

Second Amended and Restated

Subdivision Rules

for Phases I and II

of

Diamond Tail Estates

August 2011

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Subdivision Rules for Phases I and II of Diamond Tail Estates

1.0 Objectives

These Rules are created to complement and supplement the Declaration of Covenants, Conditions, and Restrictions, which should be read for additional information and guidance.

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 (the “**Declaration**”), executed by the Declarant 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.

In the planning for the Subdivision, the Declarant has taken several measures to protect the environment. Open space areas have been set aside for dedication to the Diamond Tail Homeowners’ Association (“**Association**”) for the enjoyment of all residents and guests of the Subdivision. Significant natural features such as drainages, ridgelines, and steep slopes have been included in the open space areas in order to protect them from inappropriate development. Roads have been designed to follow the contours of the land and minimize the visual impact of cut and fill slopes. Storm water run-off is captured or reduced in flow at various locations within the Subdivision as a method for controlling erosion, recharging the aquifer, and creating denser vegetation for animal habitat.

Utilities have been placed underground to ensure the preservation of views throughout the Subdivision. The entire community has been surveyed by an archaeologist. Various archeological sites have been located in the survey of the property, and easements have been designated on the plat to preserve these important historical sites.

The recommended building sites optimize views; minimize the impact on the terrain and views from other lots and roadways. Architectural design and terrain management standards have been included in the Declaration and these Subdivision Rules to ensure that future built improvements are integrated into the surrounding terrain. The Declarant is requesting the cooperation and participation of each individual Owner in the process of creating a built environment which minimizes the impact on the land. Declarant strongly encourages energy and water conservation in design and construction of homes in Diamond Tail. Passive solar site planning, construction techniques for added insulation, incorporation of solar and photovoltaic elements in home design, rooftop water harvesting, grey water re-use, and/or other technologically developed products that can reduce the use of natural resources are encouraged. Construction efficiencies to minimize contributions to solid waste are also encouraged. Each lot contains its own unique natural features, terrain opportunities, and constraints. The placement and design of the house and its relationship to the land, and such technical considerations as soils,

liquid waste collection treatment and disposal, solar heating, and storm water management must be considered holistically in the design process. Through Subdivision design, the Declaration, and the Subdivision Rules, the Declarant seeks to preserve, protect, and, where possible, enhance the unique natural environment found in the Diamond Tail Subdivision.

2.0 Architectural Design Elements

Diamond Tail's design criteria and control are intended to create a harmonious and consistent appearance for the subdivision and have homes that blend into the natural terrain with minimal visual impact. Each lot has a unique character and topography and requires design considerations that will vary from its neighbors. The intent throughout the development is, however, that all structures be compatible with the landscape and adjoining homes. As regards style, the emphasis is to adhere to historical design principles and to avoid contrived nontraditional elements. The Architectural Control Committee ("ACC") may in its discretion allow only one or several styles (Pueblo or Territorial, for example) in certain areas of the subdivision.

2.1 Approved Architectural Styles

Approved architectural styles include:

2.1.1 *Pueblo (Spanish Pueblo Revival)*

This style is typified by multiple level flat roofs, soft organic lines, rounded parapets, and simple window treatments. Support elements include heavy peeled logs or rough sawn timbers. Windows and doors are deeply recessed into thick walls. Windows are wood or wood-like in appearance. Wall materials are stucco, rammed earth, or adobe block. Trim is minimally expressed with window and door openings capped with heavy wood lintels. Exterior portals and courtyards are a common feature that allow for a fluid transition between exterior and interior spaces.

Stone trim or accenture is acceptable if limited and proportional to the overall appearance. Stone turrets or kivas will be considered based on their size and dominance of the outward appearance of the structure. Roof tile is generally not acceptable as a trim component. Irregular parapets are not acceptable.

2.1.2 *Territorial*

This style consists of flat roof masses with articulated parapet tops, usually in brick. Windows and doors have neoclassical wood trim at the top in peaked or arched shapes. Simple rectangular floor plans often have deep porches with small wood columns and flat roofs similar to the main building parapets. Support elements are milled wood (all sides) for columns and beams. Windows are painted multi-panel wood. Wall materials are stucco, rammed earth, or adobe.

2.1.3 Northern New Mexico (*High Mountain Pitched Roof*)

This style is similar to Pueblo and Territorial in the use of masonry walls, wood windows and trim, and color treatment. The pitched roofs were necessary in high snowfall areas. Roof material must be non-reflective; the ACC will provide a color pallet and material description.

2.1.4 Southwest Contemporary

This style eliminates much of the traditional detailing such as wooden posts, beams, and vigas. The emphasis is on the overall structural composition with use of windows and decorative walls while still clearly presenting the image of a Southwestern or New Mexico style home. This style needs to strictly avoid the “store front” or “commercial” look with excessive glass and metal.

2.1.5 Illustrations

The ACC has available illustrations of these styles in the Builders Guidelines for a general understanding of the planned community architectural pallet.

