

SHARED WELL AGREEMENT
Diamond Tail Subdivision (Phase I & II)
Water Group

This Shared Well Agreement ("**Agreement**") is made by and between Diamond Tail Estates I, L.L.C., a New Mexico limited liability company ("**Developer**"), the Diamond Tail Homeowners' Association (the "**Association**"), and the lot owner of Lot # _____ (the "**Lot Owner**") within Water Group# _____ (the "**Water Group**")¹. 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 more particularly described as follows:

Lots _____, _____, _____, _____, _____, _____, _____ and _____ (the "**Lots**") located in Phase _____ I _____ II 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, 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, in the Claim of Exemption Lot Line Adjustment Plat of the Diamond Tail Subdivision Phase II, recorded on September 21, 2009, at 2:31 p.m., with the County Clerk of Sandoval County, New Mexico, in Volume 3, Folio 3107, Document No. 2009P00104, and in the Claim of Exemption Lot Lines, Road & Utility Easement Alterations Plat of Diamond Tail Subdivision Phase II, recorded on April 21, 2010, at 11:45 a.m., with the County Clerk of Sandoval County, New Mexico, in Volume 3, Folio 3185, Document No. 2010P00182 (the "**Plats**").

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

D. 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.

E. 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 the Water Group is located on Lot _____. The location of the Well is an attempt to optimize the production capability of the Well. If, in the judgment of the Developer, the initial Well needs to be relocated or does not have sufficient capacity to supply the designated lots, the Developer shall have the right to reduce the number of Lots served by the Well or drill and complete a replacement Well or a supplemental well. Lot Owner agrees, when requested by Developer, to grant easements as and where reasonably determined necessary by the Developer, to enable the Developer to drill a new well, relocate a Well, or add a supplemental Well, and to provide easements necessary for utility extension and normal maintenance of the Well. The Developer, at its expense, shall be responsible for documenting all easements necessitated by a change in the location of the initial Well or the addition of a supplemental Well or the initial Well.

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, and has installed the water distribution lines of the Water Distribution System (defined below). Developer, at its expense, will equip the Well and complete the Water Distribution System by installing the remaining necessary equipment, components, and materials needed for the distribution of water from the Well to the Lots in the Water Group. The Water Distribution System, when completed, will consist of (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 or will be 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.

Developer shall not be obligated to construct and install the Water Distribution System until the Developer has received a copy of a duly approved building permit issued by the appropriate governmental authority for a single family residence on a Lot in the Water Group (the “**Building Permit**”), upon the receipt of which the Developer will proceed diligently to complete the installation of the Water Distribution System.

In the event any component of the Water Distribution System has not been completed as of the time Developer receives a copy of the Building Permit, the Developer will, upon the receipt thereof, proceed diligently to complete the installation of the Water Distribution System.

3. **Lot Owner Connection to Water Distribution System.** The Lot Owner, at Lot Owner’s cost, must initially connect the home to the Water Distribution System in accordance with the requirements of the Subdivision Rules and the Builder Guidelines and shall (1) install and connect his individual water service line, which shall contain a shut-off valve and a double check back flow preventer, to the distribution line, (2) simultaneously install a meter to monitor Lot Owner’s water use, and (3) maintain, in a good and functioning state of repair at all times, the water line, shut-off valve, back flow preventer, and meter.

4. **In-Home Water Storage System.** The Well and Water Distribution System for all Phase II Water Groups will be designed and constructed to provide water to each home in a manner that evenly distributes the available water from the Well to the extent reasonably practicable. This may be accomplished, in part, by placing a valve at the lot line or by other means deemed appropriate by the Developer or the Association. This may reduce pressure and flow at the home. In order to establish constant pressure and flow in the home, Lot Owner will need a storage tank, pressure pump, and pressure tank or other equivalent means to store and pressurize water for household use. Information and guidelines on in-home systems are available from the Association.

5. **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 and shall assess charges for water usage in an amount necessary to operate and maintain the Well and Water Distribution System, create adequate reserves, and promote water conservation.

6. **Assignment of Lots to the Water Group.** The Lots specified above have been assigned to the Water Group. However, it is understood and

agreed that should it become necessary, in the opinion of Developer and/or the Association, to reassign Developer-owned Lots to and from different Water Groups, Developer or the Association, as appropriate, may reassign one or more of the Developer-owned Lots to other Water Groups and/or assign other Developer-owned lots to the Water Group. With the approval of, and at no cost to, the owner(s) of non-developer lots, Developer or the Association, as appropriate, may reassign one or more of the non-developer Lots to other Water Groups and/or assign new non-developer lots to the Water Group. However, in no event shall more than eight (8) lots be assigned to the Water Group.

