

DECLARATION OF RESERVATIONS AND RESTRICTIVE COVENANTS**BLACK DIAMOND**

THIS DECLARATION, made as of September 26, 2006 to be effective upon recordation, by VA HUNTER, LLC, a Delaware limited liability company, its successors and assigns ("Developer").

WITNESSETH:

WHEREAS, Developer is the owner of the real property described in Article II of this Declaration and desires to create thereon a primarily residential community, with Roads and Other Common Facilities (as hereafter defined) for the benefit of said community; and

WHEREAS, Developer desires to provide for the preservation of the values and amenities in said community and for the maintenance, including snow removal, of all Roads and Other Common Facilities (as hereinafter defined), and to this end, desires to subject the real property described in said Article II to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each Owner thereof; and

WHEREAS, Developer has deemed it desirable for the efficient preservation of the values and amenities in said community to create an agency to which should be delegated and assigned the powers of maintaining and administering the community program and facilities, and administering and enforcing the covenants and restrictions, and collecting the disbursing the assessments and charges hereinafter created; and

WHEREAS, Developer has incorporated under the laws of the Commonwealth of Virginia as a non-profit, non-stock corporation, Black Diamond Property Owners Association, Inc., for the purpose of exercising the functions aforesaid.

NOW, THEREFORE, the Developer declares that the real property described in Article II hereunder is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "Covenants and Restrictions") hereinafter set forth, and in compliance with and pursuant to the Virginia Property Owners' Association Act.

ARTICLE I
DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

- (a) "Association" shall mean and refer to Black Diamond Property Owners Association, Inc.
- (b) "The Properties" shall mean and refer to all such existing properties as are subject to this Declaration, or any supplemental Declaration, as described in Article II, Section 1, hereof.
- (c) "Roads and Other Common Facilities" shall mean the areas of land and water shown on any recorded subdivision plat(s) of The Properties which are intended to be devoted to the common use of the owners of The Properties and include any "Common Area(s)" as similarly labeled on said plat(s). Certain Common Areas are shown on the plat and the individual Lots they cross are subject to the rights of others to use these areas.
- (d) "Lot" shall mean and refer to any numbered tract or plot of land, except a Common Area as shown upon any recorded subdivision plat of The Properties.
- (e) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot situated upon The Properties but, notwithstanding any applicable theory of mortgage law, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or proceedings in lieu of foreclosure.
- (f) "Member" shall mean and refer to all those Owners who are or become members of the Association as provided in Article III, Section 1, hereof.

ARTICLE II
PROPERTIES SUBJECT TO THIS DECLARATION

Section 1. Lots. The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in the Potts Mountain District of Craig County, Virginia, and is more particularly described as follows:

Lots 1 through and including Lot 103, Black Diamond, as are more fully shown upon that Final Plat prepared by Terradon Corporation, dated July 10, 2006, and recorded in the Circuit Court of Craig County, Virginia, in Deed Book 157, at page 204, et seq., and any subsequent re-plats or re-surveys thereof, including, but not limited to, a re-plat to establish conservation easements, relocation of subdivision roadways, etc. (to be recorded prior to any Lot conveyance by Seller).

AND BEING the same real estate conveyed to VA Hunter LLC, a Delaware limited liability company, by Deeds dated August 8, 2006, recorded in the Circuit Court of Craig County, Virginia in Deed Book 157, at pages 167 and 175, respectively, all of which real property shall hereafter be referred to as "Existing Property."

Every Lot Owner, and all those entitled to occupy a Lot, shall comply with all provisions of law and all provisions of the Declaration. Any lack of such compliance shall be grounds for an action or suit to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the Association, or by its executive organ or any managing agent on behalf of such Association, or in any proper case, by one or more aggrieved Lot Owners on their own behalf or as a class action. The prevailing party shall be entitled to recover reasonable attorney's fees and costs expended in the matter.

Section 2. Additions to Existing Property. Additional land may become subject to this Declaration in the following manner:

(a) WITHOUT CONSENT. Additional land, including but not limited to future sections of Black Diamond, may be annexed by the Developer without the consent of Members, provided, however, that street widths shall remain substantially the same as those initially constructed, and further provided that the land use restrictions shall remain substantially the same as provided for in this said Declaration.

(b) OTHER ADDITIONS WITH CONSENT. Additional property and common areas may be annexed to The Existing Property with the consent of a majority of each class pursuant to a vote of the Association's Members.

(c) SUPPLEMENTARY DECLARATION. The additions authorized under the two preceding subsections shall be made by filing of record a Supplementary Declaration of Covenants and Restrictions with respect to the additional property, which shall extend the scheme of the Covenants and Restrictions of this Declaration to such property. Such Supplementary Declaration may contain such complimentary additions and modifications to the Covenants and Restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration. In no event, however, shall such Supplementary Declaration revoke, modify, or add to the Covenants established by this Declaration within The Existing Property after final conveyance by the Developer.

