SECOND AMENDED AND RESTATED

DECLARATION OF

COVENANTS, CONDITIONS, RESTRICTIONS

FOR

DIAMOND TAIL SUBDIVISION

PHASES I AND II

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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.

Article 4 - Common Scheme Restrictions and Requirements

4.1 **Native Growth Preservation.** The native growth of the Subdivision, including but not limited to cacti, pinon and juniper trees, shall not be destroyed or removed without the prior written approval of the ACC, except such native growth as it may be necessary to remove for the construction and maintenance of streets, driveways, the House and other approved Structures. The area of disturbance of any native growth shall be clearly demonstrated on the plans submitted to the ACC. Each Owner shall be responsible for keeping his pinon trees in a healthy condition and not permitting the same to become infested with insects.

4.2 **Water Conservation Measures.** Water conservation measures are set forth in the Subdivision Rules.

4.3 **Fences and Walls.** It is the intent of the Declarant to preserve an open and unobstructed terrain free of fences and walls. Accordingly, no fence or wall shall be constructed or allowed to remain on any Lot except as has been approved by the ACC, subject to the following standards.

4.3.1 Owners shall not fence any portion of the perimeter or boundary of their Lots, except as may be allowed by the ACC for screening purposes or as part of a dog run.

4.3.2 Courtyard walls and retaining walls are permitted provided the Owner obtains the prior written approval of the ACC. Said walls shall not exceed six (6) feet in height, as measured from the side visible to the public, and shall be constructed of materials similar to that of the House and plastered and finished to match the color scheme and texture of the House. The ACC may permit a wall in excess of six (6) feet if necessary to restrain household pets within the courtyard area.

4.3.3 Walls shall be either plastered adobe, plastered masonry or frame. Fences shall be "coyote" style and constructed of peeled or unpeeled cedar or juniper posts. Board, slat, bark-faced boards, wire and metal mesh fencing is prohibited, except as allowed elsewhere herein. Natural vegetation and screening of all permitted fences is strongly encouraged.

4.4 **Driveways.** All driveways shall be graded and sloped for proper drainage, and shall have culverts large enough for proper drainage with an end fitting at each end.

4.5 **Nuisance.**

4.5.1 No Lot shall be used for the storage of any property or thing that will cause such Lot to appear in an unclean or untidy condition or that will be visually offensive or obnoxious, toxic, dangerous, or unhealthy, and no substance, thing or article may be kept upon any Lot that will emit foul or

obnoxious odors, or that will cause any noise that will disturb the peace, quiet, comfort, or serenity of any occupants or Owners of Lots in the Subdivision.

4.5.2 No devices emitting noise levels exceeding sixty (60) decibels shall be permitted in the Subdivision.

4.5.3 During or after construction of improvements on any Lot, no concrete slurry or construction debris of any kind shall be left anywhere in the Subdivision or on any adjoining property.

4.6 Garages and Parking of Vehicles.

4.6.1 A garage of sufficient size to accommodate at least two automobiles shall be constructed with each House; such garage shall be designed so as not to face the street except that the ACC may grant a variance if the Lot faces more than one street. Open carports which are visible from the Subdivision streets are prohibited.

4.6.2 The garage shall primarily be used for the parking of vehicles. Other uses are allowed provided they do not interfere with the ability to park at least two cars in the garage.

4.6.3 No trucks or other commercial vehicles, motorcycles, campers, motor homes, boats, trailers, horse trailers or similar vehicles shall be kept or maintained in the Subdivision, except within garages or except where customarily required for the limited purposes of building, repairing, refinishing, or maintaining the Subdivision or House, or except where there is sufficient screening through fences and vegetation to limit visibility from streets and other Lots.

4.6.4 No vehicles, parts of vehicles of any type, or large unsightly equipment or machinery shall be permanently or semi-permanently parked in any portion of the Subdivision visible from other Lots, Common Easements and streets, for purposes of repairs or reconstruction or storage. All guest parking areas should be screened from the view of other Lots with trees, walls and/or fences approved by the ACC.

