

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