(d) MERGERS. Upon merger or a consolidation of the Association with another Association as provided in the Articles of Incorporation, the properties, rights, and obligations of Black Diamond Property Owners Association, Inc., may, by operation of law, be transferred to another surviving or consolidated association, or alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of Black Diamond Property Owners Association, Inc., as a surviving corporation pursuant to a merger. The surviving or consolidated association shall administer the Covenants and Restrictions established by this Declaration any supplemental Declaration for The Existing Property, together with the covenants and restrictions established upon any other properties, as one scheme. No such merger or consolidation, however, shall effect any revocation, change, or addition to the covenants established by the Declaration(s) within The Existing Property, except as hereinafter provided. Any such proposed merger or consolidation shall be at the sole discretion of Developer, or shall be approved by at least sixty percent (60%) of the membership of Black Diamond Property Owners Association, Inc., or shall be prohibited.

Section 3. Amendment of Declaration and Conflict. In addition to corrective Amendments provided by Code of Virginia 55-512.2 (F), Developer reserves the right to amend, delete or add to this Declaration or any supplemental Declaration on a property-wide or individual basis at any time by subsequent recorded document, but in no event shall such subsequent recordation apply retroactively to eliminate rights previously conveyed by Developer with other Lots except as may be permitted elsewhere in this Declaration. In the event of any conflict between the plat or subsequently recorded subdivision documents, the most restrictive provision shall apply. This Declaration may otherwise only be amended by subsequent recorded Supplemental Declaration signed by two-thirds (2/3) of all record Owners within The Properties along with the Certification required by Code of Virginia 55-515 (F).

Section 4. Plat Amendment. Developer, its representatives and assigns, reserve the right to modify the plans of the subdivision plat, to change the size and boundaries of any Lots owned by Developer, to change the size and shape of blocks, sections and Lots, and the directions and location of streets and other ways shown thereon, or of annulling the same; provided, however, that no change shall be made which shall alter the shape or size of any Lot which has been sold, or the direction of any street or way upon which it abuts so as to cut such Lot off from convenient access to public highways, without the consent of the Owner thereof.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person or entity who is a record Owner of a fee, or undivided fee, interest in any Lot which is subject by covenants of record to assessment by the Association, shall be a Member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a Member, and further provided that the Developer, without regard to the assessments required as set forth herein, shall be entitled to one membership for each Lot for which it is a record Owner of a fee interest.

Section 2. Voting Rights. The Association shall have two classes of voting membership, which shall, except for the distinctions set forth herein, be equal in all respects.

Class A. Class A members shall be all those Owners as defined in Section 1, with the exception of the Developer. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interests required for membership by Section 1. When more than one (1) person holds such interest or interests in any Lot, such persons shall be members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

Class B. Class B membership shall be limited to the Developer. The Class B Member shall be entitled to three (3) votes for each Lot in which it holds the interest required for membership by Section 1. The Class B membership shall cease when the Developer owns no more Lots in The Existing Property.

Section 3. Annual Report. The Association shall file an annual report as prescribed by the Virginia Property Owners' Act and the Virginia Real Estate Board.

ARTICLE IV PROPERTY RIGHTS IN THE COMMON PROPERTIES AND WATER AREAS

Section 1. Members' Easements of Enjoyment. Every Member of the Association, including Developer, its employees and assigns, shall have a right and easement of enjoyment in and to the Roads and Other Common Facilities. A right of use of same and like easement shall be appurtenant to and shall pass with the title to every Lot; provided, however, that the Developer, its officers and its employees shall enjoy said easements and rights of use and enjoyment perpetually, regardless of whether the Developer owns any Lots. Developer reserves an easement to maintain sales offices within The Existing Property, and to erect sales signs within The Existing Property in locations chosen by Developer. An easement to complete construction of all facilities and utilities in The Existing Property is also reserved by Developer and is assignable at Developer's discretion. Developer may permit the use of the Roads and Other Common Facilities by purchasers or potential purchasers at Developer's discretion.

Section 2. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the right of the Association to dedicate or transfer the maintenance responsibilities for the Roads and Other Common Facilities to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members, provided that no such dedication or transfer, or determination as to the purposes for the same or as to the conditions

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thereof, shall be effective unless the provisions in the Articles of Incorporation for the Association as to such transfer are complied with.

Section 3. Title to Common Open Space and Association Powers and Responsibilities. The Developer hereby dedicates the Roads and Other Common Facility to the Association, subject to Developer's rights to construct improvements thereon and further subject to the common easements set forth in Section 1 and elsewhere herein. This dedication shall not inhibit convenient use of the Property roadways by any person or entity entitled to use the same hereby. The Board of Directors of the Association shall have the power to establish, adopt and enforce rules and regulations with respect to the use of Roads and Other Common Facilities, which rules and regulations may be adopted by resolution and shall be reasonably published or distributed throughout the Existing Property. A majority of votes cast, in person or by proxy, at a meeting convened in accordance with the provisions of the Association's By Laws and called for that purpose, shall repeal or amend any rule or regulation adopted by the Board of Directors. Rules and regulations may be enforced by any method normally available to an owner of private property in Virginia, including, but not limited to, application for injunctive relief or damages, during which the Court may award to the Association Court costs and reasonable attorneys' fees.