4.6.5 No vehicle of any type, except emergency or maintenance vehicles and machinery, motorized or otherwise, shall be operated on any Common Open Space. No automobiles or other motor vehicles shall be parked in any Common Open Space or in any street within the Subdivision. No vehicles shall be kept or stored on any Common Open Space or in any street, or driveway area within the Subdivision for purposes of accomplishing repairs thereto or the reconstruction thereof.

4.7 Sheds. No sheds shall be permitted without prior written approval of the ACC. Any such storage shed erected on any Lot shall be screened from view from

other Lots, the Common Easements and streets in a manner approved in writing by the ACC before the shed is constructed. If approved, it shall be a stuccoed masonry, adobe, or frame Structure. Approval shall only be granted if adequate screening can be shown.

4.8 Stored Items. All clothes lines, mechanical and other equipment, wood piles (except fire logs not greater than one (1) cord in size), storage piles, campers, horse trailers, extra automobiles, boat trailers, trailer homes, recreational vehicles and similar vehicles are restricted to areas on the Lot where they are screened from view from streets and adjoining Lots.

4.9 Storage Tanks. No tanks of any kind shall be erected, placed or permitted within the Subdivision, except as needed for home heating, fire protection purposes or domestic water systems or cisterns, provided any cistern or any home heating fuel tank is adequately screened, to limit visibility from the streets and other Lots.

4.10 Utilities. All extensions of utilities shall be underground to all Structures at all locations. No electrical or telephone lines shall be maintained above ground except during construction. Any disturbance of natural ground cover and vegetation necessitated by the installation of utility service lines on a Lot where such installation does not coincide with the driveway shall be restored by the Owner of the Lot by replanting. All meter locations shall be subject to approval by the ACC.

4.11 Exterior Lights. Exterior pole-mounted lights greater than three feet (3') above ground level are not permitted. All exterior wall mounted and low pole-mounted lights shall have cut-off shields which prevent the spread of light in an upward direction. Lights with motion detectors are encouraged.

4.12 Billboards and Signs. No billboards or signs will be permitted on any Lot or on any Structure except:

4.12.1 The name plate of the occupant and address of any residence which must be of a size, shape, and location as provided in the Subdivision Rules.

4.12.2 Such signs as are required by legal proceedings.

4.12.3 A job identification/builder sign during the time of construction of any Structure. Builder and "For Sale" signage guidelines will be provided by the ACC.

4.12.4 Appropriate safety, directional, and identification signs installed adjacent to or within the Common Easements or rights-of-way by Declarant, Sandoval County, the Association, or as required by law.

4.12.5 One (1) "For Sale" or "For Rent" sign may be placed on each Lot, except as may be provided in the Subdivision Rules.

4.12.6 Such residential or commercial identification signs or other signs as Declarant or the Association has the right to install or maintain, or as are specially approved by the Board.

4.13 Antennas, Wind Generators, and Towers.

4.13.1 No exterior antenna of any sort, including television antennas and satellite dishes, shall be installed or maintained on any Lot, except those devices which are erected, installed, placed or maintained enclosed within a building or Structure or screened from view from other Lots, Common Easements and streets or which are otherwise specifically authorized by the Declaration or Subdivision Rules. No radio or television transmission towers shall be erected, placed or permitted.

4.13.2 No wind-driven machinery shall be permitted within the Subdivision, except as may be approved by the Board.

4.14 Animals. No breeding of animals for commercial purposes shall be permitted. Except as provided herein, no animals of any kind may be kept on any Lot, whether for personal or commercial purposes. Each Lot may have a maximum of three dogs and/or cats more than eight (8) weeks old (exclusive of litters of such pets) which must be confined on the property. Horses are not permitted on the Lots. No animals may be kept or maintained on any Lot in any manner or number which is a nuisance or offensive to the neighboring Lots, whether by reason of noise, habits, odors, or otherwise, anything to the contrary hereinabove notwithstanding. The owner of any pet or animal shall be responsible for the immediate removal and clean-up of any such animals' waste within the Subdivision. The owner of any pet or animal shall at no time allow such animal to run unrestrained in the Subdivision, or on adjoining property, and the owner shall at all times have full and complete control over such animal. No animal or pet training or trading as a business shall be carried on, directly or indirectly, on any part of the Subdivision. The Board shall have the right to order the removal of any animals which are kept in violation of this Declaration. Enclosures for animals shall be approved in writing by the ACC. Small household pets which remain inside the residence on a Lot, such as caged birds, aquarium fish or guinea pigs, shall be allowed, at the Owner's discretion, so long as the "nuisance" portions of this provision are not violated.

