

**DECLARATION OF PROTECTIVE COVENANTS*****Barrington Subdivision***

**THIS DECLARATION** is made this 12th day of March, 1996, by **ASSOCIATED DEVELOPERS, L.L.C.**, a limited liability company, "Declarant" as grantor, **BLACK DIAMOND SAVINGS BANK, FSB**, index as grantor and **WILLIAM J. STURGILL, TRUSTEE**, index as grantor.

**P R E A M B L E:**

A. Associated Developers, L.L.C. is the owner of twenty-five (25) lots located on the southeastern side of State Route 704 in Central District, Rockingham County, Virginia, designated on a subdivision plat dated March 12, 1996, made by Benner & Associates, Inc. entitled **Barrington Subdivision, Section I**, which is to be recorded in the Clerk's Office of the Circuit Court of Rockingham County, Virginia just prior to the recordation hereof.

B. Declarant conveyed the Property to William J. Sturgill and Jeffery A. Sturgill, Trustees, either of whom may act, pursuant to a deed of trust dated November 30, 1995 which is recorded in the Clerk's Office in Deed Book 1383 at page 306 securing a loan from Black Diamond Saving Bank.

**NOW THEREFORE**, Declarant declares that all of the Property shall be held, transferred, sold, conveyed and occupied subject to the following limitations, restrictions and uses which shall run with the real estate and shall be binding on and inure to the benefit of all present and future Owners thereof. This declaration, however, shall not apply to any other "phases" or sections of **Barrington Subdivision** or any other land owned by Declarant, except for such land as may be added under § 4.5.

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## ARTICLE 1

### Definitions

§1.1 "Declarant" shall mean Associated Developers, L.L.C. and its successors and assigns, but shall not include the purchaser of any Lot.

§1.2 "Lot" shall mean and refer to the individually numbered plots of land shown upon the recorded subdivision plat of the Property.

§1.3 "Owner" shall mean or refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, whether acquired by purchase, gift, foreclosure or otherwise, but excluding those persons or entities having such interest merely as a security for the performance of an obligation. The address of an Owner (or Owners in case a Lot is owned by more than one person) for the purpose of notices required herein shall be the address as indicated on the tax records for the current year maintained by Rockingham County, Virginia, unless an Owner notifies the Association of a different address.

§1.4 "Property" shall mean and refer to all of the real estate dedicated to Barrington Subdivision, and subsequent sections added to this Declaration pursuant to § 4.5 hereof.

## ARTICLE 2

### Architectural Control

§ 2.1 No building, fence, or other improvements shall be erected or placed on any Lot and no exterior addition, change or alteration to any improvements on any Lot shall be made until the plans and specifications showing the nature, color, kind, shape, height and materials and a plat showing the location of the same shall have been submitted to and

approved in writing as to the harmony of external design and location in relation to surrounding structures and topography by an Architectural Control Committee ("ACC"). The ACC shall be composed of three voting members and one non-voting member. The three voting members shall be appointed by the Declarant until the earlier of the following:

(a) The date on which the last Lot in the Property is sold by the Declarant, or

(b) Assignment by the Declarant of its right to appoint the committee to the Owners of Lots, as evidenced by a recorded instrument.

After such time the Owners shall appoint the three voting members as provided in §2.2 hereof. The members appointed by the Declarant shall hold office until removed by the Declarant or their successors are elected.

§ 2.2 (a) The Declarant shall give notice of the election of members of the ACC. If the Declarant for any reason fails to do so, then any Owner may give notice. The notice shall be in writing and mailed first-class at least thirty (30) days in advance of the proposed election to each Owner at the address listed with the Treasurer of Rockingham County Virginia. A ballot shall be attached to the notice which shall contain the names of at least three persons suggested by the Declarant or other mailing party with the right reserved to each Owner to nominate and vote for additional or other persons if desired.

(b) The three persons receiving the highest number of votes shall be elected, the ballots shall be counted and certified by the person calling the election.

(c) The person receiving the highest number of votes shall serve a term of three years; the person receiving the next highest number of votes shall serve a term of two years; and the person receiving the third highest number of votes shall serve a term of one year. Thereafter, all persons elected shall serve for a term of three years. No person shall be elected to more than two successive terms. Vacancies—whether caused by resignation,

removal or expiration of term—shall be filled by the remaining members of the ACC. If all three offices are vacant, any Owner may request an election to be held as earlier provided. All matters decided by the ACC shall be determined by majority vote.