(i) In addition:

- (a) The Board of Directors of the Association shall also have the power to (i) suspend a Lot Owner's right to use facilities or services provided directly through the Association for nonpayment of assessments which are more than sixty (60) days past due, to the extent that access to the Lot through the Roads and Other Common Facilities is not precluded and provided that such suspension shall not endanger the health, safety, or property of any Owner, tenant, or occupant, and (ii) to access charges against any Lot Owner for any violation of the Declaration or rules and regulations for which the Lot Owner or his family members, tenants, guests, or other invitees are responsible.
- (b) Before any such charges or suspension may be imposed, the Lot Owner shall be given an opportunity to be heard and to be represented by counsel before the Board of Directors. Notice of a hearing, including the charges or other sanctions that may be imposed, shall be hand-delivered or mailed by registered or certified mail, return receipt requested, to the Lot Owner at the address of record with the Association at least fourteen (14) days prior to the hearing.
- (c) The amount of any charges so assessed shall not be limited to the expense or damage to the Association caused by the violation, but shall not exceed fifty dollars (\$50.00) for a single offense or ten dollars (\$10.00) per day for any offense of a continuing nature and shall be treated as an assessment against the Owner's Lot. However, the total charges for any offense of a continuing nature shall not be assessed for a period exceeding ninety (90) days. After the date a lawsuit is filed challenging any such charges, no additional charges shall accrue. If the Court rules in favor of the Association, it shall be entitled to collect such charges from the date the action was filed as well as all other charges assessed pursuant to this section against the Lot Owner prior to the action.
- (d) The hearing result shall be hand-delivered or mailed by registered or certified mail, return receipt requested, to the Lot Owner at the address of record with the Association with seven (7) days of the hearing.

Section 4. Trout Waterway(s)/Pond(s). Any areas of water shown and labeled on the Plat are for the exclusive use of Lot Owners and their accompanied guests. The Association shall maintain such area(s) in as good or better condition as the same are as of the date hereof, including the use of best stream and fishing management practices for cleanliness, stocking, feeding, etc. and shall comply with all related laws, rules and regulations of the Federal government and the Commonwealth of Virginia. The Association may organize a committee of Lot Owners to oversee compliance with this Section. Apart from this Declaration, but equally enforceable, are rules and regulations, amended if necessary from time to time, to more specifically comply with the intent of this Section. Said rules and regulations may be adopted and enforced by the Developer acting solely, or by the committee aforesaid, or by the Board of Directors of the Association pursuant to Section 3 above. Said rules and regulations, and any amendments thereto, shall be delivered one (1) per Lot to the Association's last known address of the Owner(s). The Association's general fund shall budget its expenditures to include regular stocking and maintenance.

Section 5. Fishing Restrictions and Penalties. All waterways are "Fish for Fun" areas, such that only barbless hooks and artificial bait are permitted, along with only rubber nets when landing a fish. Such waterways are "catch and release" only. Any person not in compliance with this Section shall be subject to a fine by the Developer, committee or Association in the maximum amount permitted by law per violation, which fine is enforceable the same as other Association dues described elsewhere herein, and which fine shall become part of Association's general fund and expended accordingly. Violators will also lose fishing privileges for a period determined on an individual basis by the Developer, Association or committee, according to the severity of the violation, in accordance with Section 3 above. The rules and regulations aforesaid may include additional or increased penalties in addition to those herein described.

Section 6. Greenspace Areas Along Waterways. The 100-year (one hundred year) floodplain extending inland along the banks of John's Creek as shown on the Plat, along with an additional area inland therefrom, shall be kept in its current, natural, undisturbed condition, which area is shown on the recorded Plat. Native trees and other plants may be sown in the Greenspace, 100-year floodplain and additional building setback line areas and mowing may occur therein, but removal or cutting of trees and other existing plants or using fertilizers and spraying with biocides is strictly prohibited. No livestock or other farm, domestic or raised animals shall be permitted in John's Creek or within the Greenspace, 100-year floodplain and additional building setback line areas. Any grazing animals shall be confined to areas outside both the Greenspace and 100-year forested floodplain by reliable fencing erected and maintained at the expense of the livestock's owner. Livestock watering shall be only via a well and trough system. No structures, improvements or fencing is permitted within the 100-year floodplain, except for the Common Areas having picnic shelters, wildlife management structures and any other items expressly permitted by the Developer and/or the Association.

ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Except the Developer and the Owners of Lots not subject to maintenance assessments under Section 10(d) herein, each Owner of a Lot in The Existing Property, by acceptance of a Deed therefore, whether or not it shall be so expressed in any such Deed or other conveyance, shall be deemed to covenant and agree to pay to the Association the annual assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual assessments, together with such interest thereon and costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with legal interest thereon and the cost of collection thereof, shall also be the personal obligation of each person who was the owner of such property at the time when the assessment fell due. Nothing herein shall be construed as requiring the Developer to maintain the Roads and Other Common Facilities or any Lots after Developer ceases to own the same, and in consideration of the initial construction, said Developer shall be exempt from collection of assessments regardless of the number of Lots owned by Developer.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, and welfare of the Owners of real estate within The Existing Property, the improvement and maintenance of Roads and Other Common Facilities devoted to this purpose and related to the use and enjoyment of the common facilities, including John's Creek and waterways provided for elsewhere herein. Such levies may be expended specifically to include, but are not limited to, the payment of taxes, insurance and expenses for utilities on any common facilities, and repair, replacement, and additions thereto, and for the cost of labor, equipment, materials, management, and supervision thereof, and such other purposes as may be set forth in the Articles of Incorporation, the By-Laws and rules and regulations of the Association.