4.15 Home Occupations. No business or commercial activity of any nature shall be conducted upon or from any Lot, except that home occupations as approved by Sandoval County shall be permitted, provided such home occupation activity does not disturb Owners of other Lots or increase traffic upon streets to undesirable levels and provided further that, regardless of whether or not permitted by Sandoval County, no sign related to any home occupation shall be constructed on any Lot.

4.16 Solar and Mechanical Devices. Solar panels are permitted provided they are properly integrated into the building Structure, or adequately screened to limit their visibility from streets and adjoining Lots. Solar heating is encouraged, especially through the use of passive solar heating techniques.

4.17 Drainage and Storm Water Detention. Surface drainage courses within Lots must be kept free and clear of debris or obstructions which prevent free flow of storm waters. As part of the water conservation measures and the desire to capture run-off in order to recharge the aquifer, each Owner must install at least one improvement within the Lot which collects and stores storm water run-off. The alternative solutions for capturing storm water run-off are described in the Subdivision Rules.

4.18 Hunting and Firearms. No hunting or discharge of firearms shall be permitted within the Subdivision.

4.19 Mining and Drilling. In no event shall the Subdivision be used for the purposes of mining, quarrying, drilling, boring, or exploring for or removing oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth.

4.20 Mailboxes and Newspaper Delivery Receptacles. Centralized 'mailboxes and newspaper delivery receptacles will be provided by the Declarant. No newspaper delivery receptacle is permitted at any Lot unless approved by the Board.

4.21 Motor Vehicles; Off-Road Vehicles. No mini-bikes, motorcycles, off-road vehicles or any unlicenced vehicles of any kind shall be driven or permitted on the Common Easements, except along driveways providing for ingress to and egress from an Owner's House. Except for maintenance vehicles and emergency vehicles, no motor-driven vehicle shall be driven or permitted on Common Easements within the Subdivision. Any person who is not licensed to operate motor vehicles by the State of New Mexico or another state shall not be permitted to operate any motor-driven vehicle on any street within the Subdivision. Any Owner responsible for damage to any paved or unpaved areas of the Common Easements may be assessed for such damage by the Association.

4.22 Rate of Insurance Increase. No portion of the Subdivision shall be used for any purpose or in any manner which would (a) increase the rate at which insurance may be obtained by any Owner or the Association against loss or damage by fire and the perils covered by extended coverage, bodily injury, property damage or liability insurance may be obtained, or (b) which would cause any other Structure to be uninsurable or to have any existing insurance canceled or suspended.

4.23 Lot Splitting and Consolidation. No Lot within the Subdivision shall be split or further subdivided. Two or more Lots within the Subdivision may be

consolidated into one Lot upon written approval by the Board and all appropriate governmental authorities.

4.24 Shared Well Agreement and Management by the Association. Each Owner is required to sign a Shared Well Agreement. The Association is responsible for the operation and management of the shared well system. The Water Group (as defined in the Shared Well Agreement) is responsible for paying the costs and expenses of operating and maintaining the shared well system. It is assumed that the location of each shared well and its corresponding easement(s) are suitable to supply the water needed for the domestic and landscape use of all members of the Water Group. If in Declarant's judgment the water supply is insufficient and a new well or supplemental well is required, the Owners shall be deemed to have granted easements as needed to drill a new or supplemental well. Any grants of such easements shall not adversely impact the building site on the affected Lot.