§ 2.3 The ACC shall have full and complete discretion to approve or disapprove proposed buildings, fences, and other improvements and alterations on the Lots and in the exercise of its discretion, the committee shall not be bound to approve any proposed buildings and improvements solely because they comply with the other restrictions and covenants or are equal in cost or value to buildings and improvements on other Lots. In the event the ACC fails to approve or disapprove the plans and specifications within thirty (30) days after submission, the plans and specifications shall be deemed to be approved, but the failure of the ACC to act shall not be construed to waive any violation of these covenants.

§ 2.4 The ACC may base its approval or rejection of plans or specifications upon any grounds, including purely aesthetic considerations, which in the sole discretion of the committee shall seem sufficient. Representatives of the ACC shall have the right to inspect the building during construction to insure that it complies with the approved plans and specifications. Where discrepancies exist, the ACC may require corrective work, or, where warranted in its opinion, it may issue a notice to cease construction until compliance is assured to its satisfaction. Failure to heed such a notice from the ACC shall operate as a default under this covenant and shall give the ACC, in addition to any rights under general law, all of the rights and powers set out in this declaration.

§ 2.5 The exterior of any dwelling or building constructed on any Lot shall be completed within nine (9) months after the commencement of construction.

§ 2.6 Except as later provided in this paragraph, the ACC shall have the power to approve any proposed buildings or improvements on any of the Lots even though the buildings or improvements do not meet the requirements of this instrument, if, in the

discretion of the committee, such deviations are not harmful to the value of the adjoining property. The ACC shall be under no duty to exercise this power, however. The ACC shall have no power to permit a deviation from § 3.1 of this instrument.

§ 2.7 The plans and specifications of any improvements shall be deemed approved under § 2.1 if the ACC has not notified the Owner of a violation of this Article within six (6) months after issuance of an occupancy permit or final inspection in case of improvements to an existing structure.

### ARTICLE 3

#### General Use Restrictions

§3.1 No Lot shall be used except for residential purposes for only one (1) single family dwelling. No townhouse, duplex, mobile home, double-wide manufactured home, house trailer or modular home shall be constructed or placed on any Lot.

§3.2 No dwelling exceeding two and one-half stories in height above ground and only a private garage for not more than three vehicles and such other outbuildings as may be approved by the ACC shall be erected on any Lot.

§3.3 The minimum above ground square footage (excluding porches, decks and garages) of any one-story dwelling shall be 1,700 square feet and shall be 1,050 square feet for the first (main) floor for any dwelling with more than one-story provided such dwelling shall have a minimum total finished floor area (exclusive of porches and garages) of 2,100 square feet. All dwellings shall have an attached or in-basement garage. Carports are not permitted on any Lot.

§3.4 No dwelling having a flat roof comprising more than 25% of the total roof area shall be constructed upon any Lot. All roofing material must have an expected life of at least 25 years.

§3.5 No dwelling shall be permitted on any Lot with any type of exterior finish except brick, stone, faux stucco, wood siding, Mastic Barkwood, Brentwood or equivalent vinyl siding, a sample of which shall be submitted to the ACC for approval prior to construction, provided, however, that aluminum soffits, guttering, and fascia boards are permitted. Chimneys and exposed foundations shall be constructed or veneered with brick, stone or faux stucco.

§3.6 No antennae or satellite receiving devices of any kind larger than 18 inches in diameter shall be erected on any Lot or on any structure located thereon, except as approved by the ACC.

§3.7 Chain link fences, except for enclosing tennis courts and permissible swimming pools are prohibited on Lots.

§3.8 Above-ground swimming pools (which shall not include hot tubs, jacuzzis and portable pools) are prohibited.

§3.9 Each Lot shall have an all-weather surface driveway within one (1) year after issuance of the certificate of occupancy for the dwelling erected on such Lot. After such one (1) year period dirt and gravel driveways are prohibited on any Lot.

§3.10 No sign of any kind shall be displayed to the public view on any Lot except one sign of not more than five square feet advertising the property for sale or rent, or signs used by the builder to advertise the property during construction. Nevertheless, one sign not exceeding one-half square foot displaying the name of the Owner or occupant of the property shall be permitted on any Lot.

§3.11 No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats, or other household pets may be kept, provided they are not kept, bred, or maintained for any commercial purpose.