2.2 Building Placement

A recommended building location has been established for each lot by the ACC. These are shown on the plats as 50 foot square symbols. These designate the approximate center of the home, which will be adjusted as the approval process progresses. The ACC will consider building size, the view corridors for the proposed home and adjoining existing or future homes, and other criteria deemed suitable.

Buildings, walls, and any structure extending above the ground shall be located at least 40 feet from the lot lines and at least 60 feet from the centerlines of the road right of ways. Based on terrain and lot conditions, these setback requirements may be varied by the ACC, in its sole discretion.

A preplan submittal engineering “on the lot” walk-through is required to discuss the building placement.

2.3 Grading & Drainage

The objective of site development of each lot at Diamond Tail is to minimize the affect of disturbance by grading and drainage operations to the existing, natural terrain that is unique to the vast topography of the area. The variety of landforms throughout Diamond Tail requires the attention to grading design to assure that the development of each lot has been specifically tailored so that each Residence blends naturally within the existing adjacent landforms. The grading design should strive to contain cut and fills within close proximity to the building foot print to preclude massive cut and fill slopes within the lot.

The natural arroyos and other defined existing drainages are great land features that contribute to the beauty of the landforms at Diamond Tail Ranch and shall not be obstructed. Drainage easements have been established as shown on the subdivision plats and are not to be encroached into by the development of each lot. Existing drainage shall enter and leave each lot at historical locations of water flows.

A Grading & Drainage Plan must be prepared for each proposed residence and submitted to the ACC for review.

2.4 Building Height and Sizes

The minimum home size is 2,400 square feet of heated space for Phase I and 2,000 square feet of heated space for Phase II. Guest houses are restricted to the lesser of ½ the heated square footage of the house or 1,600 square feet maximum.

Building height and size restrictions are intended to prevent any residence from appearing excessive when viewed from the street, open space, or another lot or would appear incompatible with other residences. The home should adapt to the site topography and not be placed for convenience on an elevated slab or be excessively cut into a hillside.

The standard maximum height for a home is 16 feet. This height is measured from a datum established as follows:

The structure shall not exceed 16 feet in height above the highest point of natural grade under the structure footprint. No elevation of an exterior wall shall exceed 20 feet from the final slab elevation. See the Builders Guidelines for illustrations of this provision.

Retaining walls and other walls not directly supporting a building structure shall not exceed 6 feet in exposed height.

If a home is proposed with a height that exceeds the maximum, it will be considered using the following criteria;

1. The necessity for the additional height. Some lots with small, difficult pad sites may need a second floor to achieve the required floor space;
2. The location of the home as regards ridgelines and the view corridors for other homes;
3. The visual aspect: is it excessive in appearance from the street, open space or other homes;
4. Other criteria that may be used by the ACC.

2.5 Building Massing

The concept of massing is somewhat subjective. The intent is to prohibit long unbroken masses in the horizontal and vertical plane. The building façade should typically have a minimum of three visually distinct masses, with vertical and horizontal offsets that are proportional to the scale of the structure. It is anticipated that massing will follow natural site profiles where practical. The Builders Guidelines illustrates elements of this concept. The ACC will endeavor to cooperate with the goals of the Owner and design team but will ultimately have final authority to accept or reject a proposed design in this regard.

2.6 Ancillary Structures

Ancillary structures such as gazebos, armadas, cabanas, pool pavilions, and similar must be designed as an integral, connected part of the residence.

Exterior stairs, if allowed, must be screened with a solid wall.

2.7 Roofs

The pueblo, territorial and contemporary styles have flat roofs. Small pitched roof areas may be allowed if they do not conflict with the traditional appearance of the home.

Northern New Mexico style homes with pitched roofs must use non-reflective materials and colors approved by the ACC.

Mechanical equipment is prohibited on roofs, unless it can be screened from view by the parapet wall or structure. If mechanical equipment is allowed on the roof the ACC will establish the design for screening, however this exception will require demonstration that alternatives such as ground mounting are not practical.

2.8 Roof Top Decks

These may be allowed on flat roofs, depending on the visibility from the street and adjoining lots.

2.9 Building Colors and Trim / Window Colors

The exterior walls of each house, guest house, garage, and all free standing walls and fences shall be plastered except as otherwise allowed by the ACC. Such plaster may be either a cementitious based stucco, an elastomeric synthetic stucco, or natural mud plaster. The exterior walls of each house, guesthouse, garage and all freestanding walls and fences must be in colors harmonious with the landscape, which generally are called earth tones. Pre-approved exterior and enameled roof colors are available from the ACC.

Stone surfaces shall be in their natural color and must approximate local earth tones.

No wooden exteriors other than trim or decking shall be permitted. “Coyote style fences” are allowable.

No reflective material shall be used where it would adversely affect any other house within the subdivision.

Colors other than those pre-approved may be approved by the ACC.

