



Control Number: 46245



Item Number: 677

Addendum StartPage: 0

APPLICATION OF DOUBLE § BEFORE THE STATE OFFICE  
DIAMOND UTILITY COMPANY, INC. § OF  
FOR WATER AND SEWER § ADMINISTRATIVE HEARINGS  
RATE/TARIFF CHANGE §

**THE CLIFFS UTILITY COMMITTEE'S  
MOTION TO REOPEN THE RECORD FOR ADMISSION  
OF LOT SALES AGREEMENT**

TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:

The Cliffs Utility Committee ("TCUC") hereby files this motion to reopen the record for the limited purpose of admitting the lot sales agreement used at The Cliffs. In support of this motion, TCUC states the following:

TCUC requests that the record be reopened solely for the purpose of admitting the document attached as Attachment A. Attachment A is an excerpt from Double Diamond's response to a request for information filed in Docket No. 46247, which includes the lot sales agreement used by Double Diamond at The Cliffs. There should be no question as to the source of this document, as this response was provided by Double Diamond.

TCUC is not represented by counsel and was not aware of the significance of the need to offer a lot sales agreement until the Open Meeting on May 10, 2018, when Chairman Walker discussed the White Bluff agreement. TCUC located this copy of the relevant document promptly after that date. TCUC asserts that admitting this document into the record at this time will not cause an injustice but will ensure that a full and accurate record is made for the Commission's decision in this matter. Given the number of opportunities Double Diamond has been given to restate its case, TCUC does not believe that its request is unreasonable.

Respectfully submitted,

THE CLIFFS UTILITY COMMITTEE

By: /s/ Byrom J. Smith, III  
Director, Intervenor and Ratepayer  
200 Oyster Bay  
Graford, Texas 76449  
Telephone (940) 779-4325  
Facsimile (940) 779-4327  
juds@adventsupply.com

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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing pleading was served on all parties of record in this proceeding on May 22, 2018, by hand-delivery, facsimile, electronic mail, and/or First Class Mail.

/s/ Byrom J. Smith, III

Byrom J. Smith, III

# **ATTACHMENT A**

## **The Cliffs Lot Sales Agreement**

SOAH DOCKET NO. 473-17-0067.WS  
PUC DOCKET NO. 46247

APPLICATION OF DOUBLE DIAMOND § BEFORE THE STATE OFFICE OF  
PROPERTIES CONSTRUCTION CO. §  
DBA ROCK CREEK FOR WATER § ADMINISTRATIVE HEARINGS  
RATE/TARIFF CHANGE §

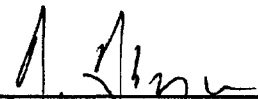
**DOUBLE DIAMOND PROPERTIES CONSTRUCTION CO. D/B/A ROCK CREEK'S  
RESPONSE TO ROCK CREEK HOMEOWNERS' FOURTH REQUESTS FOR  
INFORMATION AND SECOND REQUESTS FOR ADMISSION TO  
DOUBLE DIAMOND PROPERTIES CONSTRUCTION CO.**

To: Rock Creek Homeowners, by and through its attorney, Trey Nesloney, Booth, Ahrens & Werkenthin, P.C., 206 East 9<sup>th</sup> Street, Suite 1501, Austin, Texas 78701

Double Diamond Properties Construction Co. d/b/a Rock Creek ("DDPC") files these Responses to Rock Creek Homeowners' Fourth Requests for Information and Second Requests for Admission to Double Diamond Property Construction, served on DDPC on May 19, 2017. These responses are timely filed. DDPC agrees and stipulates that all parties may treat these responses as if they were filed under oath.

Respectfully submitted,

JACKSON WALKER L.L.P.

By: 

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**ATTORNEYS FOR DOUBLE DIAMOND  
PROPERTIES CONSTRUCTION CO.**

SOAH DOCKET NO. 473-17-0067.WS  
PUC DOCKET NO. 46247

APPLICATION OF DOUBLE DIAMOND § BEFORE THE STATE OFFICE OF  
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**DOUBLE DIAMOND PROPERTIES CONSTRUCTION CO. D/B/A ROCK CREEK'S  
RESPONSE TO ROCK CREEK HOMEOWNERS' FOURTH REQUESTS FOR  
INFORMATION AND SECOND REQUESTS FOR ADMISSION TO  
DOUBLE DIAMOND PROPERTIES CONSTRUCTION CO.**

**RCH NO. 4-9:** Please provide all drafts of real estate purchase agreements for the sale of the lots located in the White Bluffs, the Cliffs, and the Retreat developments (described by DDPC witness Mr. Randy Gracy on page 2 lines 1-21 of his draft prefiled testimony in this matter).

