

FOR FILING IN BRAZORIA COUNTY, TEXAS

**SUPPLEMENTAL AND AMENDED DECLARATION
OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

FOR

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**VILLAGE OF BISCAYNE BAY
(AMENDMENT)**

THIS SUPPLEMENTAL AND AMENDED DECLARATION (this "Amendment") is made effective as of January 1, 2010 by **SHADOW CREEK RANCH DEVELOPMENT COMPANY LIMITED PARTNERSHIP**, a Nevada limited partnership (the "Declarant"):

WITNESSETH:

WHEREAS, Declarant executed that one certain Declaration of Covenants, Conditions and Restrictions for Village of Biscayne Bay, which Declaration was recorded under Brazoria County Clerk's File No. 2004034202, as amended by that one certain Supplemental and Amended Declaration of Covenants, Conditions and Restrictions for Village of Biscayne Bay (Amendment) recorded under Brazoria County Clerk's File No. 2006070798, as amended by that one certain Supplemental and Amended Declaration of Covenants, Conditions and Restrictions for Village of Biscayne Bay (Amendment) recorded under Brazoria County Clerk's File No. 2008058686 (as amended, the "Declaration"); and

WHEREAS, Declarant now wishes to further amend certain terms of the Declaration; and

WHEREAS, Declarant has the unilateral right to amend the Declaration.

NOW, THEREFORE, Declarant hereby declares that the real property described in the Declaration, whether originally described therein or annexed thereto, including the improvements constructed or to be constructed thereon, is hereby subjected to the provisions of this Amendment and shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens, hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property hereby or hereafter made subject hereto, and shall be binding on all persons having any right, title, or interest in all or any portion of the real property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every owner of all or any portion thereof.

ARTICLE 1.
Definitions

All capitalized terms herein shall have the meanings set forth in the Declaration, unless defined otherwise herein.

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ARTICLE 2.
Property Subject to the Declaration

The real property which is, by the recording of the Declaration and any Supplemental or Amended Declaration, subject to the covenants and restrictions set forth in the Declaration and which, by virtue of the recording of this Amendment, shall be held, transferred, sold, conveyed, used, occupied and mortgaged or otherwise encumbered subject to this Amendment, is the real property described in such Declaration and any Supplemental or Amended Declarations annexing additional real property thereto.

ARTICLE 3.
Amendment

Pursuant to Article XIV, Section 1, of the Declaration, the Declaration may be amended by the filing of a recorded instrument executed by the Declarant, without the joinder or consent of any other party. Accordingly, the following amendment is made to the Declaration, which shall become effective as of January 1, 2010:

Article X, Section 2, subsection (i) is deleted in its entirety and is replaced with the following, as if originally a part thereof:

"Section 2. Annual Assessments.

(i) Generally. Each Lot and Tract in the Properties is hereby subjected to an annual assessment (the "Annual Assessment"), commencing for such Lot and/or Tract on the date upon which the Declarant conveys the record fee title to Lot or Tract to another Person. Such amount will be prorated for the first year based on the number of days remaining in the calendar year. Unless otherwise decided by the Board, the Annual Assessment will be paid by the Owner or Owners of each Lot or Tract within the Properties to the Association on an annual basis, on the dates determined by the Board of Directors, unless the Board determines otherwise.

The rate at which each Lot will be assessed will be determined annually and may be adjusted from year to year by the Association, as hereinafter provided, or as the needs for the Properties may, in the judgment of the Association, require. No notice of a change in assessment rate is required to be recorded in the real property records. The Annual Assessment shall be assessed on a per Lot or per Tract basis, except as hereinafter provided for Declarant.

For Lots sold by Declarant prior to January 1, 2009, those Lots will be assessed at ½ the full Annual Assessment for Lots until such time as the Lot and Residence constructed thereon is sold to the general public. Currently this ½ Annual Assessment is \$147.50 per Lot. At the time any Lot and Residence is sold to the general public, the full Annual Assessments for a Lot as determined by the Board shall apply to such Lot. Such full Annual Assessment is currently set at \$295.00 per Lot.

For Lots sold by Declarant after January 1, 2009, those Lots will be assessed at ½ the full Annual Assessment for Lots until the earlier of: (i) such time as the Lot and Residence constructed thereon is sold to the general public, or (ii) one year from the date the Lot was sold by Declarant. Currently this ½ Annual Assessment is \$147.50 per Lot. At the earlier of the time any Lot and Residence is sold to the general public, or the one year anniversary of the sale of the Lot by Declarant, the full Annual Assessments for a Lot as determined by the Board shall apply to such Lot. Such full Annual Assessment is currently set at \$295.00 per Lot.

It shall be the obligation of the Owner of each Lot and/or Tract to promptly notify the Association (or its managing agent) in writing, at such time as a plat is recorded for any Lot or Tract, and again at the earlier of the time any Lot and Residence is sold to the general public or the one year anniversary of the date that such Lot is sold by Declarant. Upon any such notification, the Association (or its managing agent) may re-assess such Owner for the increased Annual Assessments due the Association, resulting from the change of status of the Lot or Tract, prorated for the number of days remaining in the year, having given credit for the amount already paid."

