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**FOR FILING IN FORT BEND COUNTY, TEXAS**

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

**FOR**

**VILLAGE OF DIAMOND BAY  
(AMENDMENT)**

THIS SUPPLEMENTAL AND AMENDED DECLARATION (this "Amendment") is made effective as of June 24 2011 by **SHADOW CREEK RANCH DEVELOPMENT COMPANY LIMITED PARTNERSHIP**, a Nevada limited partnership (the "Original Declarant"):

**WITNESSETH:**

WHEREAS, Original Declarant executed that one certain Declaration of Covenants, Conditions and Restrictions for Village of Diamond Bay, which Declaration was recorded under Fort Bend County Clerk's File No. 2005017655, as amended by that one certain Supplemental and Amended Declaration of Covenants, Conditions and Restrictions for Village of Diamond Bay (Amendment) recorded under Fort Bend County Clerk's File No. 2007088578, as amended by that one certain Supplemental and Amended Declaration of Covenants, Conditions and Restrictions for Village of Diamond Bay (Amendment) recorded under Fort Bend County Clerk's File No. 2008129840, as amended by that one certain Supplemental and Amended Declaration of Covenants, Conditions and Restrictions for Village of Diamond Bay (Amendment) recorded under Fort Bend County Clerk's File No. 2009132467 as amended by that one certain Supplemental and Amended Declaration of Covenants, Conditions and Restrictions for Village of Diamond Bay (Amendment) recorded under Fort Bend County Clerk's File No. 2011000106, (as amended, the "Declaration"); and

WHEREAS, Original Declarant now wishes to further amend certain terms of the Declaration for the Village of Diamond Bay; and

WHEREAS, Original Declarant has the unilateral right to amend the Declaration; and

WHEREAS, immediately following the execution and recordation of this Amendment, Original Declarant will be assigning its rights as Declarant for the Village of Diamond Bay to 741SCR, Ltd. (the "Successor Declarant"), pursuant to the terms and conditions of that one

certain Assignment and Transfer of Rights, Benefits and Obligations of Declarant and Designation of Successor Declarant and Class B Member (the "Assignment of Declarant Rights"); and

WHEREAS, after such Assignment of Declarant Rights is effective, Original Declarant shall have no further rights or obligations to the Village of Diamond Bay except as set forth herein and/or in the Assignment of Declarant Rights.

NOW, THEREFORE, Original Declarant hereby declares that the real property described in the Declaration, whether originally included therein or later annexed thereto, including the improvements constructed or to be constructed thereon, is hereby subjected to the provisions of the Declaration and 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.

#### **ARTICLE 2.**

##### **Property Subject to this Amendment**

The real property which is, by the recording of the 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 the Declaration and any later annexation, unless by the terms of this Amendment a part of this Amendment does not apply to all of such real property.

#### **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, currently the Original 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 June 24, 2011, for all of the real property in the Village of Diamond Bay, unless otherwise noted herein:

Unless otherwise noted herein or in the Assignment of Declarant Rights, upon the effectiveness of the Assignment of Declarant Rights, the Successor Declarant will be the Declarant for all purposes under the Declaration and with respect to the Association.

Article VII, Architectural Approval, Section 4, Submission of Plans is hereby amended to clarify that that the Village Architectural Guidelines referred to in Section 4 and elsewhere in Article VII are: (i) the Shadow Creek Ranch Neighborhood Guidelines; (ii) the Shadow Creek Ranch Design Criteria & Guidelines for Overall Project – Residential Commercial and Multi-Family Uses; and (iii) any and all other design guidelines and criteria, development standards and improvement standards, all in the form approved by Original Declarant as of the date this Amendment is recorded.

Article VII, Section 21, is hereby added to the Declaration, as if originally a part thereof, to apply to the entire Village of Diamond Bay:

“Section 21. New Construction vs. Modification to Existing Improvements and/or Additional Improvements. Notwithstanding anything to the contrary herein, the Architectural Review Committee for Lots and Tracts upon which no construction of Improvements to Property by a Sub-Developer has begun shall be appointed by the Original Declarant, even if the Class B status of the Original Declarant has terminated and the Original Declarant has surrendered its right to appoint the Board of Directors, whether by Assignment of Declarant rights or by surrender of such rights and status (ie., the “NC Architectural Review Committee”). Therefore, all activity regarding architectural control, including but not limited to applications, submittals, approvals, denials, etc..., and all authority over all new construction of any Improvement to Property by a Sub-Developer on a Lot or Tract shall remain with the NC Architectural Review Committee appointed by the Original Declarant. The Association shall enforce by all remedies available, decisions by the NC Architectural Review Committee appointed by the Original Declarant.