4.25 Construction of Wells Prohibited. Except as authorized under a Shared Well Agreement and except for Subdivision fire protection wells, no wells are permitted in the Subdivision.

4.26 Water Use and Water Conservation. Water use for Lots 1 through 59 (Phase I) is limited to a maximum of 0.50 acre feet (162,925 gallons) per year per Lot and water use for Lots 60 through 201 (Phase II) is limited to 0.33 acre feet (107,531 gallons) per year per Lot. The Subdivision Rules more fully set forth water conservation measures.

4.27 Fire Suppression Sprinkler System. Installation of a professionally designed fire suppression sprinkler system in the residence with a pressurized fire water storage tank is highly recommended for Lots 1 through 59 (Phase I) and is required for Lots 60 through 201 (Phase II).

4.28 No Inconsistent Uses. No uses of a Lot are permitted that are or would be inconsistent with the single-family, residential character of the Subdivision.

4.29 Final Subdivision Plats. Owners shall be bound by the conditions set forth on the Plats as recorded. In the event of any inconsistency between this Declaration and the Plats, the Owner shall be bound by the condition that is more restrictive, regardless of whether it appears on a Plat or in this Declaration.

Article 5 - Common Easements: Uses; Restrictions

5.1 Common Open Spaces and Easements. The Common Easements shall be maintained by the Association for the benefit of all Owners pursuant to this Declaration, to enhance the value and desirability of the Subdivision, subject, however, to the following limitations and restrictions:

5.1.1 The Common Open Space and trails established by Declarant shall be open and available to all the residents of the Subdivision.

5.1.2 Use of the Common Easements shall be subject to the Subdivision Rules.

5.1.3 The Common Easements shall be subject to the following:

5.1.3.1. Such rights and easements as may be offered for dedication to public use;

5.1.3.2. Such easements as may have been granted or reserved by Declarant or others;

5.1.3.3. Such easements or other interests as may from time to time be taken under power of eminent domain;

5.1.3.4. The right of the Association to limit or permit the use of Common Easements by non-Owners, as the Association deems appropriate, and the right of the Association to limit the number of guests of Owners permitted to use the Common Open Space; and

5.1.3.5. Such other easements as may from time to time be granted or conveyed for shared wells, pursuant to this Declaration.

5.1.4 There shall be no improving, landscaping, decorating, or repairing of any Common Easement, except by the Association in conjunction with its maintenance or landscaping of Common Easements.

5.1.5 The Association shall have the right of reasonable access over and across the Lots where necessary to perform the Association's maintenance responsibilities under Article 9. The Association shall have the right to control access to the Common Easements; however, the Association shall not impair the Owners' right of access to their Lots.

5.1.6 Each Owner shall be liable to the Association for all damage to the Common Easements or improvements or facilities situated thereon caused by such Owner, his invitees, licensees or tenants.

5.1.7 The ownership and access rights of the Association and the Owners to the Common Easements shall be subject to the following easement and encroachment rights:

5.1.7.1. Each Owner of a Lot served by utility connections, lines or facilities, including, but not limited to, those for electric power, water, gas, telephone, drainage, and cable television services, shall have

the right and is hereby granted a non-exclusive easement, to the full extent necessary, to enter upon the Common Easements and/or to have utility companies and/or County of Sandoval personnel enter upon the Common Easements where such connections, lines or facilities or any portion thereof may lie, to repair, replace and generally maintain the same. Whenever utility connections, lines or facilities installed within the Subdivision serve more than one Lot, the Owner of each Lot served thereby shall be entitled to the full use and enjoyment of the portions thereof which service his Lot. Declarant hereby reserves to itself easements over, under, and through the Common Easements for installation of such utility connections, lines or facilities for the benefit of the Subdivision or as may otherwise be needed for the development of the Subdivision, together with the right, as Declarant deems necessary or appropriate, to grant and transfer such easements to the Association for the shared well systems, utility companies or governmental agencies, or authorities within whose jurisdiction the Subdivision lies, and other appropriate entities and individuals.