Section 3. Basis and Maximum of Annual Assessments. The maximum annual assessment shall be \$300.00 per assessed Lot, as adjusted annually for inflation in no greater increases than 10% per year. The assessment may be reduced annually by a vote of the Members as hereinafter provided. The officers and Board of Directors of the Association shall at all times maintain and operate the Association on a non-profit basis. Unless otherwise provided herein or in the Association Articles and By-Laws, any change in assessments shall have the assent of a majority of the votes of each class of members who are voting in person or by proxy at a regular or duly called special meeting pursuant to the advancement of provisions contained in the Association documents aforesaid.

Section 4. Authority to Levy Special Assessments. In addition to all other assessments authorized herein, the Board of Directors of the Association shall have the power to levy a special

assessment against its members if the purpose in so doing is found by the Board to be in the best interest of the Association and the proceeds of the assessment are used primarily for the maintenance and upkeep of the Roads and Other Common Facilities and such other areas of Association responsibility expressly provided for in the Declaration, including capital expenditures. A majority of votes cast, in person or by proxy, at a meeting of the membership convened in accordance with the provisions of the Associations By-Laws within sixty (60) days of promulgation of the notice of assessment shall rescind or reduce the special assessment. No director or officer of the Association shall be liable for failure to perform his fiduciary duty if a special assessment for the funds necessary is rescinded by the Lot Owners pursuant to this Section, and the Association shall indemnify such director or officer against any damage resulting from any claimed breach of fiduciary duty arising therefrom. The failure of a member to pay the special assessment allowed above shall entitle the Association to the lien provided elsewhere herein as well as any other rights afforded a creditor under law. The failure of a member to pay the special assessment allowed above will provide the Association with the right to deny the member access to any or all of the Common Facility, provided, however, that direct access to the members Lot over any road within The Existing Properties which is a Common Facilities shall not be denied the member.

Section 5. Assessment Account Balance. Notwithstanding the above assessment adjustment provisions, no decrease in the assessment amounts under Three Hundred Dollars (\$300.00) annually per Lot shall occur unless the assessment fund account reflects a balance of at least Fifty Thousand Dollars (\$50,000.00).

Section 6. Date of Commencement of Annual Assessments. The annual assessments provided for herein shall be on a calendar year basis, due and payable by the first business day in January annually. Lot owners purchasing from Developer will be responsible for payment at closing of the assessment pro-rated to the end of the year in which they purchase, at the initial rate of Three Hundred Dollars (\$300.00) annually. Such pro-rated assessments may be utilized by Developer for the maintenance of the Roads and other Common Facilities during the period of Developer ownership thereof. Developer may collect such annual assessments as are herein provided to fund such maintenance during the ownership period, and Developer shall enjoy all remedies of the Association in the event of non-payment of the assessment by Lot Owners. Assessments paid to the Developer shall be held in an interest-bearing bank account and unused funds shall be transferred to the Association upon its initial elections of officers comprised of Owners at the time the initial Directors of the Association resign. Subject to other conditions herein, the meeting for elections may be held at the Developer's discretion. At that meeting, the Developer will transfer its rights and responsibilities and will execute a Deed to the Association for the Roads and Other Common Facilities and will attend to the prompt recordation thereof. The Association shall accept such rights and responsibilities, Deed and the ownership of said Roads and Other Common Facilities at that time, provided, however, that Developer shall not deed the Roads and Other Common Facilities to the Association nor organize initial elections from the Owners of Lots therein until the Roads and Other Common Facilities have been completed. Developer reserves its rights to continue Lot sales if any remain unsold as of the meeting date.

Section 7. Assessment Certificates. The Association shall upon demand at any time furnish to any Owner liable for said assessments a certificate in writing signed by a duly authorized officer of the Association, setting forth whether said assessment has been paid. Such certification so stating shall be conclusive evidence of the payment of any assessment therein stated to have been paid.