At such time as the Original Declarant has surrendered its right to appoint the Board of Directors and the Class B membership status of the Original Declarant has been terminated (whether by Assignment of Declarant rights or by surrender of such rights and status), then the Architectural Review Committee for all Lots and Tracts upon which Sub-Developers have built Improvements to Property, will be appointed by the Board of Directors of the Association (ie., the “MOD Architectural Review Committee”). Therefore all activity regarding architectural control over modifications to any existing Improvements to Property, and/or the application or submittals to build additional Improvements to Property on Lots and Tracts already developed by a Sub-Developer, including but not limited to applications, submittals, approvals, denials, etc..., and all authority over such proposed modifications and/or additional Improvements to Property shall reside with the MOD Architectural Review Committee appointed by the Board of Directors. However, as long as the Original Declarant remains a Class A member of the Association with Class A voting rights, it shall have veto power over any and all decision(s) made by the MOD Architectural Review Committee appointed by the Board.

All other terms and conditions of Article VII shall continue in full force and effect as written. Each of the NC Architectural Review Committee and the MOD Architectural Review Committee shall be an Architectural Review Committee hereunder. In the event of any conflict between all other terms and conditions of Article VII and this Section 21 of Article VII, this Section 21 shall control."

Article X, Section 2, subsection (i) is deleted in its entirety and is replaced with the following, as if originally a part thereof, only for the Lots listed on Exhibit A attached to this Amendment and made a part hereof, and this Amendment to Article X, Section 2 shall not apply to any other Lots or Tracts in the Village of Diamond Bay:

"Section 2. Annual Assessments.

(i) Generally. Each Lot on Exhibit A hereto is hereby subjected to an annual assessment (the "Annual Assessment"), commencing for such Lot on the date upon which the Lot is conveyed from Successor Declarant to an affiliated Sub-developer. Such amount will be prorated for the first year based on the number of days remaining in the calendar year in which the Lot is conveyed to an affiliated Sub-developer. Unless otherwise decided by the Board, the Annual Assessment will be paid by the Owner or Owners of each Lot within the Properties to the Association on an annual basis, on the dates determined by the Board of Directors, unless the Board determines otherwise.

Once Annual Assessments have commenced, the rate at which each Lot or Tract 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, but may be in the discretion of the Association. The Annual Assessment shall be assessed on a per Lot or per Tract basis.

For Lots subject to this Amendment, those Lots will be assessed at ½ the full Annual Assessment for Lots until the Lot and Residence constructed thereon is sold to the general public. Currently this ½ Annual Assessment is \$155.00 per Lot. At the time any Lot and Residence is conveyed 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 \$310.00 per Lot.

It shall be the obligation of the Owner of each Lot to promptly notify the Association (or its managing agent) in writing, at such time as a Lot is conveyed to an affiliated Sub-developer, and again at the time any Lot and Residence is conveyed to the general public. 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, prorated for the number of days remaining in the year, having given credit for the amount already paid.”

The Article X, Section 2, subsection (i) as written and in effect immediately prior to this Amendment shall continue to apply to all Lots and Tracts in the Village of Diamond Bay that are not described on Exhibit A attached to this Amendment. Further, notwithstanding anything to the contrary above in the revised Article X, Section 2, in the event of a conveyance from the Successor Declarant to an unaffiliated third party Sub-developer while such Lot is not improved with a Residence, then as to such Lot the revised language of Article X, Section 2 shall cease to apply and the Article X, Section 2 as written and in effect immediately prior to this Amendment shall be reinstated, such that ½ rate Annual Assessments shall immediately be assessed upon such conveyance from Successor Declarant to the unaffiliated third party Sub-developer and shall go to full rate Annual Assessments upon the earlier of: (i) a conveyance of the Lot and Residence to the general public, or (ii) the one year anniversary of the conveyance of the Lot by Successor Declarant to the unaffiliated third party Sub-developer. It shall be the obligation of the Owner of each Lot to promptly notify the Association (or its managing agent) in writing, at the time of the occurrence of any of the events that give rise to ½ rate and then full rate Annual Assessments for unaffiliated third party Sub-developers. Upon any such notification, the Association (or its managing agent) may re-assess such Owner for the increased Annual Assessment due the Association, resulting from the change in status of the Lot, prorated for the number of days remaining in the year, having given credit for the amount already paid.

Article X, Section 2, subsection (iv) is hereby deleted in its entirety (all grammatical paragraphs thereof) and is replaced by the following language, as if originally a part thereof, which shall apply to all real property in the Village of Diamond Bay:

“So long as the Successor Declarant owns any Tracts or Lots in the Village, the Successor Declarant shall pay to the Association the difference between the amount of assessments and capitalization fees collected on all Tracts and Lots in the Village subject to assessment and the amount of expenditures required to operate the Association during the fiscal year, according to budget approved by the Board for such fiscal year, which budget shall contain expenditures related to the funding of appropriate reserves, and if applicable, the repayment of Association debt incurred after the date hereof. Upon Successor Declarant’s sale of all Tracts or Lots owned by it, Successor Declarant shall have no further obligation to fund any deficits or reserves of the Association, as long as the reserves are fully funded according to the reserve study or other methodology of reserves funding previously approved by the Board prior to the date hereof, at the point in time of Successor Declarant’s sale of all of its Tracts or Lots in the Village. As of the date of this Amendment, the Original Declarant shall have no further obligation pay any Annual or Special Assessments nor capitalization fees nor shall Original Declarant have any obligation to fund any deficits nor any reserves of the Association.”

Notwithstanding anything to the contrary, Article X, Section 4B regarding Capitalization Fees shall not apply to and Capitalization Fees shall not be paid at the conveyance of the Lots described on Exhibit "A" hereto from Original Declarant to Successor Declarant. Article X, Section 4B regarding Capitalization Fees shall apply and Capitalization Fees shall be paid on the conveyance of any Lot described on Exhibit "A": (i) from Successor Declarant to a Sub-developer, whether affiliated or unaffiliated; (ii) from a Sub-developer to the general public; and (iii) on each and every resale after the conveyances in (i) and (ii). If for any reason a Capitalization Fee has not been sooner paid when a building permit is pulled for any Lot described on Exhibit "A" because it was not paid at the conveyance from Successor Declarant to a Sub-developer, then it shall be paid at the time the building permit is pulled from the City of Pearland.

All references to Declarant in Article X, Section 4C regarding Conveyance Fees shall remain as references to Original Declarant and Successor Declarant has no rights to any fees set forth therein. Notwithstanding anything to the contrary, Article X, Section 4C regarding Conveyance Fees shall not apply to the sale of any Lot described on Exhibit "A" from Original Declarant to Successor Declarant and the sale from Successor Declarant to any affiliated Sub-developer, but Article X, Section 4C regarding Conveyance Fees shall apply and the Conveyance Fees shall be paid on the conveyance of any Lot described on Exhibit "A": (i) from Successor Declarant to an unaffiliated Sub-developer; (ii) from an affiliated Sub-developer to the general public; and (iii) on each and every resale after the conveyances in (i) and (ii), for the term originally prescribed.

For purposes of this Amendment, all references to Lots on Exhibit "A" being conveyed from Successor Declarant to an affiliated Sub-developer shall mean any sale, transfer or conveyance from the Successor Declarant or an affiliated Sub-developer to a homebuilder affiliated with Successor Declarant or an affiliated Sub-developer prior to commencement of construction of residential improvements, regardless of whether such conveyance is accomplished by recorded deed or unrecorded internal documentation.

This Amendment is intended to comply with and does comply with Article XIV of the Declaration and Original Declarant, by its execution and recordation of this Amendment, has amended the Declaration as set forth herein. All real property described in the Declaration and any later annexation 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, unless by the terms of this Amendment a part of this Amendment does not apply to all of such real property.

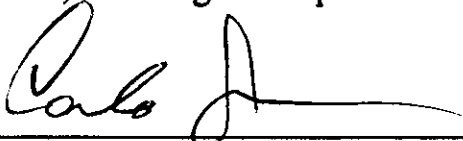
All provisions of the Declaration, as amended, shall apply to all of the Owners of the real property in the Village of Diamond Bay with the same force and effect as if said originally included in the Declaration, from the recordation of this Amendment forward, unless by the terms of this Amendment a part of this Amendment does not apply to all of such Owners.

Executed this 24 day of June, 2011.

**ORIGINAL DECLARANT:**

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

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

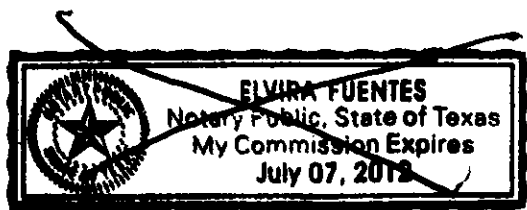
By:   
Name: Carlo Ferreira, Secretary


STATE OF Texas §

COUNTY OF Harris §

This instrument was acknowledged before me on the 24 day of June, 2011, by Carlo Ferreira, Secretary 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.