**RESPONSE:** There are no draft real estate purchase agreements. Per discussion between the parties, a contract is being provided for each of the referenced developments. Please see documents enclosed herein and bates labeled DDPC04284-04294.

**Sponsored by:** Randy Gracy

REAL ESTATE SALES CONTRACT

THE STATE OF TEXAS §
COUNTY OF PALO PINTO §

CLIFFS SUBDIVISION

This REAL ESTATE SALES CONTRACT is entered into effective [redacted] by and between DOUBLE DIAMOND, INC., a Texas corporation, 5495 Belt Line Road, Suite 200, Dallas, Texas 75254 (hereinafter referred to as the "Seller") and

NAME(S) [redacted]
STREET ADDRESS [redacted]
CITY, STATE & ZIP [redacted]
TELEPHONE 3 [redacted]

(hereinafter referred to as the "Purchaser," whether one or more) upon the following terms and conditions:

1 SALE AND PURCHASE Seller hereby promises and agrees to sell and convey to Purchaser, and Purchaser hereby promises and agrees to purchase from Seller the surface estate only of.

LOT(S) [redacted] the CLIFFS PHASE SIX SUBDIVISION, according to the subdivision plat thereof filed for record in the Plat Records of Palo Pinto County, Texas;

(such lot(s) referred to hereinafter as the "Property").

2 PURCHASE PRICE. The purchase price for the Property shall be \$ [redacted] (the "Purchase Price").

3 METHOD OF PURCHASE Purchaser elects to purchase the Property:

[ ] by payment of the Purchase Price in full.

[ ] by deferred installments (the "Deferred Payment Plan") which includes a cash down payment of [redacted] made this date, and Purchaser's promise to pay Seller, its successors and assigns, the original principal balance of \$ [redacted], bearing interest at the rate of [redacted] (%) percent per annum for [redacted] consecutive monthly installments of [redacted] then consecutive monthly installments at the rate of [redacted] (%) percent per annum, amortized principal and interest payable in [redacted] consecutive monthly installments of \$ [redacted] as more fully described and evidenced by that certain promissory note executed contemporaneously herewith by Purchaser (the "Note"). All payments due under the Note shall be made in Dallas County, Texas at Seller's address unless another address shall be furnished to Purchaser by Seller. A late fee of \$25.00 is charged on all accounts if not paid within 15 days of each monthly due date. Prior to conveyance of title to the Property, Seller shall retain legal title to the Property as security for Purchaser's full performance of all the terms and conditions herein. After conveyance of title to the Property, as security for full performance by Purchaser of all applicable terms, conditions and obligations herein, Seller shall retain a deed of trust lien covering the Property, as provided in that certain Deed of Trust executed contemporaneously herewith by Purchaser (the "Deed of Trust"). Said Deed of Trust shall also secure other and future indebtedness, if any, of Purchaser to Seller.

4. DELIVERY OF DEED. We will sign and acknowledge a warranty deed which conveys title to the property to you at the time of sale. The warranty deed will be held in escrow by United Equitable Mortgage Corp. ("UEMC") until processing at the corporate offices is complete, after which UEMC will release the documents to be recorded. Within 180 days of the date of this Contract, Seller shall deliver to Purchaser a General Warranty Deed (the "Deed") conveying fee simple title to the Property (save and except oil, gas and other minerals) free and clear of any liens (other than Purchaser's deed of trust lien if the Property is purchased from Seller under the Deferred Payment Plan) but subject to all reservations, restrictions, easements and rights-of-way which may affect the Property as recorded in the Public Records of Palo Pinto County, Texas.

5. CLOSING COSTS AND RECORDING FEES. Purchaser agrees to pay Seller \$25.00 for recording fees and costs of filing the documents to be recorded hereunder. No other closing fees or costs are payable by Purchaser.

6. TAXES. Purchaser shall be responsible for paying property taxes next due and payable after the date of this Contract. Purchaser agrees and promises to promptly pay, when due, all such property taxes and other taxes which may hereafter be taxed against the Property.

Purchaser(s) initials: \_\_\_\_\_

7. TITLE INSURANCE. Seller does not provide title insurance covering the Property. Purchaser should either obtain title insurance from a title company authorized to do business in Palo Pinto County, Texas or have the abstract covering the Property examined by an attorney of Purchaser's choice.

8. ROADS, RECREATIONAL FACILITIES AND CENTRAL SYSTEMS. The following is Seller's good faith estimate with respect to, and the obligation to provide and complete, certain items within the Cliffs Subdivision:

<u>ITEM</u>	<u>YEAR OF COMPLETION</u>	<u>PARTY RESPONSIBLE FOR PROVIDING</u>	<u>PARTY RESPONSIBLE FOR MAINTAINING</u>
A Roads	Complete	Seller	Property Owners ("POA out of annual maintenance fee funds)
B Eighteen-hole golf course	Complete	Seller	POA
Pro-shop and dining facilities	Complete	Seller	Seller
C Ship store and 144 boat slips	Complete	Seller	Seller
Marina parking, landscaping and boat ramp	Complete	Seller	POA
D Two swimming pools with bathhouses	Complete	Seller	POA
E R V. Park with 14 hook-ups and bathhouse	Complete	Seller	POA
F Beach with bathhouse	Complete	Seller	POA
G. Two lighted tennis courts	Complete	Seller	POA
H. Twenty dry boat storage spaces	Complete	Seller	POA
I Hotel and rental condos	Complete	Seller	Seller
J. Central water system			
(1) Water lines	Complete	Seller	Double Diamond Utilities Co
(2) Water treatment plant			
Phase 1 (200-400 lots)	Complete	Seller	Double Diamond Utilities Co
Phase 2 (all remaining lots)	N/A	Seller	Utilities Co
K Central sewer system			
(1) Sewer lines	Complete	Seller	Double Diamond Utilities Co.
(2) Wastewater treatment plant			
Phase 1 (115-230 lots)	Complete	Seller	Double Diamond Utilities Co.
Phase 2 (all remaining lots)	N/A	Seller	Utilities Co.

9. CENTRAL WATER & SEWER SYSTEMS. Potable water and sewage collection and disposal will be provided to all lots in the subdivision.

10. PREPAYMENT OF NOTE. Purchaser may prepay the principal amount remaining due in whole or in part without penalty. Any partial prepayment shall be applied against the principal amount outstanding and shall not postpone the due date of any subsequent monthly installments or change the amount of such installments, unless the holder of the Note shall otherwise agree in writing. Accrued interest hereon shall be calculated on the basis of a 360-day year composed of twelve 30 day months and charged through the date of payoff. The above notwithstanding, in no event whatsoever shall the amount paid or agreed to be paid hereunder exceed the maximum rate of interest permitted under applicable law. If, from any circumstance whatsoever, fulfillment of any provision hereunder shall involve transcending the limit of validity prescribed by law, then the obligation to be fulfilled shall automatically be reduced to the limit of such validity.

11. DEFAULT. If Purchaser defaults in making any payment(s) or in discharging any obligation under this Contract, Seller may (a) accelerate and mature the full amount then remaining unpaid, after giving Purchaser a refund of any unearned finance charge; (b) seek foreclosure of Seller's lien and security interests; (c) pursue other remedies available to it by law or contract; or (d) terminate this Contract and retain any payments made; and seek reimbursement for any reasonable attorneys fees and court costs incurred in exercising any of the foregoing remedies. Seller agrees to give Purchaser written notification of any default or breach of this Contract and Purchaser shall have 30 days from receipt of such notification to correct such default or breach, or such additional time as may be required by applicable law.

12. PROPERTY OWNERS' ASSOCIATION. Purchaser shall be a member of the Cliffs Property Owners Association (the "Property Owners Association"). Purchaser agrees and promises to (a) comply with the rules and regulations prescribed by the Property Owners Association and the restrictive covenants affecting the Property, (b) pay the prescribed annual maintenance fees to the Property Owners Association when due, and (c) pay any prescribed late fees if maintenance fees are not paid when due.

13. ASSIGNMENT. Purchaser agrees that no future sale, transfer, lease or disposition of the Property shall be consummated unless and until the name and address of such purchaser or transferee has been properly provided to the Property Owners Association. Seller shall have the right to assign any of its interests or obligations contained in this Contract to any reasonably responsible third party.