7. **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, one or more checking accounts 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.

8. **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 0.33 acre feet of water, or one hundred seven thousand five hundred thirty-one (107,531) 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.

9. **Surcharges, Reduced Use, and Termination.** If Lot Owner uses more than 0.33 acre feet of water annually, Lot Owner 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, at the Association's discretion, Lot Owner may be required to pay back the excess use by reducing usage the following year, unless circumstances clearly indicate the excess use was due to no fault of Lot Owner, in which case Lot Owner shall not be required to pay back the excess use, provided that the Office of the State Engineer shall not require otherwise. In the event there is a required reduction in usage, the required reduction will not exceed twice the excess usage amount. However, 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.

10. **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 **\$00.00** or such other amount as shall subsequently be established by the Association. 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.

11. **Transfer of Permit(s), Well, and Water Distribution System to Water Group.** When the first Lot within a Water Group is purchased, the Developer will assign and transfer the necessary Well permit(s) to the Water Group in care of the Association. The Developer will, upon completion of the Well and the Water Distribution System, assign and transfer ownership of the Well and the Water Distribution System to the Water Group, in care of the Association. All transfer fees were paid or will be paid by Developer.

Developer will use best efforts to obtain warranties for all work performed on and equipment furnished for the Well and the Water Distribution System. If and to the extent Developer is able to obtain warranties for work and equipment, Developer will, if possible, assign or otherwise provide such warranties to the Association at the time of transfer of the Well and/or the Water Distribution System to the Water Group in care of the Association. Developer will separately warrant to the Water Group in care of the Association that the Well, at the time of transfer, is capable of producing three acre feet of water per year.

The Association, successor-in-interest to Developer for the purpose of this Agreement, will accept and assume the assignment of the permit(s), the transfer of ownership of the Well and the Water Distribution System, and the rights and responsibilities of Developer on behalf of the Water Group and will retain custody

of the Well permit(s) and ownership of the Well and the Water Distribution System for the Water Group.

12. 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 therefor. 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.

13. 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 0.33 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 0.33 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 9.

14. **Authorized Expenses.** 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 deposits; electrical utility charges; postage, stationery expenses and other administrative expenses; systems operation and routine maintenance expense; and costs of emergency repairs, other repairs, rehabilitation, and replacement of the wells or the water distribution systems as may be required to ensure a continuous supply of water to the extent reasonably practicable.

15. **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.

16. **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.

17. **Default -- Enforcement.** In addition to the enforcement provisions set forth at Paragraphs 9 and 12, 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.

18. **Notice.**

a. 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 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.

b. 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.

c. All notices 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 26867, Albuquerque, NM 87125, 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.

19. **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.

20. **Term.** The term of this Agreement shall commence as of the date of the last signature affixed hereto, 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.

21. **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.

22. **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.

23. **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.

24. **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.

25. **Amendment.** This Agreement may be amended if and to the extent agreed jointly by the Association, the Developer, and sixty-six and two-thirds percent (66 2/3%) of the combined total of the Lot Owners of Lots 47 and 59 in Phase I and all of the Lot Owners in Phase II of the Diamond Tail Subdivision. The Association, Developer, and Lot Owners owning at least sixty-six and two-thirds percent (66 2/3%) of the lots in Phase II may, by executing and acknowledging an appropriate instrument, at any time, change, amend, modify or revise this Agreement, except as prohibited herein. Every amendment must be recorded in the Office of County Clerk, Sandoval County, New Mexico.

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

DEVELOPER/DECLARANT:

DIAMOND TAIL ESTATES I, L.L.C.,
a Nevada Limited Liability company

By: HRN LLC.,
Its Member

By: _____
Dennis Neff, Manager

Date: _____

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 20____, by _____, the _____ of HRN LLC, a Nevada corporation, Manager of Diamond Tail Estates I, L.L.C., a Nevada limited liability company.

Notary Public

My Commission Expires:

DIAMOND TAIL HOMEOWNERS' ASSOCIATION

By: _____

Date: _____

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____,
20____, by _____, the _____ of the Diamond Tail
Homeowners' Association.

Notary Public

My Commission Expires:

LOT OWNER: Lot #

By: _____

Date: _____

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 20_____,
by _____.

Notary Public

My Commission Expires: