

## **CANYON CREEK**

### **Dedication of Plat and Declaration of Protective Covenants**

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, Black Diamond Experience, LLC, hereinafter referred to as “Declarant” does hereby record that plat of a subdivision known as Canyon Creek - Phase I, lying and being situated in the Moorefield District, Hardy County, West Virginia, and being more fully described on the plat and survey of Canyon Creek - Phase I, which is made a part hereof, and is recorded in the Office of the Clerk of the County Commission of Hardy County, West Virginia, in Map Book No. 7, at Page 137, and said real estate being a part of the same real estate conveyed to the said Declarant by Deed dated November 8, 2004 and recorded in Deed Book 282 at Page 688.

All lots in Canyon Creek - Phase I, *and all subsequent Phases or lots*, shall be subject to the following protective covenants, conditions, and restrictions and easements which shall run with the land and shall be binding upon all subsequent owners of the lots:

#### **ARTICLE I — DEFINITIONS**

1. “Association” shall mean and refer to Canyon Creek Property Owners’ Association, its successors and assigns.
2. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot which is a part of the property, including contract sellers, but excluding those having such an interest merely as security for the performance of an obligation.
3. “Property” shall mean and refer to that certain real property described above and such additions thereto as may hereafter be brought within the jurisdiction of the Association.
4. “Lot” shall mean and refer to any numbered or lettered plat of land shown upon the recorded subdivision plat of the property.
5. “Declarant” shall mean “Grantor/Developer” and refer to its successors and assigns.

#### **ARTICLE II — MEMBERSHIP, VOTING RIGHTS, AND OBJECTIVES**

1. Every owner of a lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot.
2. The Canyon Creek Property Owners’ Association is required to secure and maintain a third party liability insurance policy in the principal amount as may be required by the State of West Virginia or Federal law from time to time.
3. On or before December 31, 2006, or when two-thirds (2/3) of the lots in Canyon Creek -

Phase I, have been sold, whichever occurs first, a Property Owners' Association shall be established with membership consisting of the owners (and only the owners) of each lot in Canyon Creek - Phase I who shall have one (1) vote per lot owned. A Board of Directors of three (3) to (5) members shall be elected by the lot owners, except for the initial Board.

4. The initial Directors of the Association, consisting of one to five members, shall be appointed by the Declarant or its assigns, and thereafter the Board of Directors shall be elected by the lot owners. The initial Directors shall be responsible for calling the first meeting of the Property Owners' Association on or before January 31, 2007 and shall be responsible for the mailing of the written notice of the lot assessment which is due and payable on February 28, 2007. The meeting shall be held in Hardy County, West Virginia, at a suitable place to be designated by the initial Board of Directors. At said meeting, the owners shall by a majority vote, determined whether or not the Association shall be a corporation, and unincorporated association, or other legal entity, and shall elect a Board of Directors and such officers as that may determine necessary, depending on the legal entity which they have selected.
5. The Duties and Responsibilities of the Property Owners' Association shall include, but not be limited to, the following:
  - a. Maintain Property Owners' Association, periodically elect officers and directors, and establish and collect fees and dues.
  - b. Maintain Financial Records
  - c. Administer the upkeep and improvements, including roads, of Canyon Creek.

### **ARTICLE III—COVENANT FOR MAINTENANCE ASSESSMENT**

1. Each owner of a Lot within Canyon Creek shall pay an assessment for the reasonable construction, use, and maintenance, and expansion of the roads in Canyon Creek. All assessments, including any pro-rata share of said assessments, shall be collected by and paid beginning the calendar year of January 1, 2007 through December 31, 2007. The Assessment for the year beginning 2007 shall be \$200.00 per Lot. In no event shall the annual average common expense liability of each Lot, exclusive of optional user fees of any insurance premiums, exceed the sum of Two Hundred Dollars (\$200.00) as adjusted, pursuant to the provisions of the West Virginia Code Section 36B-1-114. All assessments shall be due and owing on the first day of January of each year and if unpaid shall be a lien upon the property against which each assessment is made. Black Diamond Experience, LLC and its assigns, including Canyon Creek Property Owners' Association, and any lot owner, shall have the right to sue for and collect any assessment, together with interest, properly assessed under this contract.
2. Any assessment made on a property pursuant to this paragraph, including a late fee of Five Dollars (\$5.00), interest at the rate of Ten Percent (10%) per annum from the date of delinquency, and reasonable attorney's fees incurred in the collection thereof, shall constitute a lien on this property until paid. This lien is expressly inferior and subordinate to any mortgage liens presently or hereafter encumbering the property affected by these protective covenants. The owner of each lot, by acceptance of a deed thereto, automatically becomes a