5.1.7.2. There is hereby reserved to Declarant non-exclusive easements over the Common Easements and the facilities located thereon for all construction and sales activities relating to development of the Subdivision.

5.2 **Declarant's Reservation of Easements.** Declarant reserves an easement and right-of-way in, through, over, under and across all portions of the Subdivision for the purpose of completing its development and improvement work on the Subdivision, and, towards this end, Declarant reserves the right to grant easements and rights-of-way in, through, under, over, on and across the Subdivision, for the installation, maintenance and inspection of lines and appurtenances for electric power, water, drainage, cable television, telephone, gas or other utilities and for any other materials or services necessary for the completion of said development and improvement work; provided, however, that Declarant's exercise of this right shall not materially affect an Owner's proposed building site or use of his Lot. Declarant reserves the right to connect with and make use of the utility lines, wires, pipes, conduits, cable television, sewers and drainage lines which may from time to time be in or along the streets, or in proximity to the shared well systems located within the Subdivision. In addition, Declarant reserves the right to continue to use the Subdivision and any sales offices, model homes, signs and parking spaces located in the Subdivision in its effort to develop and market portions of the Subdivision. This section may not be amended without the prior written consent of Declarant. Any of the easements and rights reserved by Declarant in this section may be assigned to merchant builders and may be exercised by Declarant's agents, employees and representatives.

5.3 **Easement to Inspect.** The Association and its duly authorized agents are granted the right to enter Lots to ascertain the extent of compliance with the Bylaws, Subdivision Rules and this Declaration, and to correct defaults and violations, if

necessary or desirable in the opinion of the Association. Prior notice of said inspection shall be given to the occupant, except in cases of emergency.

5.4 Easement for Governmental Personnel. There is hereby established a right of entry for public officials, police, fire, rescue, and other personnel to come upon the Subdivision to carry out and enforce their official duties.

5.5 Declarant's Right to Dedicate. Nothing contained in this Declaration shall be deemed to restrict or otherwise impede Declarant, at any time and from time to time, from dedicating portions of a Lot within the Subdivision to any public or private agencies, authorities or utilities, prior to sale of such Lot.

Article 6 - The Association

6.1 The Association. The Diamond Tail Homeowners' Association will be duly incorporated and organized according to New Mexico law pursuant to the Articles and Bylaws.

The President and Secretary of the Association, or any two (2) members of the Board, may execute and file with the Association a certificate of identity stating the names of all of the members of the then current Board and the then current ACC. The most recently filed certificate shall be conclusive evidence of the identity of the persons then composing the Board and ACC in favor of any person relying thereon in good faith.

The affairs of the Association shall be managed by the Board, which shall exercise all of the rights and powers and perform all of the duties and responsibilities set out in this Declaration, the Articles and the Bylaws.

The Board shall, from time to time make, establish, promulgate, amend and repeal the Subdivision Rules. The Association shall prepare an annual operating statement reflecting the money received by the Association and the expenditures of the Association for each fiscal year, and shall distribute such statement to each member and each mortgagee upon request.

In the event that the Association, as a corporate entity, loses its corporate powers or is dissolved, a non-profit, unincorporated association shall be formed forthwith by Declarant, if necessary, and without further action or notice, and shall succeed to all rights and obligations of the Association hereunder until a qualified nonprofit corporation is formed by Declarant. Said unincorporated association's affairs shall be governed by the laws of the state of New Mexico, and to the extent not inconsistent therewith, by the Declaration, the Articles and Bylaws, respectively, as if they were created for the purpose of governing the affairs of an unincorporated association.

Article 7- Assessments

7.1 Mutual Covenants to Pay Assessments. Declarant, as Owner of the Subdivision, covenants, and each Owner, by acceptance of a deed to a Lot, covenants and agrees with each other Owner and with the Association, to pay all assessments levied by the Board as permitted under this Declaration, the Bylaws, the Subdivision Rules, the Shared Well Agreements and/or any other authority, whether or not such covenant is contained in such deed.