§3.12 Whenever animals are permitted outside a building or other enclosed area approved by the ACC for the maintenance and confinement of animals, they must be secured by a leash or lead.

§3.13 All Lots shall be kept at all times in a sanitary, healthful, attractive and safe condition, and the Owner and occupants of all Lots shall keep all weeds, grass, and dead trees thereon cut.

§3.14 None of the Lots shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste shall be kept in sanitary enclosed containers. All containers shall be appropriately screened from view from any street or road on which the Lot fronts.

§3.15 No motor vehicle shall be kept on any Lot unless it bears a valid state license plate and current inspection sticker unless within a structural enclosure.

§3.16 No individual sewage disposal system shall be constructed, maintained, or used on any Lot.

§3.17 No dwelling shall be permitted on any Lot unless adequate off-street parking for at least two vehicles is provided on the Lot. No trailer, basement, tent, shack, barn, or other outbuilding erected on any Lot shall be used at any time as a residence, temporarily or permanently, nor shall any residence of a temporary character be permitted.

§3.18 No trailer, bus, camper, motor home, truck larger than three-quarter ton, commercial equipment, commercial vehicle (including, but not limited to, any tractor trailer, or combination of tractor and trailer), or disabled or unlicensed vehicle, or any portion thereof may be parked or stored within Barrington Subdivision except for commercial equipment and vehicles temporarily located therein for the purpose of performing necessary construction or repairs. No stripped down or junk vehicles (licensed or unlicensed) or any sizable parts thereof shall be permitted to be parked on any street or Lot.

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§3.19 No more than two unrelated persons may occupy any dwelling on any Lot. As used herein, "unrelated persons" shall mean persons unrelated by either blood or marriage.

§3.20 No noxious or offensive use or activity shall be carried on upon any Lot, nor shall any practice be engaged in by the Owners of the Lots, their tenants, agents, guests, or assigns, that shall become an annoyance or nuisance to the neighborhood.

§3.21 No improvement which has been partially or totally destroyed by fire or other casualty shall remain in such condition for more than three months from the date of such destruction.

§3.22 The drying of clothes in public view is prohibited, and the Owner or occupants of any Lot at the intersection of streets where the rear yard or a portion of the Lot is visible to the public shall construct and/or maintain a drying yard or other suitable enclosure to screen drying clothes from public view.

§3.23 No skateboard ramps or structures of any kind shall be constructed, placed, or used on any Lot.

§3.24 No exterior watch light shall be erected on any Lot without the prior approval by the ACC. For the purposes of this section, a watch light is an exterior light of a type typically mounted on a telephone pole, utility pole, or street light pole, or any other light which the ACC determines casts an unacceptable level of light on neighboring properties.

§3.25 No dirt bikes, ATVs, three or four wheelers or other non-licensed vehicles shall be operated on any Lot, common area, street or driveway.

§3.26 No incinerator or other device for the burning of trash shall be permitted on any Lot, common area, street or driveway within Barrington Subdivision.

§3.27 No propane, oil or other storage tank or cylinder shall be permitted on any Lot, common area, street or driveway within Barrington Subdivision unless it is buried or



enclosed within the residential dwelling.

§3.28 No Lot or any portion of any Lot shall be used as an access way or right-of-way for ingress or egress to any Lot, piece or parcel of land in the Property, or any other lot, piece or parcel of land, without the prior written consent of the ACC.

#### ARTICLE 4

##### Miscellaneous Provisions

§4.1 No Lot shall be re-subdivided into smaller lots, nor shall any portion of any Lot be sold or conveyed by the Owner thereof without the prior approval of the ACC.

§4.2 All drainage and utility easements shown on the subdivision plat are hereby reserved to Declarant. A release by Declarant to any Lot Owner of any easement so reserved shall operate as a complete release to such Lot and no other party shall be entitled to assert any claim or right to the use of such easement.

§4.3 These restrictions, conditions, covenants, and limitations shall continue in force until December 31, 2016, at which time they will expire. Nevertheless, upon the expiration of this term and any subsequent term, they shall be automatically renewed for ten (10) year periods unless terminated or amended by the Owners (with each Lot having one (1) vote) of at least 75% of the Lots.

§4.4 Any water drainage or detention system traversing or abutting any Lot shall be maintained by the Owner of the Lot.

