

**FIRST AMENDED SHARED WELL AGREEMENT
Diamond Tail Subdivision (Phase I)
Water Group 08**

This First Amended Shared Well Agreement (“**Agreement**”) is made by and between Diamond Tail Estates I, L.L.C., a Texas limited liability company (“**Developer**”), the Diamond Tail Homeowners’ Association (the “**Association**”), and the lot owner of Lot 50 (the “**Lot Owner**”) within Water Group 08 (the “**Water Group**”)¹ and replaces and supersedes any and all prior Shared Well Agreements pertaining to Lot 50. The parties acknowledge the following:

A. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Second Amended and Restated Declaration of Covenants, Conditions, Restrictions for Diamond Tail Subdivision Phases I and II, executed by the Developer and recorded in the real property records of Sandoval County, New Mexico on October 22, 2008, in Book 411, at Page 31871, as Document No. 200831871 (the “**Declaration**”).

B. The Water Group consists of the owners of the lots affected by this Agreement, which lots are more particularly described as follows:

Lots 40, 41, 42, 43, 44, and 50 (the “**Lots**”)
Phase I of the Diamond Tail Subdivision

C. Developer is the developer of the Diamond Tail Subdivision, sometimes also referred to as Diamond Tail, Diamond Tail Estates, and/or Diamond Tail Ranch (the “**Subdivision**”), in Sandoval County, New Mexico, described in the Second Amended Final Plat of the Diamond Tail Subdivision, Phase I, recorded in the real property records of Sandoval County, New Mexico on July 29, 1999, in Volume 3, Folio 1887-A, Document No. 19061, and in the Subdivision Plat of Lots 60 Thru 201 and Tract A-1-A of Diamond Tail Subdivision Phase II, recorded on September 12, 2008 at 2:26 p.m., with the County Clerk of Sandoval County, New Mexico, in Volume 3, Folio 2958-B, Document No. 200828276 (the

¹ The Office of the State Engineer sometimes refers to a Water Group as a Water Well Group.

“Plats”). Pursuant to its plan of development for the Subdivision, the Developer has established the Water Group and has agreed to drill and complete the initial well for the Water Group (the “Well”), as provided herein, located on one or more of the Lots, and to install the initial Water Distribution System (defined below) to service the Lots, subject to the Declaration and the terms and conditions of this Agreement.

D. Provisions pertaining to the costs of operation, maintenance and repair of the Well and/or the Water Distribution System and the provisions governing the operation of the Water Group, are set forth below.

IT IS THEREFORE AGREED as follows:

1. **Location of Well.** The Well for Water Group is located on Lot 42.
2. **Installation of Well and Water Distribution System.** Developer, at its expense, has drilled and completed the Well, in accordance with New Mexico Office of the State Engineer 72-12-1 Well Permit Procedures. Developer, at its expense, has also provided a water distribution system consisting of the necessary equipment, components, and materials for the distribution of water from the Well to the Lots in the Water Group, including (1) the well pump and pump controls, (2) the primary meter, (3) electric power, (4) water storage tank(s), (5) pressure tank(s), (6) all necessary electrical components and other related equipment, (7) the equipment vault and (8) the water distribution lines (collectively, excluding the Well, the “**Water Distribution System**”). The electric meter on the Well shall be attributed to the Water Group, and any required utility deposit shall be paid by the Association from the funds of the Water Groups. Components of the Water Distribution System have been constructed on the lot on which the Well is located and/or on Lots adjacent to the Well. Easements for the Water Distribution System are reflected on the Plats and are hereby granted to the extent there is currently any deviation from the Plats; however, it is understood that such easements are subject to adjustment as deemed advisable by the Association, following consultation with affected lot owners, to accommodate construction and operation of the Water Distribution System.

At his own expense, prior to using any water from the Well which is delivered by the Water Distribution System, Lot Owner shall (1) install and connect his individual water service line to the distribution line and (2)

simultaneously install a meter to monitor Lot Owner's water use. Lot Owner shall maintain, in a good and functioning state of repair at all times, the individual water line and meter on his Lot.