7.2 Lien for Non-payment of Assessments and Fines. All sums assessed and fines imposed by the Association pursuant to this Declaration, the Bylaws, the Subdivision Rules, the Shared Well Agreements and/or any other authority, chargeable to any Lot or its Owner, but unpaid as of the date payment is due, shall constitute a continuing lien on such Lot, from the date payment is due but not made. The Association is authorized to execute, acknowledge and record in the real property records of Sandoval County an instrument evidencing and perfecting such lien, which may be foreclosed. The Association, shall give, to the Owner and to those mortgagee(s) of a Lot actually known to the Association, notice of any unpaid assessments remaining unpaid for longer than thirty (30) days after the same are due. If any assessment shall remain unpaid for thirty (30) days after the due date thereof, the Board or managing agent shall assess interest thereon at a rate equal to eighteen percent (18%) per annum, commencing on the date such assessment was due, together with reasonable costs and any attorney's fees incurred in connection with the collection thereof. If the assessments or fines, together with all costs of collection, including, without limitation, attorneys' fees, plus interest accrued on the foregoing, are not paid within thirty (30) days after notice is delivered, the Association may take all action necessary or advisable for collection and/or to enforce its lien on any Lot, including, without limitation, suit for collection, and/or foreclosure. The lien provided for herein shall secure payment of all assessments and fines, as well as all reasonably related expenses, including, without limitation, all attorneys' fees and costs expended in perfecting the lien and attempting collection of assessments or fines, plus interest on the foregoing at the rate of eighteen percent (18%) per annum. The lien may be enforced and foreclosed in an action brought in a court of competent jurisdiction in a like manner as the foreclosure of a mortgage on real property under the laws of the State of New Mexico. In any such foreclosure, the Owner of the Lot(s) being foreclosed shall be required to pay the costs, expenses and attorneys' fees incurred in connection with such foreclosure, as well as all other reasonable costs of collection and all related attorneys' fees. The managing agent or Board on behalf of the Association shall have the power to bid on the Lot at foreclosure sale, and to acquire, hold, lease, mortgage and convey the same. The period of redemption following any judicial sale shall be one (1) month in lieu of the nine (9) months provided by law.

The Owner shall be required to pay to the Association any assessment due for the Lot during the period of foreclosure. Any holder of a lien on a Lot may pay, but shall not be required to pay, any unpaid assessments or fines with respect to such Lot, and

upon such payment such encumbrancer shall have a lien on such Lot of the same rank as the lien of his encumbrance for the amounts paid.

7.3 Personal Debt of Owner. The amount of the assessments or fines chargeable against any Lot or its Owner shall be the personal and individual debt of the Owner thereof at the time the assessment is made. Suit to recover a money judgment for such assessments or fines shall be maintainable without foreclosing or waiving the lien securing same.

7.4 Joint Liability for Assessments or Fines. The grantee of a Lot shall be jointly and severally liable with the prior Owner for all unpaid assessments against the latter, without prejudice to the grantee's right to recover from the prior Owner or grantor therefor.

7.5 No Waiver of Assessments. No Owner may waive or otherwise escape liability for assessments by non-use of the Common Easements or his Lot, by abandonment of his Lot or by any other means whatsoever.

Article 8 - Duties and Responsibilities of Owners

8.1 Owner's Responsibility to Repair. Each Owner shall be responsible for the maintenance and repair of his Lot and all Structures on, in, and under his Lot, and for the prompt rebuilding or demolition of any Structure on his Lot, in the event of partial or complete destruction. All maintained areas shall be kept in clean and orderly condition.

8.2 Parking Areas: Vehicles. For overnight parking, each Owner shall park his vehicle(s) in his garage, unless there are more vehicles used by the Owner than his garage will accommodate except that the Owner must be able to accommodate at least two cars in his garage.

8.3 Maintenance of Landscaping. Each Owner shall maintain the landscaping and vegetation of his Lot in a neat and attractive manner.

8.4 Observance of Responsibilities. Each Owner shall comply with the provisions of this Declaration and will cause and be responsible for compliance by the Owner's family, agents, guests, contractors, employees and any person renting or leasing Owner's Lot.

