splitting and Consolidation	13
4.24	Shared Well Agreement and Management by the Association	14
4.25	Construction of Wells Prohibited	14
4.26	Water Use and Water Conservation	14
4.27	Fire Suppression Sprinkler System	14
4.28	No Inconsistent Uses	14
4.29	Final Subdivision Plats	14
Article 5	- Common Easements: Uses; Restrictions	14
5.1	Common Open Spaces and Easements	14
5.2	Declarant's Reservation of Easements	16
5.3	Easement to Inspect	16
5.4	Easement for Governmental Personnel	17
5.5	Declarant's Right to Dedicate	17
Article 6	- The Association	17
6.1	The Association	17
Article 7	- Assessments	18
7.1	Mutual Covenants to Pay Assessments	18
7.2	Lien for Non-payment of Assessments and Fines	18
7.3	Personal Debt of Owner	19
7.4	Joint Liability for Assessments or Fines	19
7.5	No Waiver of Assessments	19
Article 8	- Duties and Responsibilities of Owners	19
8.1	Owner's Responsibility to Repair	19
8.2	Parking Areas: Vehicles	19
8.3	Maintenance of Landscaping	19
8.4	Observance of Responsibilities	19
8.5	Rights of Action	19
8.6	Archaeological Preservation Easement	20
8.7	Construction and Maintenance of the Septic Tank and Leach Field	20
Article 9	- Responsibilities of Association	20
9.1	Maintenance of Streets	20
9.2	Maintenance of Other Common Easements	20
9.3	Maintenance of Drainage Easements; Easement	20
9.4	Solid Waste Disposal	20
9.5	Liquid Waste Disposal	20
Article 10	- General Provisions	20
10.1	Enforcement	20
10.2	Notices	21
10.3	Severability	21
10.4	Acceptance; Run with the Land; Amendment	21
10.5	Annexation	21
10.6	Disputes and Method for Resolution	22
10.7	Master Plan	22
10.8	Binding Effect	22

SECOND AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS FOR
DIAMOND TAIL SUBDIVISION
PHASES I AND II

THIS SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS FOR THE DIAMOND TAIL SUBDIVISION PHASES I AND II (the "**Declaration**"), is made this 14th day of May, 2008 by DIAMOND TAIL ESTATES I, L.L.C., a Texas limited liability company (hereinafter referred to as "**Declarant**").

WHEREAS, Declarant is the Owner (defined below) of certain real estate in Sandoval County, New Mexico, as described and shown on the Plats of Phase I ("Phase I") and Phase II ("Phase II") (further defined below), and desires to impose the provisions of this Declaration on, and subject all of said real estate to, the covenants, hereinafter stated, including easements, for the purpose of protecting the value and standards of said real estate, the terms of which shall run with the land and be binding upon and inure to the benefit of all parties having any right, title or interest in or to the above-described real estate, or any part thereof, and their successors and assigns, and

WHEREAS, by this Second Amendment to the Phase I Declaration, Declarant has annexed Phase II, consisting of 142 Lots, to Phase I, consisting of 59 Lots, and has declared that Phase II is held pursuant to the Phase I Declaration as amended and as set forth hereinafter with a total of 201 Lots in the now-combined Phases I and II for assessment and voting purposes.

NOW, THEREFORE, Declarant hereby declares that the Subdivision shall be subject to the following covenants, conditions and restrictions:

Article 1- Definitions

1.1 "**Architectural Control Committee**" or "**ACC**" means the Architectural Control Committee created pursuant to Article 3 of this Declaration.

1.2 "**Articles**" means the Articles of Incorporation of the Diamond Tail Homeowners' Association on file with the New Mexico Public Regulation Commission.

1.3 "**Association**" means the Diamond Tail Homeowners' Association, a nonprofit corporation which will be constituted under the laws of New Mexico for the purposes set forth in the Articles and Bylaws (defined below), and any successor unincorporated association, including, without limitation, any master association.

1.4 "**Board**" means the Board of Directors of the Association and the governing body of any predecessor or successor of the Association, including, but not limited to, Declarant.

1.5 “Bylaws” means the Bylaws of the Diamond Tail Homeowners' Association on file with the New Mexico Public Regulation Commission.

1.6 “Common Easements” means and refers to all portions of the Subdivision intended for the common use of some or all of the Owners (defined below), including, without limitation, those areas designated on the Plats as follows:

1.6.1 Ingress, egress and utility easements, including without limitation, the private streets;

1.6.2 Common Open Space and trails;

1.6.3 The mailbox easements; and

1.6.4 Drainage easements for drainageways and storm water detention ponds.

1.7 “Common Open Space” means areas reserved for the Association for recreational purposes, as depicted on the Plats.