Section 8. Assessment as Personal Obligation of the Owner. If an assessment is not paid on the date when due as aforesaid, such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof, become a continuing lien on the Lot of the then Owner, his heirs, devisees, personal representatives and assigns. If not reduced to a lien as hereinafter provided, the personal obligation of the then Owner to pay such assessment shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

Section 9. Lien and Remedies of the Association. Once perfected, the Association shall have a lien on every Lot for unpaid assessments levied against that Lot in accordance with the law and all lawful provisions of the Declaration. The lien, once perfected, shall be prior to all other subsequent liens and encumbrances except (i) real estate tax liens on that Lot, (ii) liens and encumbrances recorded prior to the recordation of the Declaration, and (iii) sums unpaid on and owing under any mortgage or Deed of Trust recorded prior to the perfection of said lien. The provisions of this section shall not affect the priority of mechanics' or materialmen's liens. Notice of a Memorandum of Lien to a holder of a Credit Line Deed of Trust shall be given in the same fashion as if the Association's lien were a judgment. Perfection of the lien shall occur as follows:

(a) The Association shall file before the expiration twelve (12) months from the time the first such assessment became due and payable in the Clerk's Office of the Circuit Court in Craig County, a memorandum, verified by the oath of the principal officer of the Association which contains the following: 1. The name of the development, Black Diamond. 2. A description of the Lot; 3. The name or names of the persons constituting the Owners of that Lot; 4. The amount of unpaid assessments currently due or past due relative to such Lot together with the date when each fell due. 5. The date of issuance of the Memorandum; 6. The name of the Association (Black Diamond Property Owners Association, Inc.) and the name and current address of the person to contact to arrange for payment or release of the lien; and 7. A statement that Association is obtaining a lien in accordance with the provisions of the Virginia Property Owners' Association Act as set forth in Chapter 26 (§ 55-508 et seq.) of Title 55.

It shall be the duty of the Clerk in whose office such memorandum is filed as hereinafter provided to record and index the same as provided by law, in the names of the persons identified therein as well as in the name of the Association. The cost of recording and releasing the memorandum shall be taxed against the person found liable in any judgment or decree enforcing such lien.

- (b) Prior to filing a memorandum of lien, a written notice shall be sent to the Lot Owner by certified mail, at the Lot Owner's last known address, informing the Lot Owner that a Memorandum of Lien will be filed in the Circuit Court Clerk's Office of Craig County. The notice shall be sent at least ten (10) days before the actual filing date of the Memorandum of Lien.
- (c) No suit to enforce any lien perfected hereunder shall be brought, or action to foreclose any lien perfected after thirty-six (36) months from the time when the Memorandum of Lien was recorded.
- (d) The judgment or decree in an action brought pursuant to this section shall include, without limitation, reimbursement for cost and reasonable attorneys' fees of the prevailing party. If the Association prevails, it may also recover interest at the legal rate for sums secured by the lien from the time each such sum became due and payable.
- (e) When payment or satisfaction is made of a debt secured by a perfected lien, the lien shall be released in accordance with the law. Any lien which is not so released shall subject the lien creditor to all legal penalties. The principal officer of the Association shall be deemed the legally authorized agent of the lien creditor.
- (f) Nothing in this section shall be construed to prohibit an action at law to recover other legal sums for which a lien may be created.
- (g) At any time after perfecting the lien pursuant to this Section, the Association may sell the lot at public sale, subject to prior liens. For purposes of this Section, the Association shall have the power both to sell and convey the Lot and shall be deemed the Lot Owner's statutory agent for the purpose of transferring title to the Lot. A non-judicial foreclosure sale shall be conducted in compliance with the Virginia Property Owners' Association Act.

Section 10. Exempt Property. Notwithstanding anything herein to the contrary, the following special properties subject to this Declaration shall be exempted from the assessments, charges and liens created herein:

- (a) all properties to the extent of any easement or other interest therein dedicated and accepted by a public authority and devoted to public use;
- (b) all properties exempted from taxation by the laws of the Commonwealth of Virginia, upon the terms and to the extent of such legal exemption, and
- (c) all properties owned by Developer during the period of Developer ownership only, whether during initial, original ownership, thereafter, or pursuant to foreclosure or proceedings in lieu of foreclosure.

ARTICLE VI
RESERVES FOR CAPITAL COMPONENTS

The Board of Directors shall:

- (1.) Conduct at least once every five (5) years, a study to determine the necessity and amount of reserves required to repair, replace and restore the capital components;
- (2.) Review the results of that study at least annually to determine if reserves are sufficient; and
- (3.) Make any adjustments the Board of Directors deems necessary to maintain reserves, as appropriate.

To the extent that the reserve study conducted in accordance with this Section indicates a need to budget for reserves, the Association budget shall include, without limitation:

- (1.) The current estimated replacement cost, estimated remaining life and estimated useful life of the capital components;
- (2.) As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside, to repair, replace or restore capital components and the amount of the expected contribution to the reserve fund for that year; and
- (3.) A general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to this Section and the extent to which the Association is funding its reserve obligations consistent with the study currently in effect.

ARTICLE VII
SETBACK MINIMUMS

No building or any part thereof shall be erected on any Lot closer or nearer to any street or front lot lines than fifty feet (50'), or closer or nearer than sixty feet (60') from the center line of any State maintained road, or closer or nearer to any side boundary line than twenty-five feet (25') or closer or nearer than fifty feet (50') from rear boundary lines or perimeter side lines. Any existing structures upon the Property at the date of this Declaration and otherwise violative of this Article are exempt from compliance with the provisions hereof, unless any new improvement thereto would create a violation. This Article is subject to other building line restrictions elsewhere herein (see, e.g., Article IV, Section 6, supra).