2.10 Exterior Lighting

All exterior lighting, as shown on the Final Elevation Plan and Landscape Plan, must be designed to minimize glare or glow. The use of low voltage lights, automatic timers and other equipment is encouraged. 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. The approval of the lighting plan will be at the discretion of the ACC and will focus on the effect that may be anticipated on adjoining lots and the general area.

2.11 Art, Ornamental Objects, and Flagpoles

The installation of art in the front yard or anywhere visible from the street or an adjoining lot is subject to approval by the ACC. Flagpoles for the display of the American flag on appropriate holidays may be allowed, depending on design and location.

2.12 Skylights

Skylights on flat roofs must be darkly tinted, low profile, and surrounded by parapets to provide sufficient screening of light from the interior of the residence.

Up-lighting in skylights will not be permitted.

Skylights will not be allowed on sloped roofs, unless not visible from any direction.

2.13 Solar Collectors

Solar panels are permitted provided that they are properly integrated into the building and adequately screened to limit their visibility from the street and other lots.

2.14 Antennas, Wind Generators, and Towers

No exterior antenna of any sort, including television antennas, 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.

Satellite dishes, if installed, must be located and screened from view to the extent possible without interfering with functionality.

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

2.15 Fireplace Spark Arrestors

Spark arrestors and prefabricated sheet metal chimney caps must have a sheet metal, masonry or other fireplace shroud in a design consistent with the architectural character of the residence and finished in the color of the chimney.

2.16 Driveways

All driveways shall be graded and sloped for proper drainage, and shall have culverts large enough for proper drainage, with ends fitted. Asphalt or concrete driveways are discouraged. If allowed, they must be of a texture and color approved by the ACC. Permanent driveways shall be surfaced with a compacted base course at least four (4) inches thick or three (3) inches of base course and two (2) inches of other surface material approved by the ACC. Prior to commencement of construction of the house, EPA Storm Water Pollution Prevention Regulations (SWPPP) require the first 50 feet of the driveway to have 3 to 4 inches of round rock base course. It is strongly recommended that a minimum of three inch base course be installed on the driveway prior to commencement of on site development.

One driveway will be permitted on each lot. Driveways must have a width and intersection angle at the street that is satisfactory to the ACC.

2.17 Garages and Parking

Garage space must be provided for a minimum of two vehicles. The visual impact of garages must be minimized. Garages shall not face the street unless site constraints require a street orientation. If facing or otherwise visible from the street or adjoining lots, it is required that no more than two single garage doors be in the same plane. A single and a double door will be allowed in the same plane.

If visible from the street or adjoining lots, garage doors must be recessed from the face of the garage wall to the satisfaction of the ACC and must be constructed with materials that are consistent with the style of the home.

No carports or open parking structures will be allowed.

A minimum of two guest parking spaces must be provided. Screening, either with landscaping or low walls that are extensions of the residence is required to minimize the visibility of the parking area.

2.18 Patios and Courtyards

These areas must be designed as integral parts of the residence, with low walls to screen furniture and fixtures from view. They must be compatible with the architectural character of the residence.

2.19 Driveway Security Gate

A private driveway security gate (manual or electronically operated) will be considered by the ACC, on a case by case basis, and may be allowed at the sole discretion of the ACC, depending on design and shielding by terrain and vegetation. Gates will not be allowed within the designated setback on the lot.

2.20 Home Street Address Markers

Each home may have one street address marker located at the street entrance to be approved before construction by the ACC.

3.0 Water Usage

3.1 In-Home Potable Water Storage Systems

All homes in Phase II must have a tank or other receptacle to receive an open flow of water from the water distribution system and owner's water line. This water may be of a lower flow and pressure than is customary due to the design of the shared well system, therefore, a potable water holding tank and supplementary pressure pump and pressure tank will be needed. The design and technical information for these are available in documents provided to the HOA and ACC by professional engineers.

Lot owners in Phase I are strongly encouraged to also install an in-home water storage tank, booster pump, and pressure tank. A major benefit of this will be to provide an in-home storage of potable water for potential incidents of temporary water supply interruption from the shared well.

3.2 In-Home Water Quality Treatment Systems

Water quality treatment equipment/systems for individual homes may be installed at the home by the lot owner. This may include treatment by water softeners or other systems desired by individual lot owners for treatment of water hardness and other aesthetic or chemical conditions. If water softeners are installed, they must utilize an “on demand” system and use potassium chemicals rather than sodium.

3.3 Fire Suppression

Installation of a professionally designed fire suppression sprinkler system in the residence is highly recommended for Lots 1 through 59 and is required for all other lots in Diamond Tail Estates .The systems must meet the requirements established by Sandoval County.

3.4 Water Conservation

Water conserving plumbing fixtures are required by the National Energy Policy Act of 1992 (NEPA). The fixtures and appliances required below are in conformance with the NEPA standards. Where there is a conflict between NEPA standards and these Subdivision Rules the more restrictive standard shall apply.