3. **Administration of the Well and the Water Distribution System.** The Association shall administer, manage, operate, and maintain the Well and the Water Distribution System for the Water Group.

4. **The Water Groups Account.** There is a separate Water Group for each domestic well in the Subdivision. More than one Water Group may be referred to collectively as the "Water Groups." The Association shall manage the finances of all of the Water Groups pursuant to generally accepted accounting principles ("GAAP") and may have its accounts periodically audited by an accredited outside auditor. The Association shall maintain, on behalf of all the Water Groups within the Subdivision, a checking account with a local banking institution and other reserve and/or investment accounts with such financial institutions, as it deems appropriate, regardless of location (collectively, the "**Water Groups Account**"), and shall keep current and adequate records showing all receipts to and disbursements from the Water Groups Account. All Water Group assessments, surcharges and other payments collected pursuant to this Agreement shall be deposited into the Water Groups Account. A duly authorized representative of the Association shall be the signatory on the Water Groups Account.

5. **Water Supply and Metering.**

a. The maximum annual water diversion from the Well is three (3) acre feet of water, or nine hundred seventy-seven thousand five hundred fifty-three (977,553) gallons of water per year. Each lot in the Water Group is limited to a maximum annual water consumption of 0.50 acre feet of water, or one hundred sixty-two thousand nine hundred twenty-five (162,925) gallons of water per year. Lot Owner is required to contribute his pro rata share of the minimum amount of water deemed necessary by the Association to establish and maintain appropriate low-water usage landscaping of the shared well, related electrical components, the water supply tank(s) and related pumping/supply equipment (collectively, the "**Shared Well Equipment**").

b. The Association shall take meter readings of water usage at least quarterly at the Well meter, to determine the total amount of water produced by the Well, and at the individual lot meters, to determine the amount of water used by each lot.

c. The Association shall submit information on water use to the Office of the State Engineer in compliance with its reporting requirements at the following address:

Office of the State Engineer
121 Tijeras N.E.
Albuquerque, New Mexico 87102

6. **Surcharges, Reduced Use, and Termination.** Any lot owner within the Water Group who uses more than 0.50 acre feet of water annually shall be assessed and shall pay a surcharge per gallon in an amount established, from time to time, by the Association for all gallons which exceed the annual limit. Further, in addition to the surcharge, the lot owner so assessed shall be required to pay back the excess use by reducing usage the following year in the amount of the excess for which a surcharge was imposed, unless circumstances clearly indicate the excess use was due to no fault of the lot owner, in which case lot owner shall not be required to pay back the excess use. In the event the Association determines that the extent of the use beyond the annual limit is egregious, whether by the amount of the excess use or by the number of occasions of excess use, the Association may terminate water service to the lot which is the subject of the egregious water use.

7. **Reserve Funds.** Upon the closing of the sale of a lot in the Water Group and upon the closing of a resale thereof, whether vacant or improved, the Purchaser of the lot shall pay to Developer or the Association, as appropriate, the sum of \$400 or such other amount as shall subsequently be established by the Association, which amount shall not exceed the basic annual water charges assessed lot owners in the Water Groups in the Subdivision for the prior calendar year. This amount shall be deposited in the Water Groups Account designated for the reserve for Water Groups expenses. The Developer shall not be required to contribute to this reserve.

8. **Transfer of Permit(s), Well and Water Distribution System to Water Group.**

a. The Developer has assigned and transferred the necessary Well permit(s) and ownership of the Well and the Water Distribution System to the Water Group, in care of the Association. The Association has accepted the assignment of the permit(s) and the transfer of ownership of the Well and the Water Distribution System on behalf of the Water Group and retains custody of the Well permit(s) and ownership of the Well and the Water Distribution System for the Water Group. The Association, successor-in-interest to Developer for the purpose of this Agreement, has accepted and assumed the rights and responsibilities of Developer as to the Wells permit(s), the Well, the Water Distribution System and the Water Group. Developer has no further obligation or responsibility regarding the Well, the Water Distribution System or the Water Group. All transfer fees were paid by the Developer.