ARTICLE VIII
UTILITY EASEMENTS

The Developer reserves unto itself, its successors and assigns, the right to construct and maintain all utility and electric lines, or to grant rights-of-way therefore, with the right of ingress and egress for the purpose of installing or maintaining the same on, over or under a strip of land ten feet (10') from the side and rear lines of each Lot. Such utility easements are to include, but are not limited to, telephone or electric light poles, conduits, equipment, sewer, gas and water lines. Any Owner placing structures, plantings or improvements or other materials within the aforesaid easements or any pre-existing easements undertakes any interference with the utility easements at his or her own risk and is deemed to waive any and release any and all parties from any and all claims or damages to said improvements if and when maintenance or other work is performed within the easement area. Each private subdivision road right-of-way is sixty feet (60') in total width, being thirty feet (30') on either side of the roadway center line. Each public road is forty feet (40') in total width, being twenty feet (20') on either side of the roadway center line. These areas may be used by Developer, its successors and assigns, to construct and maintain all electric and utility lines. Any variances to these measurements are noted on the plat and are controlling. Street lines shall be measured from the edge of the right-of-way. Nothing herein shall be construed to limit the Developer's rights to construct the Roads and Other Common Facilities within the Properties or the Association's right and obligation to maintain the same.

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ARTICLE IX
RESIDENTIAL AND AREA USE

Except as otherwise expressly provided in this Declaration, all Lots shall be used for residential and recreational purposes only. Nothing in this Declaration shall be construed to create a violation of any provision herein by any existing structure in its condition as of the date hereof, although compliance herewith is mandatory for improvements to said structure. No residence shall be erected, constructed, maintained, used or permitted to remain on any Lot other than one (1) single-family dwelling containing not less than a 1700 (seventeen hundred) square foot minimum total area, exclusive of porch, decking, basement and garage or outbuilding.

(i) In Addition:

- (a) All exterior construction must be completed and closed within one (1) year of the commencement date of excavation. All dwellings shall have an enclosed permanent foundation and be a minimum of thirty feet (30') in width. No vinyl house siding is permitted on the street side of any residence or other building or improvement, including dormers, including upon corner Lots and other Lots abutting a street along more than one boundary line. For the purposes of this paragraph, a "street" is a subdivision or public road.
- (b) There shall be no single-wide or double-wide mobile homes (as they are defined by Virginia Code), house trailers, or buses situate on any Lot as a residence or for the storage of materials therein, either temporarily or permanently. Manufactured and modular home, as defined by Virginia Code, are specifically permitted and are subject to all of the provisions contained in this Declaration.
- (c) Improvements and construction for the maintenance of animals shall be kept in good repair, shall be constructed of new materials and must conform generally in appearance with any dwelling upon a Lot, although such improvements need not be constructed of materials identical to an existing dwelling. No such improvements shall precede the construction of the dwelling. Each Lot Owner shall maintain any such improvements placed upon any Lot and no unsightly or dilapidated buildings or other structures shall be permitted on any Lot.
- (d) The Association shall appoint a standing committee to review and approve all construction plans prior to commencement of construction on any Lot to assure compliance with this Declaration. Rejection of any such plans, or the failure to submit same for review, entitles the Association to pursue any and all legal remedies against violators, including injunctions, removal of the offending improvement, and the collection of Attorney fees and costs.
- (e) Prior to the construction of any improvement or the use of the Lot for camping, the entrance/driveway to the Lot shall be improved by the installation of a culvert a minimum of 30' (thirty feet) in length and 15" (fifteen inches) in diameter, along with an appropriate apron to avoid damage to the subdivision roads by runoff and other results of use. All lots adjacent to the proposed roads must be accessed internally. All lots served by existed state maintained roads require an entrance permit from V.D.O.T. All private entrances on State maintained roads must be in a location where it meets the current sight distance requirements, or where it has optimum lines of sight.
- (f) Cemeteries noted on the Final Plat are subject to access rights pursuant to noted or existing paths/dirt roads. Access shall not be blocked. In addition, the Huffman cemetery is subject to the "right of the descendants of E. F. Huffman's father to be buried there." Cemeteries may be further protected by the Code of Virginia.
- (g) Any and all other reservations or easements for the benefit of others noted or shown on the Final Plat shall be respected without the need for further specific references in the Deed of conveyance for the

affected lot(s), including, but not limited to, all conservation or other easements transgressing individual Lots. Lots 6, 8, 10, 12, 15, 67, 68, 69 and 70 are subject to further restriction and conservation on certain acreage by Declaration also of record. Lots 16, 65, 66, 26, 64 and 28 are subject to a permanent stocking easement. Lot 56 is subject to a permanent wetlands easement. Lots 12 and 15 are subject to a temporary construction easement. Other easements may follow and may not be shown on the plat. All such easements are subject to compliance with, and enforcement under the appropriate provisions of this Declaration and/or Association rules and regulations.

ARTICLE X SEWAGE AND JUNK

No dwelling shall be erected or maintained on any Lot unless there is constructed with it a septic system for disposal of sewage, which must be approved by the Virginia Department of Health. No outside toilet or closet shall be erected on any Lot. Junk, inoperative or unlicensed vehicles may not be stored or kept on any Lot unless housed in a garage of the type described above.