- Toilets shall be of a type designed for use no more than 1.6 gallons per flush.
- Showerheads maximum flow rate shall not exceed 2.5 gpm.
- Kitchen faucets maximum flow rate shall not exceed 2.5 gpm, and 2.0 gpm faucets for bathroom sinks.
- Insulation of hot water pipes is required.
- If evaporative coolers are used, they must re-circulate bleed-off water.
- Low-water use dishwashers which require no more than fourteen (14) gallons in the regular cycles, and have a cycle adjustment which reduces the water use for small loads are required.
- Installing a point-of-use water heater which produces hot water instantaneously is recommended, especially for isolated hot water uses at some distance from a centralized hot water source.
- Low-water use washing machines which require no more than forty-three (43) gallons in the regular cycle and fifty-three (53) gallons in the permanent-press cycle, and have a cycle or water-level adjustment which reduces the water used for small loads is required.

3.5 Water Harvesting

Each Owner is required to capture water from roofs and hard surfaces in order to utilize water for landscaping and/or design storm water structures on the lot to enhance the recharge of the aquifer. The volume of capture required is 220 cubic feet per 1000 square feet of area, prorated as to actual area. The holding capacity of each structure will be noted on the as-built site plan.

3.6 Water Features

Water features such as waterfalls, ponds, and fountains must be designed, sized, and located to minimize water loss to evaporation and ground infiltration.

3.7 Swimming Pools

Swimming pools are discouraged. However, if an owner elects to construct a swimming pool it will not be larger than a standard lap pool. This will be a surface area not to exceed 300 square feet. It must be filled initially with water trucked in. It must be equipped with an automatic pool cover to reduce evaporation. The pool shall be designed to be visually connected to the residence and must be screened by the use of walls or courtyards.

All pools and associated equipment and structures must be in accordance with the regulations of Sandoval County.

3.8 Landscape

The type and extent of vegetation is extremely important to the Subdivision water conservation program. One of the most effective techniques to conserve water is the maintenance of the existing vegetation, since the present ecosystem maintains itself without supplemental water. In order to minimize the removal of vegetation several mandatory measures are set forth in these Rules.

The predominant vegetation in the Subdivision is pinion and juniper. The introduction of other, non-indigenous trees to this landscape creates foreign elements which affect the appearance of the landscape. The selection of plant types is designed to have the new landscape blend with the existing vegetation.

3.9 Plant Zones

Three types of planting zones have been established as part of the landscape standards which are enforced on each Lot.

The three planting zones are:

3.9.1 “Intensive Zone”

This zone is located closest to the House or guest house where captured rain water can most easily be used to supplement the irrigation requirements. This space is, many times, walled or screened. Mature height limits of 6 feet or lower are encouraged, and the mature height should not exceed the height of the home. Non-native and more water consumptive plants are permitted in this zone. The usual disruption of taller trees against a back-drop of pinion and juniper vegetation is minimized by locating the trees in closer proximity to the House or guest house. A broader palette of vegetation types is allowed in this zone.

3.9.2 “Transition Zone”

The zone is generally further away from the House or guest house and is intended as a transition between the Intensive Zone and the Natural Zone. Trees have a lower mature height than the Intensive Zone and blend better with the existing vegetation. The plant material once established does not receive supplemental irrigation except in times of drought when limited seasonal watering may be critical to survival of the plants.

3.9.3 “Natural Zone”

Plant material in this zone generally reflects the plant types that are found within the Subdivision or within similar ecological zones in New Mexico. Plants in this zone, once established, do not receive supplemental irrigation.

4.0. Required Plans to be Submitted to the ACC

4.1 Definitions

4.1.1 Preliminary Plans

Preliminary Plans are plans prepared for the ACC’s Preliminary Design Review and subsequent meeting as described below.

4.1.2 Final Plans

Final Plans are plans prepared for the ACC’s Final Design Review and subsequent meeting as described below.

4.2 Topographical Survey / Site Plan

A Preliminary Topographical Survey with 4' contours or less together with platting data (metes and bounds, easement locations, as-built utility locations) will be provided by the ACC. This will assist the Owner/Builder in their preparation of the Preliminary and Final Site Plan, the Grading and Drainage Plan, and the As-Built Site Plan.

4.3 Grading and Drainage Plan

The Grading and Drainage Plan will be prepared by a New Mexico Licensed Engineer, if requested by the ACC.

The Grading and Drainage Plan shall utilize the Topographical Survey / Site Plan previously provided as a base. At the request of the ACC, the owner/builder will provide additional topographical or location control (smaller contour intervals, for example) to better define the plan. This may be done by the builder, or, at the request of the ACC, by a Licensed New Mexico Surveyor.

The Grading and Drainage Plan shall delineate the limits of grading and shall include the footprint of all proposed structures (i.e. house, guest house, fences, walls, patios, driveways, and parking areas).