#### NOTICE

**ANY HOLDER OF THIS CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.**

**DDPC04285**



14. WAIVER OF TRIAL BY JURY. Seller and Purchaser knowingly and conclusively waive all rights to trial by jury, in any action or proceeding relating to this contract

15. **NO RELIANCE ON REPRESENTATIONS.** PURCHASER AGREES THAT A FULL INSPECTION OF THE LOT HAS BEEN MADE, THAT HE OR SHE IS ACCEPTING THE LOT AS IS AND RELYING SOLELY ON HIS OR HER OWN JUDGMENT IN PURCHASING THE LOT. PURCHASER ACKNOWLEDGES THAT HE OR SHE **HAS NOT RELIED** ON ANY PLANS, REPRESENTATIONS, BROCHURES, ADVERTISEMENTS, COVENANTS, WARRANTIES OR STATEMENTS OF ANY KIND WHATSOEVER, WHETHER MADE BY SELLER, ITS AGENTS, ASSIGNS, OR OTHERWISE, EXCEPT THOSE SPECIFICALLY SET FORTH IN THIS CONTRACT, THE PROPERTY REPORT, OR THE COVENANTS AND RESTRICTIONS.

16. **NOTICES.** Any notice to Purchaser shall be deemed effective, given and completed upon deposit of the notice in a post-paid envelope, addressed and mailed to Purchaser at the most recent address as shown in the records of Seller. Any notice to Seller or its assignee (other than notice of cancellation) will be effective, given and completed only upon receipt of written notice by Seller or its assignee.

17. **DELAY.** No act, delay, omission or course of dealing between Seller and Purchaser will be a waiver of any of Seller's rights or a bar to the exercise of any right or remedy of Seller on any subsequent occasion unless such waiver be in writing and signed by Seller. All rights and remedies of Seller hereunder are cumulative and may be exercised singularly or concurrently in addition to those otherwise available by law or equity.

18. **JOINT AND SEVERAL.** The obligations of Purchaser will be the joint and several agreement of all parties signing this Contract as Purchaser.

19. **INVALIDITY OF PROVISIONS.** If any provision of this Contract is invalid or unenforceable under any law, the provision is and will be totally ineffective to that extent, but the remaining provisions will be unaffected.

20. **GOVERNING LAW AND EXCLUSIVE JURISDICTION.** This contract shall be interpreted in accordance with the laws of the State of Texas. Seller and Purchaser agree that any dispute arising under or in connection with this contract or related to any matter which is the subject of this contract shall be subject to the exclusive jurisdiction of the state and/or federal courts located in Dallas County, Texas.

21. **BINDING EFFECT.** This Contract shall be binding upon and inure to the benefit of the heirs, successors and/or assigns of the parties hereto.

22. **ENTIRE AGREEMENT.** The terms, covenants and conditions appearing herein contain the entire agreement between Seller and Purchaser and cannot be varied except by the written agreement of the parties.

23. **AUTHORITY OF SELLER'S REPRESENTATIVE.** The authority of Seller's representatives is limited to securing purchasers for the Property upon the terms and conditions that are set forth herein and not otherwise, and the sales representatives have no power or authority to make any change, alteration, modification, stipulation, inducement, promise or any representation whatsoever other than those herein stated. Seller reserves the right to disapprove and reject this Contract upon review at its home office. If rejected, all monies paid shall be returned to Purchaser.

24. **BOAT DOCKS** Due to the proximity to the swim area and beach, and for the general safety, health, and welfare of property owners and their guests, boat docks, swim docks, fishing piers, or other improvements of a similar nature shall not be permitted on Lots 1-7 of Phase XIII of the subdivision.

Purchaser hereby acknowledges that: (i) this Contract was completed as to all provisions and disclosures before it was signed by Purchaser and a duplicate copy thereof was delivered to Purchaser at the time of signing; and (ii) Purchaser has made a personal on-the-lot inspection of the Property.

**YOU HAVE THE OPTION TO CANCEL YOUR CONTRACT OF SALE BY NOTICE TO THE SELLER UNTIL MIDNIGHT OF THE SEVENTH DAY FOLLOWING THE SIGNING OF THIS CONTRACT.**

**IF YOU DID NOT RECEIVE A PROPERTY REPORT PREPARED PURSUANT TO THE RULES AND REGULATIONS OF THE OFFICE OF INTERSTATE LAND SALES REGISTRATION, BUREAU OF CONSUMER FINANCIAL PROTECTION, IN ADVANCE OF YOUR SIGNING THE CONTRACT, THE CONTRACT OF SALE MAY BE CANCELLED AT YOUR OPTION FOR TWO YEARS FROM THE DATE OF SIGNING.**

SELLER  
DOUBLE DIAMOND, INC.,

PURCHASER(S)

By: \_\_\_\_\_  
Seller's Representative

\_\_\_\_\_

and  
\_\_\_\_\_  
Tim Grout, Vice President

\_\_\_\_\_