Article X, Section 4B, is deleted in its entirety and is replaced with the following, as if originally a part thereof:

"Section 4B. Capitalization Fee. Each Owner of a Tract or Lot other than Declarant (whether one or more Persons) at the time it purchases a Tract or Lot, shall be obligated to pay to the Association a fee of \$100.00 per Tract or Lot, at the time of purchase, as a Capitalization Fee. Such funds from the Capitalization Fee collected at each purchase shall initially be used to defray initial operating costs and other expenses of the Association, and later used to ensure that the Association shall have adequate funds to meet its expenses and otherwise, as the Declarant (and later the Association) shall determine in its sole discretion (hereinafter "Capitalization Fee"). Such Capitalization Fee shall be non-refundable and shall not be considered an advance payment of any Assessments levied by the Association pursuant to the Declaration. The amount of the Capitalization Fee may be changed prospectively (but not retrospectively) by the Association from time to time in its discretion, without having to record any notice in the real property records. Such Capitalization Fee will be collected from the purchasing Owner directly at the purchase of the Tract or Lot. If any Tract or Lot is subdivided and/or platted into multiple Tracts or Lots, then the multiple Tracts or Lots will thereafter be subject to the Capitalization Fee at the time of each purchase. Such Capitalization Fee shall be deemed an Assessment hereunder, and may be collected in the same fashion."

Article X, Section 4C, is deleted in its entirety and is replaced with the following, as if originally a part thereof:

"Section 4C. Conveyance Fee. In connection with the creation of the Association and the development of the Village of Biscayne Bay and the construction of the Common Area, the Declarant has expended substantial sums in connection with developing the master plan, helping finance and plan the development, the credit enhancement

necessary to obtain the necessary construction financing and financially subsidizing the maintenance and operations of the Association and its Common Areas. In particular, the Declarant has personally guaranteed the construction financing obtained to construct all of the Common Area improvements and other infrastructure in the Village of Biscayne Bay. Therefore, each Owner of a Tract or Lot other than Declarant (whether one or more Persons) at the time it sells a Tract or Lot, shall be obligated to pay to the Declarant a fee of \$50.00 per a Tract or Lot as a Conveyance Fee, regardless of the size or projected usage or actual usage of such a Tract or Lot at the time of sale. This Conveyance Fee shall be collected on every sale of a Tract or Lot for twenty (20) years from the date of recording of this Declaration, at which time this Conveyance Fee shall expire and shall no longer be collected. Such Conveyance Fees from each sale shall reimburse the Declarant for expenses involved in the creation of the Association, funds expended by Declarant to subsidize the operations of the Association and unreimbursed construction and other expenses involving the Association. Such Conveyance Fee shall also compensate the Declarant for the financial obligations and risks it undertook in its development activities and guarantees of financial obligations. Such Conveyance Fee shall be non-refundable and shall not be considered an advance payment or offset of any past or future Assessments levied by the Association nor shall the Conveyance Fee be considered partial payment of the Capitalization Fee. Such Conveyance Fee will be billed to the selling Owner directly at the time of the sale of the Tract or Lot. If any Tract or Lot is subdivided and/or platted into multiple Tracts or Lots, then each of the multiple Tracts or Lots will thereafter be subject to the Conveyance Fee at the time of each sale of each of the multiple Tracts or Lots.

Notwithstanding anything to the contrary contained herein, the provisions of this Declaration regarding this Conveyance Fee may not be amended, modified, repealed, terminated or waived without the prior written agreement of the Declarant.”

This Amendment is intended to comply with and does comply with Article XIV of the Declaration and Declarant, by its execution and recordation of this Amendment, has amended the Declaration as set forth herein. All real property shall be developed, held, used, sold and conveyed in accordance with and subject to the provisions of the Declaration as heretofore amended by any previous amendment and by this Amendment.

All provisions of the Declaration, as amended, shall apply to all of the Owners with the same force and effect as if said originally included in the Declaration, from the recordation of this Amendment forward.

Executed this ____ day of _____, 2009, but effective as of January 1, 2010.

DECLARANT:

SHADOW CREEK RANCH DEVELOPMENT COMPANY LIMITED PARTNERSHIP, a Nevada limited partnership

By: Shadow Creek Ranch, Inc., a Nevada corporation, and its general partner

By: *Gary W. Cook*
Name: Gary Cook, President

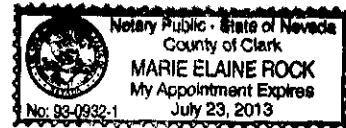
STATE OF *Nevada* §
COUNTY OF *Clark* §

This instrument was acknowledged before me on the 17 day of December, 2009, by Gary Cook, President of Shadow Creek Ranch, Inc., a Nevada corporation, as the general partner of SHADOW CREEK RANCH DEVELOPMENT COMPANY LIMITED PARTNERSHIP, a Nevada limited partnership, on behalf of said entities.

Marie Elaine Rock
Notary Public in and for
The State of *Nevada*

AFTER RECORDING RETURN TO:

✓ Sarah A. Powers
Hoover Slovacek LLP
5847 San Felipe, Suite 2200
Houston, Texas 77057
351074-15



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Pages 5
12/21/2009 4:07PM
Official Public Records of
BRAZORIA COUNTY
JOYCE HUDMAN
COUNTY CLERK
Fees \$32.00

Joyce Hudman