The Grading and Drainage Plan shall include proposed spot elevations within the grading limits needed for the development of the site. The plan shall also show the directional flow paths of both existing and proposed drainage including drainage from roofs, driveways, walks and other structures

The builder will establish to an accuracy acceptable to the ACC:

- A benchmark monument at a location suitable for location and elevation reference
- The highest point of the natural terrain under the house (and guest house) by location and height

4.4 Site Plan

4.4.1 Preliminary Site Plan

The Preliminary Site Plan shall include:

- Existing contour intervals of up to 4' as provided by Diamond Tail for preliminary design
- Plat information provided by Diamond Tail including metes and bounds description, easement locations, required setbacks and as-built utility main locations

- Preliminary horizontal placement of the structure(s) along with location of other preliminary site features (i.e. drives, walks and walls)

4.4.2 Final Site Plan

The Final Site Plan (1"=20' minimum) shall include and show:

- Building pad footprint with driveways, parking area, turnarounds, fences/walls, patios, decks, pools, and any other proposed site features
- Required setbacks and easements and shall have the building located by bearing and distance from a designated benchmark
- Existing utilities and the proposed utility service connections and alignment to the residence
- Other features requested by the ACC

4.5 Exterior Elevation Plans

4.5.1 Preliminary Elevation Plan

The Preliminary Elevation Plan shall:

- Illustrate the “architectural style” of the home and be in accordance with the “Approved Architectural Styles” described above
- Illustrate the exterior appearance of all views as labeled in relationship with the preliminary site plan
- Conform to all height requirements set forth in “Building Heights & Sizes”

4.5.2 Final Elevation Plan

The Final Elevation Plan shall:

- Illustrate the “architectural style” of the home and be in accordance with the “Approved Architectural Styles.”
- Illustrate the exterior appearance of all views as labeled in relationship with the site plan.
- Indicate the dimensions and elevations of all roof steps at top of parapet.
- Show on the appropriate elevation(s)
 1. The original ground surface under the house pad
 2. The planned surface under the pad after excavation and construction, including adjacent slopes and retention structures, if any
 3. The location and elevation of the “highest point” established in the Grading and Drainage Plan.

- Describe all exterior materials, colors, finishes (retaining & privacy walls, roofs, trim, vents, windows, doors, mechanical equipment, required screening, etc.) and locate all exterior lighting fixtures.
- Conform to all height requirements as set forth in “Building Heights & Sizes”

4.6 Landscape Plan

The Landscape Plan shall:

- Show the locations and types of all proposed landscaping with an accompanying irrigation plan.
- Show all landscape lighting, with notation to show wattage, style, and additional information that the ACC may request.
- List all proposed plant materials.

4.7 Storm Water Pollution Prevention Plan (SWPPP)

Storm water pollution and erosion control is not monitored in New Mexico by either Sandoval County or the State. Consequently, the US EPA (Region VI in Dallas, Texas) has jurisdiction for monitoring these activities. Diamond Tail has a Storm Water Pollution Protection Plan (SWPPP) for the platted portions of its property approved by the Diamond Tail Homeowners Association Architectural Control Committee (ACC). An owner or builder has three choices: (1) file a Notice of Intent (NOI) and acquire a Construction General Permit (CGP) from the US EPA under the National Pollutant Discharge Elimination System (NPDES) agreeing to comply with Diamond Tail’s SWPPP, (2) prepare and implement his/her own SWPPP, which must be approved by the ACC; or (3) acquire a Low Erosivity Waiver (LEW) upon satisfaction of specific conditions. Liabilities for non-compliance can be very significant for all parties.

Diamond Tail engages a consulting firm to administer the extensive documentation and evaluations required by the SWPPP program. Compliance with the NPDES/SWPPP program put in place by Diamond Tail is of the utmost importance; non-compliance puts the entire platted area in jeopardy for fines and construction stoppage.

All owners/builders must either secure their own CGP or file for and receive the CGP to operate under Diamond Tail’s SWPPP program from the US EPA prior to the commencement of any construction on site. If filing your own NOI is the choice, it can be secured by the owner or builder from the EPA in writing or electronically, or, the NOI can be secured for the owners/builder from one of many consultants that perform this service. Owners/operators must receive a US EPA issued CGP and tracking number prior to ground disturbance. An e-NOI has a minimum 7-day waiting period while other government agencies review the NOI. After the 7-day waiting period, if no issues are flagged, the US EPA will issue a CGP and tracking number. Diamond Tail can provide the name of the consultant handling its SWPPP process. Either your consultant or Diamond Tail’s consultant will draft the plan, maintain the plan documents, inspect the

site for violations during construction, suggest corrective action as necessary, and provide reporting required by the US EPA.

Additionally, during construction the SWPPP process requires regular on-site inspections (bi-monthly 14-day rotation and after a 0.5” rain event has been observed at the permitted site) and reports to be filed for each home under construction. The inspections must be performed by and the reports filed by a SWPPP consultant.