1.8 “Declarant” means and refers to Diamond Tail Estates I, L.L.C., a Texas limited liability company and any of its successors and assigns. Declarant shall act and be represented by its officer(s) or representative(s) as designated by Declarant from time to time.

1.9 “Declaration” means this Declaration of Restrictive Covenants for the Diamond Tail Subdivision (Phases I and II) executed by the Declarant.

1.10 “Fire Station Site” means that site designated on the Plat as the location for a fire station, helipad and related similar facilities which may, at Declarant's discretion, be converted to a different use comparable with the uses in the Subdivision.

1.11 “House” means that Structure located on a Lot consisting of a single family dwelling intended for use as the principal residence on such Lot.

1.12 “Lot” means each and every numbered lot shown on the Plats.

1.13 “Owner” means and refers to any record Owner of fee simple title to any Lot, whether one or more persons or entities.

1.14 “Plats” mean and refer to that certain Second Amended Final Plat of Diamond Tail Subdivision Phase I, recorded on the 29th day of July, 1999, at 9:50 a.m., with the County Clerk of Sandoval County, New Mexico, in Volume 3, Folio 1887 A, Document No. 19061, and that certain Subdivision Plat of Lots 60 Thru 201 and Tract A-1-A of Diamond Tail Subdivision Phase II, recorded on the 12th day of Sept., 2008.

at 2:26 p.m., with the County Clerk of Sandoval County, New Mexico, in Volume 3, Folio 2958-B, Document No. 200828276

1.15 “Shared Well Agreements” means the individual Shared Well Agreements entered into between the Declarant and the Owners within each of the several specific Water Groups (as the term “**Water Group**” is defined in each Shared Well Agreement) in the Subdivision.

1.16 “Structure” means any construction or improvement of any kind, including, without limitation, any House, guest house, garage, wall, fence, gate, sign, driveway, parking area, antenna, utilities and related facilities and lines, drainage structure, or non-commercial communication installation (whether above or below ground), septic system, recreation facility and landscaping.

1.17 “Subdivision” means and refers to the real estate commonly known as the Diamond Tail Subdivision (Phases I and II), sometimes also referred to as Diamond Tail (Phases I and II), and/or Diamond Tail Estates I and II, consisting of approximately 778.4 acres, described and shown on the Plats, and such additions as may hereafter be brought within the jurisdiction of this Declaration.

1.18 “Subdivision Rules” mean the Subdivision Rules adopted by the Board pursuant to the authority granted by this Declaration, as originally adopted and as amended from time to time.

1.19 “Voting Power of the Association” means the total number of votes of all Owners, including Declarant, at the time the pertinent vote is to be taken as more particularly set forth in the Articles and Bylaws.

Article 2 - Structures

2.1 Permitted Structures. No Structure shall be erected, altered, placed or permitted to remain on any Lot subject to this Declaration other than one House, a private attached garage, one guest house, attached recreational facilities, solar heating devices, landscaped areas, evaporative cooler or coolers, and such other Structures as are incidental to residential use of the Lot. Any guest house, studio or other dwelling Structure shall be attached to the House, or located in close proximity to, and architecturally aligned with, the House.

2.2 House and Guest House Size and Use. No House, exclusive of the required attached garage, shall be less than twenty four hundred (2,400) square feet of interior heated space in Phase I, unless specifically granted as a variance, nor less than two thousand (2,000) square feet of interior heated space in Phase II, unless specifically granted as a variance. No guest house shall be more than one-half (1/2) of the heated square footage of the house, or sixteen hundred (1600) square feet of interior heated square footage, whichever is less. Occupancy and use of the guest house and other ancillary Structures approved by the ACC shall not be permitted until the principal

House has been constructed and approved for occupancy by the ACC. Each House shall be occupied by no more than one (1) family, and no House or guest house shall be used as a boarding house or divided into apartments or rooms for rental purposes. No guest house shall be leased separately from the House. No lease shall be for a period of less than six (6) months. This subsection does not prevent the rental or lease of the Lot, including, without limitation, the House, together with the guest house, if any, by the Owner thereof, but any such rental or lease must be by a written agreement which requires the tenant to observe the provisions of this Declaration and the Subdivision Rules, and makes a breach of this Declaration a breach of such rental agreement or lease.

2.3 Prohibited Structures. No mobile homes will be permitted on any residential home site. No modular home or prefabricated Structure, or similar facility or Structure, shall be kept, placed, or maintained within the Subdivision. No temporary house, dwelling, garage, outbuilding, trailer or other similar Structure may be placed or erected within the Subdivision. The provisions of this section shall not apply to temporary construction shelters or facilities maintained during, and used exclusively in connection with, the performance of any work or construction of any improvement in the Subdivision.

2.4 Construction and Architectural Style of Structures. Approved architectural styles are included in the Subdivision Rules. Any and all Structures shall be constructed in accordance with the following criteria:

2.4.1 Height Limitations. The height limits are a function of the type of terrain where the Lot is located. The building height limits are set forth in the Subdivision Rules.

2.4.2 Building Colors. The color of all Structures (other than permitted wooden fences) shall predominantly be browns and tans. A list of pre-approved colors for stucco and roofs shall be available from the ACC. Non pre-approved colors may be approved by the ACC, in its sole discretion, if such colors add interest or creativity to a particular Structure. Stone surfaces shall be in their natural color and must approximate local earth tones.

2.4.3 Building Setbacks. The building setbacks from property lines are set forth in the Subdivision Rules.

2.4.4 Wooden Exteriors. No wooden exteriors of Structures other than trim or decking shall be permitted. This provision shall not apply to "coyote" style fences, or juniper posts.

2.4.5 Commencement and Completion of Construction. Construction of Structures shall commence within six (6) months of ACC approval or the approval shall be void. The exterior construction, including the final stucco color coat, paint, trim, and landscaping shall be fully completed within one (1) year

after commencement of construction. The ACC may extend this time limit for a maximum of six (6) months based on weather conditions and size and complexity of the Structure.

2.4.6 Conditions for Occupation of House or Guest House. No House or guest house erected within the Subdivision shall be occupied in any manner in the course of construction, or prior to the time when the exterior is fully finished and the House or guest house is fully functional for residential purposes. No House or guest house shall be occupied until the Owner is in compliance with this Declaration and the approved plans, as evidenced by written approval of the ACC.

2.5 Reflective Materials. No reflective material shall be used where it would adversely affect any other house site within the Subdivision. If such reflection does occur, the reflective material shall be painted a subdued, neutral color to be approved by the ACC, or some other approved treatment shall be applied.

2.6 Exemption from Declaration. The Fire Station Site and all Structures thereon, as well as Declarant's temporary construction shelters or storage facilities or yards maintained during, and used exclusively in connection with, the performance of any work or construction of any improvement and any sales facility and related office facility are exempt from the provisions of this Declaration.

Article 3 - Architectural Control Committee

3.1 Architectural Control Committee. An "Architectural Control Committee" (sometimes, the "ACC") for the Subdivision is hereby established and consists of three (3) persons. The initial members of said ACC are:

- Position 1: Daniel H. Dennison, or designated representative
- Position 2: To be designated
- Position 3: To be designated

The members of the ACC shall, during the first three (3) years after the date of execution of this Declaration, serve at the pleasure of Declarant, who shall have the right to appoint, reappoint and discharge members of the said ACC at will, or until Declarant relinquishes its right to appoint members of the ACC, whichever is earlier, at which time the Board shall appoint the three (3) members of the ACC, one of whom shall be designated to chair the ACC, which members shall then serve for the following terms:

- Position 1: until three (3) years after the appointment;
- Position 2: until two (2) years after appointment; and
- Position 3: until one (1) year after appointment.

Upon the expiration of the term of any ACC member, the Board shall elect a successor to such position who shall serve for a period of three (3) years, such that the terms of the ACC members are staggered. An ACC member shall serve until his or her term expires and a successor is duly elected and qualified, the member resigns or is unable to serve, or the member is removed in the manner provided for the removal of directors in the Bylaws. Any vacancy in the ACC occurring before the end of a term shall be filled by a person appointed by the majority vote of the Board.

The affirmative vote of a majority of the members of the ACC shall be required for approval of any matter; provided, however that a majority of the members of the ACC may designate one member to act on behalf of the ACC.

3.2 Approval Requirements. No Structure shall be erected, constructed, installed, painted, stuccoed, remodeled, reconstructed, altered, added or demolished on any Lot within the Subdivision, unless and until the final plans, specifications and elevations therefor shall have received written approval of the ACC. Additionally, no grading, tree cutting or other site disturbance may occur without the prior written approval of the ACC. Maintenance of previously approved Structures which do not materially alter the color or appearance of the Structures shall not require ACC approval. Review procedures are set forth in the Subdivision Rules.

3.3 Review Fee. In connection with any submission and filing for plan approval, the ACC may require the Lot Owner to pay a review fee sufficient to pay the ACC's costs and expenses incurred in having the construction and documentary materials submitted and examined by the ACC. Such review fee shall be stated in the Subdivision Rules.

3.4 Approval Standards. The ACC shall act upon any submission within the time specified in the Subdivision Rules. The ACC shall have the right to disapprove any plans and specifications submitted to it for any one or more of the following reasons:

3.4.1 The plans and specifications are not in sufficient detail or are incomplete.

3.4.2 In the opinion of the ACC, the architectural design or style of the proposed improvements, as shown by the plans and specifications, plot plans, including exterior color scheme, or the size or location of any Structure, is not in harmony with the general surroundings, or with the improvements, or proposed improvements, near or adjacent to the location at which said improvements are intended to be erected.

3.4.3 The roof is of either a material or style different than that specified by this Declaration and the Subdivision Rules. Roofing materials and surfaces shall be of neutral color and non-reflective.

3.4.4 The solar collectors are not designed or located in an aesthetically pleasing manner or are not shielded from view from other Lots as much as practical.

3.4.5 The plans and specifications are not in compliance with all requirements and provisions of this Declaration and the Subdivision Rules.

3.5 Subdivision Rules. The Subdivision Rules, as they may exist from time to time, shall have the same force and effect and shall be binding upon every Owner as if they were set out in this Declaration. A copy of the Subdivision Rules, as they exist from time to time, shall be kept with the Association's records, and shall be available to any Owner, upon request.

3.6 ACC Inspection: Certificate of Occupancy. Upon completion of the Structures for which plans and specifications have been approved, the Owner or builder shall notify the ACC in writing that the work is complete (the "**Completion Notice**"). The ACC shall, within seven days of receipt of the Completion Notice, inspect the completed work and take one of the following actions:

3.6.1 Issue the Owner an Association Certificate of Occupancy if the Structure is in conformity and compliance with the approved plans and specifications, the Declaration and the Subdivision Rules; or

3.6.2 Provide the Owner with a list of all items related to the Structure needed to be completed or altered to bring the work into conformity with the approved plans and specifications, the Declaration and the Subdivision Rules.

An Owner shall not occupy any Structure until an Association Certificate of Occupancy has been received for the Structure. Upon receipt from the ACC of a list of items for completion, the Owner may either (i) refrain from occupying the Structure until the corrections are completed and the ACC has reinspected and issued an Association Certificate of Occupancy, or (ii) obtain a conditional Association Certificate of Occupancy by depositing with the Association (or leaving with the Association from the Construction Deposit held pursuant to Section 3.9 below) an amount equal to 150% of the ACC's estimate of the cost of making the needed corrections. If the Owner chooses the latter alternative, the monies will be held by the Association in a non-interest bearing segregated account. Upon the Owner's completion of the needed corrections by that date fixed by the ACC, the deposited monies will be released to the Owner, less the Association's costs of maintaining this account and conducting reinspections of the House or other Structure. If the needed corrections are not completed by that date fixed by the ACC, in its discretion, the Association may draw upon the deposited monies and complete the needed corrections.

3.7 Liability. The ACC, the Board, the Declarant and any member of any of the foregoing shall not be liable to the Association, any Owner or any other party for any damage, loss, or prejudice suffered or claimed on account of:

3.7.1 The approval, conditioned approval or disapproval of any plans, drawings, and specifications, whether or not defective;

3.7.2 The construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications;

3.7.3 The development or manner of development of any property within the Subdivision.

By the acquisition of title to any Lot in the Subdivision, and in consideration thereof, each Owner thereby agrees not to file suit or pursue any claim against the ACC, the Board, the Declarant and any member of any of the foregoing, to recover damages or obtain any other relief in connection with any of the foregoing events.

3.8 Variances. When naturally or artificially occurring circumstances or the necessities of reasonable use and enjoyment of a Lot within the Subdivision require, the Owner of said Lot may apply to the ACC for variance approval, and the ACC, upon showing of good cause and necessity therefor without significant possibility of detriment to others, and by the affirmative vote of a majority of its members, may allow reasonable variances with respect to any provision of this Declaration or the Subdivision Rules, on such terms and conditions as the ACC shall specify by written report.

3.9 Construction Deposit; Remedy for Violation. Following approval by the ACC of plans and specifications for the proposed Structure, but prior to the start of construction, the Owner or the Owner's builder shall provide a cash construction deposit to the Association. The amount of the construction deposit shall be set by the Board. The construction deposit shall be held by the Association in a non-interest bearing segregated account. If the ACC determines at any time during the course of construction, that the Structure is being built in non-compliance with the approved plans and specifications, including but not limited to the requirements of the Storm Water Prevention Plan, the Declaration or Subdivision Rules, or that the construction has caused damage to Association property or the property of any Owner, the ACC shall provide the Owner with written notice of the violations and a date by which they must be remedied. If the violations are not cured by that date fixed by the ACC, the Association shall be entitled to draw upon the construction deposit to remedy the violations. Upon issuance of an Association Certificate of Occupancy, pursuant to Section 3.6, the balance of the construction deposit held by the Association shall be released to the Owner or the Owner's builder, as appropriate.

3.10 Non-Compliance of Other Projects. No Owner or builder shall be permitted to commence construction of a new Structure, if any other Structure currently under construction or previously constructed, by or for that Owner or builder does not comply with the Subdivision Rules, this Declaration, or plans and specifications approved by the ACC.