8.5 Rights of Action. The Board shall have a right of action against Owners for failure to comply with the provisions of this Declaration. In addition to any other enforcement rights, if an Owner fails to fulfill his maintenance responsibilities, after reasonable notice from the Association and an opportunity for the Owner to cure such failure, the Association may enter the Lot and perform such maintenance. The Board shall be entitled to recover all costs, expenses and attorney's fees incurred in the enforcement of this Declaration, and, from the time such costs, expenses and attorneys'

fees are due and unpaid, they shall constitute a continuing lien which may be perfected and enforced pursuant to and consistent with the provisions of Article 7.

8.6 Archaeological Preservation Easement. Archaeological sites have been discovered in Phase I on Lots 17, 18, 23, 25, 26, 27, and 58 and in Phase II on Lots 60, 68, 75, 84, 85, 86, 90, 91, 92, 100, 101, 102, 164, 165, 180, 181, 182, 186, 188, 193, 194, 195, and 198, and easements have been established therefor, as shown on the Plats. No construction, grading or moving of dirt is permitted within the boundaries of the easements provided for the archaeological sites. The sites may not be disturbed, and artifacts may not be removed therefrom.

8.7 Construction and Maintenance of the Septic Tank and Leach Field. Construction and maintenance of the septic tank and leach field for each Lot shall comply with standards set forth in the Subdivision Rules.

Article 9 - Responsibilities of Association

9.1 Maintenance of Streets. The Association shall maintain all streets within the Subdivision in good condition and repair.

9.2 Maintenance of Other Common Easements. The Association shall own, maintain and keep in good repair all improvements constructed by Declarant or the Association within other Common Easements, including, without limitation, signage, mailboxes and trails.

9.3 Maintenance of Drainage Easements; Easement. Declarant and the Association are each granted a perpetual easement to enter upon each Lot for drainage maintenance purposes and for purposes of correcting drainage problems or Structures. Prior notice of entry shall be given to the occupant, except in an emergency. Such easement to enter shall include, but is not limited to, vehicular access to check dams and storm water detention areas. The Association shall be responsible for maintenance of the storm water detention ponds and other erosion control Structures in Common Easements and the periodic removal of silt from the ponds.

9.4 Solid Waste Disposal. The Association shall designate a private trash hauler, licensed by the State of New Mexico, to provide once weekly solid waste pick up service to all Lots in the Subdivision. Each Owner shall contract individually for these services with the Association-designated private trash hauler.

9.5 Liquid Waste Disposal. Inspection and maintenance of wastewater system on a Lot will be the responsibility of the Lot Owner.

Article 10 - General Provisions

10.1 Enforcement. The Board, Declarant and any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants,

reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by a party to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Board, Declarant and any Owner shall be entitled to recover all costs, expenses and reasonable attorney's fees incurred in the enforcement of the provisions of this Declaration.

10.2 Notices. Any notices required or permitted to Owners under this Declaration shall be delivered to the respective addressee or deposited in the United Stated mails, postage prepaid, and addressed to the Owners at the respective addresses as shown in records maintained by Declarant or the Association. Notice shall be deemed to have been delivered or given upon hand delivery or three (3) days after deposit in the United States mails. Any Owner may change his address by giving written notice thereof to the Association, in accordance with the Bylaws, or to such other address as specified by the Declarant. Any other notices required or permitted to Declarant hereunder shall be sent certified mail, postage prepaid, to Declarant, P.O. Box 2079, Abilene, Texas 79604, until such address is changed by a notice of address change duly recorded in the Office of the County Clerk of Sandoval County, New Mexico. Notice shall be deemed to have been delivered upon the date of actual receipt.