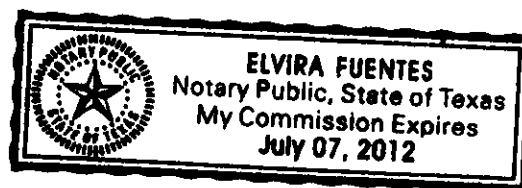
AS PER ORIGINAL



  
Notary Public in and for  
The State of 7-7-12

**AFTER RECORDING RETURN TO:**

Sarah A. Powers  
Hoover Slovacek LLP  
5847 San Felipe, Suite 2200  
Houston, Texas 77057  
351074-18



**EXHIBIT “A”**

**Diamond Bay – 741 Lots + 3 Additional Lots  
(legal description – to be attached)**



**EXHIBIT "A"**  
**741 LOTS**

**TRACT I:**

ALL LOTS, FINAL PLAT OF SHADOW CREEK RANCH SF-45B, ACCORDING TO MAP OR PLAT THEREOF RECORDED IN PLAT NO. 20050109, OF THE PLAT RECORDS OF FORT BEND COUNTY, TEXAS.

**TRACT II:**

ALL LOTS, FINAL PLAT OF SHADOW CREEK RANCH SF-45C, ACCORDING TO MAP OR PLAT THEREOF RECORDED IN PLAT NO. 20050110, OF THE PLAT RECORDS OF FORT BEND COUNTY, TEXAS.

**TRACT III:**

ALL LOTS, FINAL PLAT OF SHADOW CREEK RANCH SF-49, ACCORDING TO MAP OR PLAT THEREOF RECORDED IN PLAT NO. 20060136, OF THE PLAT RECORDS OF FORT BEND COUNTY, TEXAS.

**TRACT IV:**

ALL LOTS, FINAL PLAT OF SHADOW CREEK RANCH SF-54, ACCORDING TO MAP OR PLAT THEREOF RECORDED IN PLAT NO. 20060269, OF THE PLAT RECORDS OF FORT BEND COUNTY, TEXAS.

**TRACT V:**

ALL LOTS, FINAL PLAT OF SHADOW CREEK RANCH SF-55A, ACCORDING TO MAP OR PLAT THEREOF RECORDED IN PLAT NO. 20060102, OF THE PLAT RECORDS OF FORT BEND COUNTY, TEXAS.

**TRACT VI:**

ALL LOTS, FINAL PLAT OF SHADOW CREEK RANCH SF-55B, ACCORDING TO MAP OR PLAT THEREOF RECORDED IN PLAT NO. 20060103, OF THE PLAT RECORDS OF FORT BEND COUNTY, TEXAS.

**TRACT VII:**

ALL LOTS, FINAL PLAT OF SHADOW CREEK RANCH SF-52, ACCORDING TO MAP OR PLAT THEREOF RECORDED IN PLAT NO. 20060267, OF THE PLAT RECORDS OF FORT BEND COUNTY, TEXAS.

**TRACT VIII:**

ALL LOTS, FINAL PLAT OF SHADOW CREEK RANCH SF-60, ACCORDING TO MAP OR PLAT THEREOF RECORDED IN PLAT NO. 20050262, OF THE PLAT RECORDS OF FORT BEND COUNTY, TEXAS.

**TRACT IX:**

ALL LOTS, FINAL PLAT OF SHADOW CREEK RANCH SF-61, ACCORDING TO MAP OR PLAT THEREOF RECORDED IN PLAT NO. 20070135, OF THE PLAT RECORDS OF FORT BEND COUNTY, TEXAS.

**TRACT X:**

ALL LOTS, FINAL PLAT OF SHADOW CREEK RANCH SF-62, ACCORDING TO MAP OR PLAT THEREOF RECORDED IN PLAT NO. 20070136, OF THE PLAT RECORDS OF FORT BEND COUNTY, TEXAS.

EXHIBIT "A"

3 LOTS SF-45A

LOT ONE (1), IN BLOCK ONE (1); LOTS NINETEEN (19) AND TWENTY (20), IN BLOCK FOUR (4), OF THE FINAL PLAT OF SHADOW CREEK RANCH SF-45A, ACCORDING TO THE MAP OF PLAT THEREOF RECORDED IN PLAT NO. 20050108, OF THE PLAT RECORDS OF FORT BEND COUNTY, TEXAS.

**FILED AND RECORDED**

OFFICIAL PUBLIC RECORDS

*Dianne Wilson*

2011 Jul 11 01:59 PM

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RMM \$52.00

Dianne Wilson COUNTY CLERK

FT BEND COUNTY TEXAS