If this process is not thoroughly followed, Diamond Tail will have no choice but to stop construction, at its sole discretion, or step in and bring the process into compliance and reimburse itself from the Construction Deposit.

The ACC has a written summary narrative to more thoroughly explain how the SWPPP process works.

The builder is responsible for installing and mounting effective storm water pollution prevention devices including, but not limited to such items as covered waste containers, erosion control devices (wattles, straw bale, rock dams, sediment basins), concrete waste pits, off-site tracking controls, secured site sanitary facilities (toilets staked to the ground to prevent blow overs), and other good housekeeping practices outlined in the SWPPP, which shall be shown, and updated as necessary, on the Grading and Drainage Plan. Any fines or cost incurred due to EPA or NMED inspections and requirements during construction on the lot will be considered assessed against the Builder and Lot Owner who shall be responsible for payment of any fine or cost so assessed. Proper devices are required until the disturbed soil is stabilized. The builder will stabilize the driveway to prevent tracking mud onto the paved roads. Builder will also create a holding area on-site or other suitable material for the containment of concrete slag and other potentially harmful materials. Concrete waste and truck washout cannot be discharged on the construction site unless discharged into a leak-free container for subsequent off-site disposal.

A full description of the SWPPP regulations and process may be found in the US EPA Guidance EPA-833-R-06-004 (May 2007) “Developing Your Stormwater Pollution Prevention Plan: A Guide for Construction Sites” and available at the following website: <http://cfpub.epa.gov/npdes/stormwater/swppp>.

4.8 As-Built Site Plan

Upon completion of construction builder will provide to the ACC an As-Built Site Plan indicating the final location of all improvements including structures, utility lines, septic tanks/leach fields, driveways, parking areas, water harvesting detention areas, drainage swales and ancillary improvements such as retaining walls. This as-built will be at the Owner/ Builders expense and is required prior to the return of the Contractor’s Bond. This should be done to an accuracy acceptable to the ACC, but will normally not require a survey.

4.9 Use of Design and Construction Professionals

The use of professionals is required in the preparation of the design and construction drawings. They must have professional accreditation in the State of New Mexico.

The builder must have:

1. A registered contractor's license;
2. Satisfactory record of resolving complaints with the Registrar of Contractors;
3. Letter of bonding capacity from a bonding company, to the satisfaction of the ACC;
4. Compliance with current insurance coverage as required by the ACC and Developer.

The ACC reserves the right to establish a roster of acceptable design professionals and builders. Other proposed professionals not on the list will be evaluated based on criteria considered appropriate by the ACC, including the requirements listed above.

4.10 Review Process

The ACC has a formal process utilized from design through construction completion to insure adherence to the covenants and these subdivision rules.

4.11 Review Fee

The fee shall be one thousand dollars (\$1,000.00) for the construction of a House or guest house and shall be due upon submittal for final design review. This fee may be adjusted by the ACC from time to time to reflect the actual cost of the plan review process. The fee for additions, landscaping or other submittals not reviewed with the House or guest house shall be determined by the ACC. From time to time, the Association may modify any fee, bond, or other financial requirements.

4.12 Contractor's Bond

To guarantee that these Subdivision Rules are adhered to, each builder, before beginning any construction, shall post a cash bond in the amount of \$3,000.00 ("Contractor's Bond") with the Association. Should it become necessary for the Association to remedy any violation of or failure to comply with the approved plans and specifications, the Declaration, or these Subdivision Rules, or damages caused to Association property or the property of any Lot Owner, the costs of such remedy will be

charged against the bond. This shall not prevent assessment of the Owner for damages which exceeds the amount of the bond.

5.0 Meetings & Compliance Review

5.1 Building Placement Engineering Walk-through, Pre-plan Document Receipt Sign-off

This Engineering Walk-Through is required and should occur prior to design work on the house. Additionally, Owner needs to acknowledge receipt of covenants and rules.

The ACC engineering representative will meet with the Owner's design professionals on the lot to determine the approximate boundaries in which development will occur. This evaluation will include consideration for siting of the waste water system, driveway location, and other elements of construction that will affect the lot. The affected area will become defined later as the Grading and Drainage Plan, which will delimit the area of disturbance and activity during construction.

5.2 Preliminary Design Review / Meeting

This review is required by the ACC. It is intended to take place early in the design process to review the concerns the ACC may have with the design before the preparation of working drawings. The owner's design professionals will send or deliver two (2) sets of plans to the ACC at 100 Diamond Tail Road, Placitas, NM 87043. The ACC will have 20 working days to review the plans and make written comments directly on the plans and/or write a separate letter. The owner's design professional may schedule a meeting with the ACC to discuss the comments.