ARTICLE XI PARKING

No automobiles or other motor vehicles shall be parked in or within twenty-five (25) feet from the rights-of-way or roads of the subdivision, and no on-street parking is permitted by Lot Owners. Visitors, guests, delivery vehicles or others legitimately using said roads and streets are excepted and are permitted to temporarily park along said streets.

ARTICLE XII ROAD MAINTENANCE

No road salt (NaCl) shall be utilized by the Developer or Association on roads located within five hundred (500) feet of John's Creek, its tributaries, or drainage ditches leading into aforementioned waterways. Alternative road deicing materials including calcium magnesium acetate (CMA) or Potassium acetate (KA) to protect aquatic biota including trout and their invertebrate food sources.

ARTICLE XIII ADVERTISING

No advertising signs or billboards of any nature shall be erected, placed or maintained on any Lot, with the exception of address, identification signs, builders' job location signs and real estate signs offering the premises for sale, none of which exceptions shall exceed four square feet (4') in size. Developer shall have the right to construct subdivision entrance signs and structures, which shall remain erected on the Lot upon which each is situate. The Association shall repair and maintain such signs and structures, and shall have the right to enter upon The Existing Property on which the same are affixed as is reasonably necessary for maintenance. While Developer owns any Lots in The Properties, any signs offering any Lot for sale (other than those Lots owned by Developer) shall be not more than twelve (12) inches square, double-sided, display the words, "For Sale", a telephone number and shall disclose whether the Lot is sold by the Owner or a broker/real estate agent, who shall be identified. Such signs shall be professionally made.

ARTICLE XIV AGRICULTURE

Household pets, such as dogs and cats, may be kept provided they are not permitted to run at large or kept so as to become an annoyance to other Lot Owners. With suitable facilities and proper fencing, sheep, horses and livestock shall be permitted on Lots for personal use, provided at least one acre per each grazing animal (i.e., livestock and horses) is fenced for the maintenance of said animal. No more than twenty (20) fowl per Lot will be permitted. Hunting and trapping of wildlife is not permitted within The Properties or on the Common Area(s).

ARTICLE XV COMMERCIAL USE

Except as expressly provided elsewhere in this Declaration, no Lot shall be used for commercial purposes, save that Lots may be utilized for in-home occupations although no signs or advertisements thereof will be permitted within The Existing Property. While business invitees

thereof all have use of the subdivision roadways, such use shall be for ingress and egress only. Such in-home occupational use shall not be permitted to become a nuisance to other Lot Owners.

ARTICLE XVI NUISANCE

No noxious, noisy or offensive activity shall be carried on within The Existing Property, nor shall anything be done therein which may be or which may become an annoyance or nuisance to the neighborhood. No toxic or hazardous materials shall be produced or stored within The Existing Property at any time.

ARTICLE XVII WASTE

No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. All Lots shall be kept free and clear of trash and rubbish at all times and shall be kept mown, and no salvage or junk yard operations are permitted within The Existing Properties regardless of whether the Lot is occupied, the Association may collect trash charges from Lot owners not complying with the sanitation requirements herein in addition to the assessment set forth herein. The lien procedure available for delinquent payments shall be utilized in order to ensure the non-accumulation of waste in The Existing Property.

ARTICLE XVIII RECREATION USE

No trail bikes, mini-bikes or similar all terrain vehicles, or snowmobiles shall be permitted to be driven upon the roads within The Existing Property or anywhere therein unless duly licensed, with mufflers, and then only for ingress and egress.

ARTICLE XIX CAMPING

Temporary camping is permitted upon the Lots from February 1 through December 1 annually. Only equipment professionally manufactured for the purpose, such as tents, travel trailers/campers and recreational vehicles, are permitted for use as camping shelters. No camping is permitted after the end of the year 2012. No said equipment shall remain on The Properties more than 30 consecutive days.

ARTICLE XX SWALE AND DRAINAGE AREAS

All drainage patterns, easements and swale areas shown on the plat across Lots within The Existing Property are reserved and shall not be disturbed, barricaded or filled. Permanent easements are reserved over these natural patterns for stormwater runoff.

ARTICLE XXI VIOLATIONS

In the event of violations or the Association's enforcement of any of the covenants and restrictions applying to The Existing Property, the costs and expenses attendant thereto shall be paid by the violator as part of any judgment or remedy obtained.

ARTICLE XXII NO FURTHER SUBDIVISION

Except for Developer's reservation of rights elsewhere herein, no Lot within The Existing Property shall be further subdivided, divided or portioned in any way by sale, gift, devise or other method, except to allow for nominal boundary line adjustments.

ARTICLE XXIII DRAIN FIELDS

As shown on the Plat, each Lot has a proposed "leach field" to be used only for the construction of initial and future septic system drainage fields and it otherwise is to remain undeveloped. These reserved areas may be relocated only if additional field testing for the purpose of obtaining individual septic system permits from the Craig County Health Department has been

conducted in a new reserve area. The final reserve area must be clearly marked and prohibit the movement of heavy equipment across these areas when the systems have been installed. In addition, all wells must be located at least one hundred feet (100') from any reserve area and at least ten feet (10') from any boundary line.