9. **Assessments; Capital Expenditures.**

a. One or more representatives of the Association and the lot owners in the Water Groups shall meet as often as necessary but no less frequently than annually to review the condition of the wells and the water distribution systems in the Subdivision, the annual water use reports and the Water Groups' financial status and to recommend to the Association what action needs to be taken and what assessments, if any, should be levied against each lot in the Water Groups to provide an adequate reserve for, and to pay, administrative expenses, electrical charges, maintenance and inspection costs, and capital expenditures, including, but not limited to expenditures for the replacing, rehabilitation and redevelopment of the wells or the water distribution systems, as applicable. The Association shall determine whether action is required and whether an assessment should be levied and, if so, the amount of the assessment and whether a different assessment is appropriate for occupied and vacant lots. For purposes of this Agreement, "**capital expenditures**" shall include repairs to or replacement of components of the wells and the water distribution systems.

b. If the assessment for maintaining, repairing, replacing, rebuilding and/or deepening any of the wells or the water distribution systems is insufficient to cover the cost of any such needed expenditures, the

Association, if necessary, will notify the lot owners within the Water Groups of the amount of the additional assessment needed to cover the cost.

c. Lot Owner shall pay all assessments and any surcharges to the Association within thirty (30) days after the delivery of a invoice therefore. An invoice shall be deemed delinquent on the thirty-first (31st) day after delivery. An eighteen percent (18%) per annum interest rate may be added to all invoices which have not been paid within sixty (60) days after delivery of the invoice. If the invoice remains unpaid ninety (90) days after it is delinquent, the Association shall have the right to terminate all water service and to proceed against the Lot Owner pursuant to Article 7 of the Declaration.

10. **Equal Rights; Interim Shortage.** No lot owner(s) shall obtain any priority over any other lot served by first commencing to use the Well, and each lot owner(s) shall have equal rights to the water produced by the Well.

a. Should the Well become incapable of producing sufficient water to meet the annual consumption of 0.50 acre feet of water per lot per annum, then, unless and until a different course of action is taken, the lot owners in the Water Group shall take steps to reduce, proportionately on a per lot basis, the amount of water being withdrawn from the Well, so that each lot owner receives an equitable amount of available water. The lot owners may agree among themselves on the water allocation, provided, however, that in no case shall the annual individual water diversion exceed 0.50 acre feet per lot per annum. If the lot owners fail to so agree upon an allocation within thirty (30) days of the receipt of notice from the Association of the need to do so, then the Association shall establish, on a per lot basis, the reduced amount of water that can be diverted to each lot. Any lot owner whose diversion exceeds the reduced amount so established shall be subject to the provisions of Paragraph 6.

11. **Authorized Expenses; Electrical Charges.** Without further approval or authorization of the parties hereto, the Association is authorized and directed to pay from the Water Groups Account all costs and charges attributable to the Water Groups including, but not limited to, the utility deposit, if required, for the electric meter on the Well, the monthly electric utility charges attributable to the electrical meters serving the wells and/or the water distribution systems; postage, stationery expenses and other

administrative expenses; systems operation and routine maintenance expense; and costs of emergency repairs to the wells or the water distribution systems as may be required to ensure a continuous supply of water to the extent reasonably practicable. Electrical charges shall be divided among the lot owners on such equitable basis as shall be reasonably determined by the Association. The Association shall have the monthly electrical bill for the Water Groups sent to the mailing address of the Association, and shall be responsible for calculating and recording the water usage of each lot on a quarterly basis.

12. **Well and Water Distribution System Easement.** The Lot(s) upon which the Well and/or Water Distribution System or any portion thereof is located shall be subject to an easement in favor of other Lots served thereby for the purposes of installation, operation, inspection, maintenance and repair of the Well and/or the Water Distribution System, including the right to use such vehicles, drilling and pump rigs and other equipment as are commonly and reasonably used for the purposes of well drilling, equipping and repair, and for the purposes of water and power line installation, repair and replacements.