The following items must be submitted for the Preliminary Review:

1. Preliminary Site Plan
2. Preliminary Elevation Plan

5.3 Final Review / Meeting

Upon receipt of the ACC's comments after the Preliminary Design Review, the Owner's design professionals and/or builder shall submit two (2) sets of final plans to the ACC. These will include:

1. Architectural Review Fee: The fee is \$1,000.00. The check should be payable to the Diamond Tail Homeowners Association;
2. Estimated schedule for construction, utility hookup, and landscaping;

3. Description of exterior colors. The HOA will provide a color pallet for the designer's reference. A color board with samples of materials may be requested by the ACC;
4. Grading and Drainage Plan;
5. Final Site Plan;
6. Final Elevation Plan;
7. Landscape Plans;
8. Such other plans, documents and material samples that the ACC may request;
9. When prepared, but before ACC approval, the Owner/Builder shall provide the ACC with a copy of the Final Permit plans as proposed and when later approved by NM Construction Industries Division (CID).

The ACC shall have 20 working days following submittal to review the plans and make comments. Upon approval of the plans and the posting of the Contractor's Bond with the Association with a copy of builder's insurance, a written "Notice to Proceed" shall be issued by the ACC.

Plan approvals shall be valid for 6 months from the date of issuance of the Notice to Proceed. If construction has not substantially begun the plans must be resubmitted as a new application.

Plan approvals by the ACC do not exempt the owner or builder from securing necessary approvals from appropriate government agencies as required.

5.4 Pre-Construction Meeting / Checkpoint

The owner / builder will schedule a pre-construction site visit with the ACC engineering representative.

5.5 Surveyor / Construction Observations / Checkpoints

After excavation and prior to pouring the footings, the Owner/Builder shall demonstrate to the ACC that the structures are located on the site as proposed in the final site plan and the heights of the slab at locations determined by the ACC are consistent with the approved plans.

These determinations shall be to an accuracy satisfactory to the ACC, and may require the use of a Licensed New Mexico Surveyor. Unless otherwise agreed, the owner/builder will be responsible for this cost.

Upon acceptance of the above by the ACC, foundation work may continue,

Throughout the construction of the residence, the Owner will allow the ACC representative(s) to visit the site and structure with prior notification to observe that the residence is being constructed in conformance with the plans submitted and approved by the ACC. The builder shall be available for questions if requested.

5.6 Completion / Compliance Review & Meeting

Upon completion of the exterior of all Structures and all grading, erosion control, on-site water harvesting, and landscaping 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") and provide the As-Built Site Plan. The ACC shall within seven days of receipt of the Completion Notice inspect the completed work and take one of the following actions.

1. Issue the Owner an Association Certificate of Occupancy if the work is in conformity and compliance with the approved plans and specifications; or
2. Provide the Owner with a list of all items needed to be completed or altered to bring the work into conformity and compliance with the approved plans and specifications.

An Owner shall not occupy a House or guest house until an Association Certificate of Occupancy has been received for the House or guest house. Upon receipt from the ACC of a list of items for completion the Owner may either (a) refrain from occupying the House or guest house until the corrections are completed and the ACC has re-inspected and issued an Association Certificate of Occupancy, or (b) obtain a conditional Association Certificate of Occupancy by depositing with the Association an amount equal to one hundred fifty percent (150%) of the ACC's estimated cost of making the needed corrections or such other guarantee as shall satisfy the Association that the needed corrections will be completed (the "**Completion Guarantee**"). The Completion Guarantee will be held by the Association. Upon the Owner's completion of the needed corrections by the date required by the ACC, the Completion Guarantee will be released to the Owner, less the Association's costs of maintaining the Completion Guarantee and conducting re-inspections of the House or guest house. If the needed corrections are not completed by the date required by the ACC, the Association may, in its discretion, draw upon the Completion Guarantee and complete the needed corrections.

5.7 Landscape Completion

With approval of the ACC, completion of landscaping, as approved, may be extended for an additional period after completion of the home to accommodate seasonal weather conditions. This period may not exceed nine (9) months. This ability to extend

completion does not include storm water and drainage controls, water harvesting as shown on the Grading & Drainage Plan, or driveway completion.

5.8 Changes

Changes required by the ACC during the review process shall be noted on the originals submitted by the Owner, and after corrections are made the plans shall be resubmitted to the ACC for review and approval.

Should the Owner wish to deviate or elaborate upon the ACC approved plans after ACC approval, the Owner shall submit proposed changes or elaboration to the ACC in writing, prior to commencing the change or elaboration. The ACC shall approve or disapprove the submittal pursuant to its regular review procedures. No new review fee shall be required if the changes are minor. Determination of whether or not the changes are minor will be at the sole discretion of the ACC.

Impacts/delays to the Builder/Owner's construction schedule due to the changes/modifications are anticipated due to the re-review of the ACC.

5.9 Home Additions and Remodeling

All exterior remodeling or improvements to either the home or the home site must be submitted to the ACC for approval. Criteria for this process, including any possible review fees, will be established by the ACC.

6.0 Construction Requirements

6.1 Construction Access

The only approved construction access during the time a residence or other improvements is under construction will be over the approved driveway for the Lot unless the ACC approves an alternative access point. In no event shall more than one construction access be permitted onto any Lot.