member of the Canyon Creek Property Owners' Association to be created as herein set forth, and agrees to pay an amount determined by the positive vote of the Owners of at least two-thirds (2/3rds) of the Lots in Canyon Creek Subdivision as deeded, necessary for the purpose of maintaining (including the removal of snow and the repairs and improvements of the roads) the right of ways and roadways as shown on the subdivision plat. During December of each year, beginning December, 2006 said Association shall notify each Lot Owner, in writing, as to the amount of the Lot Assessment which shall be due and payable in January of the following year. In the event of a resale or transfer of one or more Lots in said subdivision, this obligation shall run with the land and become the obligation of the new Owner(s) even though it may have been assessed to a prior owner.

3. If the owner of any Lot is in default in the payment of any assessments, including interest and costs of collection, in addition to any other means of collection, the Property Owners' Association, or any lot owner, may bring an action at law against the owner personally obligated to pay same.
4. In exchange for the Declarant's agreement to install and maintain said roadways and rights of way until two-thirds of the Lots have been conveyed, the Declarant shall be forever exempt from the payment of said annual assessments and road maintenance fees, as to all Lots now owned or later re-acquired by the Declarant. In the event that the Declarant should re-acquire real estate through purchase at a foreclosure sale, or through settlement of an Owner's default in any contract, note or deed of trust that the Owner should be obligated to pay the Declarant, Declarant shall not be required to pay any past due assessment that the previous owner may have owed the Association, nor shall the Declarant be required in the future to contribute to the maintenance of the roadways.
5. Each Lot Owner, by acceptance of a Deed thereto, acknowledges that the roads and rights of way are private in nature and may not be maintained by the West Virginia Department of Transportation or other public agency and that the maintenance of improvement thereof shall be the mutual obligation of the Landowners in the subdivision abutting said road.

#### **ARTICLE IV — USE RESTRICTIONS**

1. No signs or advertising of any nature shall be erected or maintained on any lot, except for sale or rental signs not to exceed six (6) square feet in area (said signs must comply with Hardy County Ordinances relating to the erection of signs), except for directional and informational signs provided by the Declarant.
2. Re-subdivision of the Lots is prohibited.
3. No owner of any Lot shall interfere with the natural drainage of surface water from such lot to the detriment of any other lots. Consequently, in the construction of driveways into any lot, a minimum twelve inch diameter culvert shall be used in constructing the driveway in order to facilitate natural drainage. No parking that obstructs traffic is permitted upon any road within the property, and as part of the development of any lot, the Owner shall provide

adequate off-road parking for himself and his guests.

4. Due to the unsightliness of junk vehicles, no motor vehicle or trailer which does not have current license plates or an inspection sticker not more than six months out of date shall be permitted on any lot. Temporary camping trailers may be placed on any lot, provided they are in compliance with Hardy County and West Virginia laws concerning temporary camping. Temporary camping shall be for the personal use of the owner and his immediate family.
5. No building of a temporary nature shall be erected or placed on any lot except those customarily erected in connection with building permanent structures, and in such cases, for a period not to exceed twelve months.
6. Not more than one single family residence shall be erected on a lot. Residences shall contain a minimum of 1,000 square feet for a single story or ranch style residence and a minimum of 1,400 square feet for a two-story residence. Said square foot minimum is of living area, excluding basement, garage, porch, carport, deck and overhanging eaves. All exterior construction must be completed and closed in within 12 months of the commencement of construction. No exterior siding of masonry block or cinderblock shall be permitted. Mobile Homes are not permitted.

7. Each Lot shall be used for residential/recreational purposes only, and any garage or barn must conform generally in appearance and material with any dwelling on said lot.

Notwithstanding the prior paragraph, the following uses are permitted, subject to applicable state and local laws:

- a. Home occupations conducted by the occupant.
  - b. Agricultural uses, including incidental use and the construction of accessory buildings connected with the agriculture or with the building of a residence including storage of temporary camping and lawn maintenance equipment. Said accessory buildings may be constructed before construction of the residence. Said accessory buildings shall not be used for temporary sleeping or camping quarters.
  - c. Not more than one head of livestock per fenced acre and one domesticated animal (excluding dogs and cats) per acre shall be permitted per lot, unless otherwise approved by the Board of Directors of the Property Owners' Association, provided that no pigs or pig pens are allowed within the subdivision. All livestock must be fenced in. Operation of any laying hen, broiler houses, or other poultry business is prohibited. Limited raising of poultry for personal use is permitted. Pets and domesticated animals must be fenced in or otherwise prevented from roaming.
8. The owner shall maintain, repair and restore, as necessary, the exterior of any building or other improvements erected on any lot owned by him. Owners likewise agree to repair and restore promptly to its prior condition any part of the subdivision road damaged by equipment of Owner or his contractor en route to or from Owner's Lot. All lots improved or unimproved must be maintained by the Owner in a neat and orderly condition at all times. No garbage, trash, or inoperable vehicle or other debris shall be permitted to accumulated or remain on any lot.