§4.5 The Declarant shall have the absolute and unqualified right (but shall not be obligated) to bring within the terms of this declaration additional property, so long as the property is adjacent to the property shown on the subdivision plat or on later plats brought within the declaration. Such additions shall be made by recording a supplemental declaration in the Clerk's Office of the Circuit Court of Rockingham County, Virginia,

indicating the additional property which shall be subject to this declaration. Property added to this declaration shall be treated for all purposes as if it had been shown on the original subdivision plat, but the added property may be subject to other restrictions in addition to this declaration.

§4.6 The Declarant may appoint a successor Declarant by an instrument recorded in the Clerk's Office of the Circuit Court of Rockingham County, Virginia. The sale of Lots to a successor Declarant shall not be deemed a sale for purposes of § 2.1 (a).

§4.7 The Declarant and the ACC shall not be liable to any Owner or other person on account of any claim, liability, damage, or expense suffered or incurred by or threatened against an Owner or other person arising out of or in any way related to the subject matter of any reviews, acceptances, inspections, permissions, consents, or required approvals which must be obtained from the Declarant or the ACC, whether given, granted, or withheld.

§4.8 If any part of any provision of this Declaration shall be invalid or unenforceable under applicable law, such part shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts of such provisions or the remaining provisions of this declaration.

## ARTICLE 5

### Validity and Enforcement

§5.1 The failure on the part of the Declarant or any Owner to enforce any restrictions contained in this instrument shall not be deemed a waiver of the right to do so thereafter for the same breach or one occurring prior or subsequent thereto.

§5.2 Enforcement of this instrument shall be by proceedings instituted by any Owner at law or in equity against any persons or other entities violating or attempting to

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violate any covenant, either to restrain violation or to recover damages therefor. In any such proceeding, an Owner found to have breached any covenant contained in this instrument shall be responsible for the cost of the enforcement proceeding, including the prevailing party's attorney's fees.

WITNESS the following signature.

ASSOCIATED DEVELOPERS, L.L.C.

By: Management Advisory Solutions, Inc.,  
sole manager, a Virginia corporation

By: Walter R. Trobaugh, III Pres.  
Walter R. Trobaugh, III, President

BLACK DIAMOND SAVINGS BANK FSB

By: Don M. Green  
Don M. Green, President

William J. Sturgill (seal)  
William J. Sturgill, Trustee

STATE OF VIRGINIA  
CITY OF HARRISONBURG, to-wit:

The foregoing instrument was acknowledged before me in the aforesaid jurisdiction this 16 day of February, 1996 by Walter R. Trobaugh, III, president of Management Advisory Solutions, Inc., sole manager of Associated Developers, L.L.C., on behalf of the company.

My commission expires: 8/31/99

Thomas D. Burke  
Notary Public

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**STATE OF VIRGINIA**

STATE OF VIRGINIA  
COUNTY OF WISE, to-wit:  
COUNTY OF WISE

The foregoing instrument was acknowledged before me in the aforesaid jurisdiction this 13th day of March, 1996, by Don M. Green, President of **BLACK DIAMOND SAVINGS BANK**, on behalf of said corporation.

My commission expires: 12-31-98

Notary Public

**STATE OF VIRGINIA**

**COUNTY OF WISE, to-wit:**

The foregoing instrument was acknowledged before me in the aforesaid jurisdiction this 12<sup>th</sup> day of March, 1996, by William J. Sturgill, Trustee.

My commission expires: September 30, 1998

*Maude D. Bright*  
Notary Public  
Commissioned as  
*Maude D. Bright*

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R'HAM CO. CIRCUIT

**COUNT**

L. WAYNE HARPER, CLERK

VIRGINIA: In the Clerk's Office of the Circuit Court of Rockingham County, the foregoing instrument was this day presented in the office aforesaid, and is together with the certificate of acknowledgment annexed, admitted to record this 26 day of April, 1996 at 9:34 A.M. I certify that the taxes were paid when applicable:

sec. 58-54 - State \_\_\_\_\_ County \_\_\_\_\_ City \_\_\_\_\_  
 sec. 58-54.1 - State \_\_\_\_\_ County \_\_\_\_\_ City \_\_\_\_\_ Transfer \_\_\_\_\_  
 recording 21.00 \_\_\_\_\_  
 TESTE \_\_\_\_\_

L WAYNE HARPER  
CLERK

Field Book No. 141 Page 203