The location of the Subdivision construction entrance along with the standard procedures and operation of the entrance gate will be determined from time to time and issued to each builder working within the development.

6.2 Construction and Maintenance of Liquid Waste Systems

The liquid waste system must be designed by qualified personnel and installed by a qualified contractor after design approval and permitting by the NMED. The NMED may inspect the system during construction, and the inspector has the authority to require design changes depending on the conditions encountered.

6.3 Debris and Trash Removal

Builders shall keep the construction site clean at all times and shall enforce these clean site restrictions on their personnel and all of their subcontractors. Builders shall clean up and remove all trash and debris on the construction site at the end of each week. Trash and debris shall be removed from each construction site as frequently as is necessary and not be permitted to accumulate. Lightweight materials, packaging, and other items shall be picked up or covered or weighted down, on a daily basis, to prevent their being blown off the construction site. One or more paper trash containers shall be conveniently located on-site during construction to control and contain paper trash. Such containers are typically constructed in circular form with either chicken wire or rabbit wire and of sufficient height to contain the paper trash until the contents are deposited in the on-site dumpster. Builders are prohibited from dumping, burying, or burning trash anywhere on the Subdivision or adjacent property, except as expressly permitted in writing by the ACC. During the construction period, each construction site, or the route to and from the construction site, shall be kept neat and clean, and shall be properly placed to prevent it from becoming a public eyesore or affecting other Lots or any open space. Unsightly dirt or mud deposited on the roadway, or debris anywhere that came from activity on the construction site shall be promptly removed and the general area cleaned up. If the Association performs the cleanup because the builder does not comply with this requirement, the cost will be deducted from the Contractor's Bond.

6.4 Sanitary Facilities

Each builder shall be responsible for providing adequate sanitary facilities for his construction workers. Portable toilets or similar temporary toilet facilities shall be located only within the grading limits or as approved by the ACC.

6.5 Excavation Materials

Excess excavation materials must be hauled away from the Subdivision, or deposited in an area specifically designated by the ACC as appropriate.

6.6 Blasting

No blasting is allowed.

6.7 Restoration or Repair of Other Property Damages

Damages and scarring to any property, Common Easements, open space or other Lot, including, but not limited to roads, driveways, concrete curbs, gutters, utilities, vegetation and/or other improvements, resulting from construction operations, will not be permitted. If any such damage occurs, it must be repaired and/or restored promptly, and any expenses are those of the builder, and, in the event of default by the builder in meeting these obligations, the Owner who has retained the builder shall be responsible.

6.8 Job Site Regulations

All Owners will be absolutely responsible for the conduct and behavior of their agents, representative, builders, contractors, and subcontractors while on the Subdivision.

The following practices are required within the Subdivision:

- Must provide for mitigation measures and improvements to minimize increased runoff onto adjacent properties, including open spaces. Excavation or fill may not occur in drainage easements. If any grading operations encroach on any drainage easements, the areas within the drainage must be returned to their original condition (including vegetation)
- No removal of soil, rock, or vegetation outside the plan boundaries will be permitted. No stockpiling of soil or rock will be permitted outside the grading limits shown on the Grading and Drainage Plan without prior approval from the ACC.
- The builder may be required to use temporary construction fencing to define the grading limits and restrict activity outside this area. Other temporary fencing may be required to confine activity to the active site.

The following practices are prohibited within the Subdivision or adjoining property:

Changing oil on any vehicle or equipment, other than at a location, if any, designated for that purpose by the ACC.

Allowing concrete suppliers, plasterers, painters, or any other subcontractors to clean their equipment anywhere but the location specifically designated, if any, for that purpose by the ACC. (The builder will designate a prepared location on the driveway for equipment cleanup and provide a plastic lined slurry collection area, and must ensure that items such as oil, diesel fuel, antifreeze, paint, cement slurry, plaster, cleaning fluids and soap, and any other harmful items do not soak into the ground.)

Removing any rocks, plant material, topsoil, or similar items from any property of others within the Subdivision, including other construction sites.

Carrying any type of firearms.

Using disposal methods or equipment other than those approved by the ACC.

Bringing pets, particularly dogs, into the Subdivision by construction personnel.

6.9 Fire Prevention

Careless disposition of cigarettes and other flammable material is prohibited. At least one 10-pound ABCA rated dry chemical fire extinguisher shall be present and available in a conspicuous place on the construction site at all times.

6.10 Dust and Noise

The builder shall be responsible for controlling dust and noise, including, without limitation, music from the construction site.

6.11 Construction Signage

Temporary construction signs shall be limited to one sign per lot. The ACC will provide signage criteria.

6.12 Daily Operation

Daily working hours for each construction site will be established and modified, if and as appropriate, in writing by the ACC/Association.

6.13 Adobe Brick Manufacture

Adobe bricks may not be manufactured at the jobsite or on Diamond Tail land without approval of the ACC.