9. No building shall be erected closer than twenty (20) feet from the property line, with the exception that where two or more lots are used together for the construction of one dwelling, then the said twenty (20) foot setback shall apply only to the outside lines.
10. All sanitation facilities constructed on any lot shall conform with the regulations of the West Virginia State Health Department, Hardy County Health Department, and any other government agency regulating the installation of sewage disposal systems.
11. No lots shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste must be kept in sanitary containers. All raw materials must be kept from view where possible.
12. The Declarant reserves unto himself or his assigns the right to erect, maintain, and operate and replace telephone and electric light poles, conduits, and related equipment and water, gas and sewer lines, and any other utilities, and the right to grant other additional easements or rights of way over, on or under a strip of land twenty feet (20') wide, along all of the rights of ways (and additional width as necessary for guying purposes), in addition to easements reserved by any other instruments duly recorded. Where the centerline of roadways or rights of way serve as the property line of a lot, then the twenty foot wide easement herein reserved shall exclude any portion of the lot included in the roadways or rights of way, and extend instead, across the remainder of the lot abounding on said roadways or rights of way. Nothing here shall be construed as creating any duty of Declarant. The 20 foot wide right of way reserved herein shall be for the benefit of Shenandoah Valley Electric Company, also, and this easements may also be construed as a 20 foot wide set back along every lot line, in addition to any road right of way as shown on the plats of Canyon Creek.
13. Each lot owner shall have any unobstructed right of way and easement over and across the roads as shown on the subdivision plat as recorded from time to time, for the purpose of ingress and egress to and from the public roads in the subdivision. No part of any lot may be sold or used as a road or right of way to any land outside the Property. The Property Owners' Association shall be solely responsible for the maintenance of the subdivision road.
14. Reasonable cutting of wood and timber for land clearing is permitted.
15. If any lot owner shall violate any of the covenants herein, it shall be lawful for any other person, persons, legal entities owning real estate in the subdivision or the Canyon Creek Property Owners' Association to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant, whether to prevent him from doing so or to recover damages or other dues for such violation. Failure to enforce any provision herein contained shall in no way be deemed a waiver of the right to do so hereafter.
16. The Association, by a vote of two-thirds (2/3rds) of its members, may make additional rules, covenants, and restrictions for the use of the Property, which together with the above, may be deemed advisable by the Association.

## ARTICLE V—GENERAL PROVISIONS

1. Declarant reserves the right to re-plat any unsold lot or lots. Nothing herein shall be construed to prevent Declarant from imposing additional covenants or restrictions on any unsold lot(s).
2. The Association or any Owner, shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereinafter imposed by the provision of this Declaration. Failure by the Declarant or Association or by any owner to enforce an provision contained herein shall in no event be deemed a waiver of the right to do so thereafter.
3. Additional property may be annexed to the Subdivision by the Declarant.

## ARTICLE VI

1. The covenants, restrictions and other provisions of this Declaration shall run with and bind the land.
2. Invalidation of any of the covenants, restrictions, or other provisions of this Declaration by Judgment or Court Order shall in no way affect other provisions, which shall remain in full force and effect.
3. Whenever in this Declaration the context so requires, the masculine gender includes the feminine and neuter and singular numbers include the plural and plural numbers include the singular.

IN WITNESS WHEREOF: The Declarant does hereby execute this Dedication of Plat and Declaration of Protective Covenants for Canyon Creek Subdivision, Phase I, and all future Phases, this 15th day of August, 2006.

Black Diamond Experience, LLC  
A West Virginia Limited Liability Co.

BY: \_\_\_\_\_  
W. Thomas Lee Campbell, Member

STATE OF WEST VIRGINIA,  
COUNTY OF HAMPSHIRE, TO WIT:

I, \_\_\_\_\_, a Notary Public in and for the  
county and state aforesaid, do hereby certify that W. Thomas Lee

Campbell,, in his capacity as Member of Black Diamond Experience, LLC, a West Virginia Limited Liability Company, whose name is signed and affixed to the foregoing instrument dated the 15th day of August, 2006, has this day, acknowledged the same before me in my said county and state.

Given under my hand and Notarial Seal this 15th day of August, 2006.

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Notary Public

Notary Seal