13. **Agreement to Future Wells.** Lot Owner agrees that Lot Owner will not protest, challenge, or oppose in any way the approval, drilling or completion of any well(s), whether a new, supplemental or replacement well(s), at any location in the Diamond Tail Subdivision or in any future Phase of the Diamond Tail Subdivision, which does not unreasonably interfere with Lot Owner's ability to enjoy his/her Lot.

14. **Default -- Enforcement.** In addition to the enforcement provisions set forth at Paragraphs 6 and 9, if a party fails to perform any of the obligations required of him under this Agreement, that party shall be in default, in which event the Association may notify such defaulting party in writing and, if the default is not cured within thirty (30) days after delivery of written notice, the Association may, at its option, commence a legal action on behalf of the Water Group to require the defaulting party to perform his obligations hereunder and/or may terminate water service to the Lot which is the subject of the default. If the non-defaulting party obtains substantially the relief sought in any legal action, the defaulting party shall pay the non-defaulting party's reasonable attorneys' fees and all other costs related to such legal action.

15. **Notice.** Lot Owner shall register his mailing address with the Association. All notices or demands intended to be served upon Lot Owner shall be hand delivered or shall be sent certified mail, postage prepaid, to the Lot Owner at the registered mailing address. If Lot Owner fails to register his address with the Association, all notices, statements, demands, etc., to Lot Owner shall be sent to the address of the Lot. Notice shall be deemed to have been delivered or given upon hand delivery or three days after deposit in the United States Mail.

All notices or demands intended to be served upon the Association shall be hand delivered or shall be sent certified mail, postage prepaid, to the Association at 100 Diamond Tail Road, Placitas, NM 87043. Notice shall be deemed to have been delivered or given upon hand delivery or three days after deposit in the United States Mail.

All notice or demands intended to be served upon the Developer shall be hand delivered or shall be sent certified mail, postage prepaid, to Diamond Tail Estates I, L.L.C., P.O. Box 2079, Abilene, TX 79604, until such address is changed by a notice of address duly registered with the Association. All notices, demands, statements, or other information directed to the Developer shall be deemed effective upon the date of actual receipt.

16. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Developer, the Association, Lot Owner, successors in interest, grantees, assignees, heirs and beneficiaries, and the provisions hereof shall be deemed to be covenants running with the land and with title to the Lots.

17. **Term.** The term of this Agreement shall commence as of the date the first lot owner within the Water Group to execute this Agreement acquires title to his lot, as evidenced by the recordation of the deed to the lot, and shall continue for so long as the Well or any replacement Well or supplemental Well is able to produce a volume of water adequate to serve the reasonable and lawful domestic uses of all Lots or there are outstanding obligations hereunder.

18. **Subject to Law and Regulations.** Any and all obligations and responsibilities pursuant to this Agreement are subject to and can only be performed to the extent allowed by applicable law and regulation.

19. **Counterpart Signatures.** This Shared Well Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

20. **Recordation.** This Agreement shall be recorded in the records of Sandoval County upon the closing of the initial sale of the Lot from Developer to Lot Owner.

21. **Enforcement; Attorney's Fees.** The term of this Agreement shall be specifically enforceable and the prevailing party shall be entitled to recover his reasonable attorneys' fees and costs incurred in the judicial enforcement of this Agreement.

22. **Amendment.** This Agreement may be amended only with the written consent of Lot Owner and the Association or its successor(s). Any amendment shall be recorded and shall reference this Agreement.

This Agreement shall be effective as of the last signature affixed hereto.

DEVELOPER:

DIAMOND TAIL ESTATES I, L.L.C.,
a Texas Limited Liability Company

By: JOE B. MATTHEWS ENTERPRISES, INC.,
a Texas corporation,
Manager of DiamondTail Estates I, L.L.C.

By: _____
Joe. B. Matthews

Manager