10.3 Severability. Invalidation of any provision of this Declaration by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

10.4 Acceptance; Run with the Land; Amendment. By purchasing, or accepting a conveyance or transfer of an interest in, a Lot, the Owner agrees to the terms of this Declaration. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years each; provided, however, that Owners holding at least sixty-six and two-thirds percent (66 2/3%) of the Voting Power of the Association may, by executing and acknowledging an appropriate instrument not more than one (1) year and not less than ninety (90) days prior to the expiration of said initial twenty (20) year period or prior to the expiration of any ten (10) year extension period thereafter, release the land subject hereto from all of the restrictive covenants contained in this Declaration, or may, at any time, change, amend, modify or revise any of said restrictive covenants, except as prohibited herein. Every amendment must be recorded in the Office of County Clerk, Sandoval County, New Mexico.

10.5 Annexation. Declarant may, from time to time, and in its sole discretion, and without necessity of any approvals by any Owner, subject real property which is contiguous to the Subdivision and which is owned by Declarant or owned by other persons with the permission of such other persons, to this Declaration whereby such property will have all of the rights and obligations of membership in the Association, including the right to use the Common Easements. The annexation of any such property shall become effective when Declarant shall have recorded in the Office of

County Clerk, Sandoval County, New Mexico, an amendment to this Declaration which describes the real property to be annexed, declares that such property is held pursuant to this Declaration, and states the amended total number of Lots within the Subdivision for assessment and voting purposes, and shall have recorded a subdivision plat of the annexed property.

No property may be incorporated into the Subdivision without Declarant's consent.

10.6 Disputes and Method for Resolution. Claims, disputes or other matters arising between or among the Association, any of its committees, including but not limited to the ACC, or any of the Owners, which arise out of or relate to the Declaration, Subdivision Rules, Shared Well Agreements, or any other Subdivision-related agreements, shall be subject to and decided by arbitration in accordance with the Subdivision Rules of the New Mexico Uniform Arbitration Act, NMSA 1978, §§ 44-7-1 et. seq., unless the parties mutually agree otherwise. Notice for demand for arbitration should be filed in writing with the other party within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based upon such claim, dispute or other matter in question, would be barred by the applicable statute of limitations. The award rendered by the arbitrator(s) shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

The parties to the arbitration shall attempt to agree upon a single arbitrator, but if they are unable to do so, then each party shall, within thirty (30) days after a demand for arbitration has been made, select an arbitrator of his choice. The two arbitrators so chosen shall, within thirty (30) days after selection, appoint a third arbitrator, and the three arbitrators so chosen shall hear and render a decision on the matter as soon as practicable thereafter. If two arbitrators are chosen by the parties hereunder and cannot agree on a third arbitrator, the presiding judge of the Thirteenth Judicial District Court shall appoint a third arbitrator.

10.7 Master Plan. The Diamond Tail Master Development Plan, recorded on March 5, 1997, in Volume 3, Folio 1587-A of the real property records of Sandoval County, New Mexico, as Document No. 4523, contemplates the possible development of as much as 1754.74 acres of land, more or less, in as many as five (5) separate phases or subdivisions. Nothing in this Declaration or in the Master Development Plan commits or obligates Declarant or any other person to develop all or any portion of the land described in the Master Development Plan, or guarantees to any Owner any development beyond the Subdivision.

10.8 Binding Effect. This Declaration shall be binding upon and shall inure to the benefit of Declarant, the Owners, and their respective heirs, successors and assigns, and shall run with the land.

IN WITNESS WHEREOF, Declarant has executed this Declaration this 14TH day of MAY 2008.

Diamond Tail Estates I, L.L.C.,
a Texas limited liability company

By: Joe B. Matthews Enterprises, Inc.
a Texas corporation, Manager

By: Joe B. Matthews
Joe B. Matthews, President

ACKNOWLEDGMENTS

STATE OF Texas)
) ss.
COUNTY OF Taylor)

This instrument was acknowledged before me on May 14, 2008, by Joe B. Matthews as President of Joe B. Matthews Enterprises, Inc., a Texas corporation, Manager of Diamond Tail Estates I, L.L.C., a Texas limited liability company.

HELEN ENGLAND
Notary Public, State of Texas
My Commission Exp 12-27-08

Helen L. England
Notary Public

My Commission Expires: 12-27-08