ARTICLE XXIV
DECLARATION AND DEVELOPER INTERPRETATION

As long as Developer owns any Lot(s) within The Properties, Developer shall have the right to interpret and/or clarify the contents of this Declaration. This right shall not be obligatory and any exercise of same may be performed by subsequent recorded instrument as Developer solely deems necessary and/or appropriate, or as provided by the Virginia Property Owners' Association Act. This Declaration shall be liberally construed to effect the intent of Developer and in favor of compliance herewith.

ARTICLE XXV
SEVERABILITY PROVISION

The articles hereof shall be deemed individual and severable and the invalidity or partial invalidity or unenforceability of any one article or any portion thereof shall not affect the validity or enforceability or any other provision thereof.

WITNESS the following signature and seal of VA Hunter, LLC, a Delaware limited liability company, by L. Hunter Wilson, its President.

VA HUNTER, LLC,
a Delaware limited liability company

By: [Signature]
L. Hunter Wilson, President

STATE OF West Virginia
COUNTY OF Berkeley

The foregoing instrument was acknowledged before me this 26th day of September 2006, by L. Hunter Wilson, President of VA Hunter, LLC, a Delaware limited liability company, on behalf of the limited liability company.

My commission expires:

June 18, 2012
(SEAL)

[Signature]
Kathy Cummings
Notary Public



27th
September 2006 DEC 23 38
P
843
Peggy Boston
By: [Signature] Deputy Clerk
Check Fee 28.50
VSLF 1.50
TTP 5.00

THIS DOCUMENT PREPARED BY:

VA Hunter, LLC
471 B&O Overpass Road
Hedgesville, WV 25427

**AMENDMENT TO THE DECLARATION OF RESERVATIONS AND
RESTRICTIVE COVENANTS FOR BLACK DIAMOND PROPERTY
OWNERS ASSOCIATION, INC. 2019**

THIS AMENDMENT to the Declaration of Reservations and Restrictive Covenants for Black Diamond Property Owners Association, Inc., is hereby made and is effective upon the date of recordation (April 1, 2019). The Declaration is hereby amended as follows:

Article V, Section 8 is revised and replaced by:

Section 8. Assessment as Personal Obligation of the Owner. If an assessment is not paid on the date when due as aforesaid, such assessment shall become delinquent and incur a late penalty of Fifty Dollars (\$50.00) (or such other amount as may be established from time to time by the Board of Directors) and another late penalty of Fifty Dollars (\$50.00) (or such other amount as may be established from time to time by the Board of Directors) thereafter for each additional month such assessment remains unpaid and bear interest from such due date at the maximum legal rate of interest permissible, not to exceed eighteen percent (18%) per annum, and shall, together with such interest thereon and all costs of collection thereof, including attorneys' fees become a continuing lien on the Lot of the then Owner, his heirs, devisees, personal representatives and assigns. Each such assessment together with interest thereon, late fees, attorneys' fees and collection costs shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them. No Owner may waive or otherwise escape liability

for any assessment provided herein by non-use of the Common Area or abandonment of his Lot, or for claims that the Association is failing to provide adequate service.

Article V, Section 9 is revised and replaced by:

Section 9. Lien and Remedies of the Association. Once perfected, the Association shall have a lien on every Lot for unpaid assessments levied against that Lot in accordance with the law and all lawful provisions of the Declaration. The lien, once perfected, shall be prior to all other subsequent liens and encumbrances except (i) real estate tax liens on that Lot, (ii) liens and encumbrances recorded prior to the recordation of the Declaratory and (iii) sums unpaid on and owing under any mortgage or Deed of Trust recorded prior to the perfection of said lien. The provisions of this section shall not affect the priority of mechanics' or materialmen's liens. Notice of a Memorandum of Lien to a holder of a Credit Line Deed of Trust shall be given in the same fashion as if the Association's lien were a judgment. Perfection of the lien shall occur as follows: (d) The judgment or decree in an action brought pursuant to this section shall include, without limitation, reimbursement for cost and all attorneys' fees of the prevailing party. If the Association prevails, it may also recover interest at the legal rate for sums secured by the lien from the time each such sum became due and payable, as well as late fees from the time each sum became due and payable.

Article XIX is revised and replaced by:

ARTICLE XIX CAMPING. Camping is permitted upon the Lots year-round. Only equipment professionally manufactured for the purpose, such as tents, travel trailers/campers and recreational vehicles, are permitted for use as temporary camping shelters. No said equipment shall remain deployed on The Properties more than 30 consecutive days, and all such equipment must be removed from camping on the Lot when not occupied or in use by the Owner for more than seven (7) days. Parking unoccupied travel trailers/campers or RVs on a Lot that includes a residence, and the use of travel trailers/ campers and RVs related to construction of a dwelling upon a Lot, shall not be considered "camping" under this Article, and such use shall be governed by the Rules and Regulations adopted by the Board of Directors.