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**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
BLUE STONE HILLS SUBDIVISION, SECTION 5
The Village at Bluestone**

THIS DECLARATION is made this 25th day of April, 1995, by BLUE STONE LAND COMPANY, INC., a Virginia corporation, "Declarant" as grantor and MICHAEL L. LAYMAN, Trustee, as grantor.

P R E A M B L E:

A. Blue Stone Land Company, Inc. is the owner of a parcel of land containing 32.927 acres located on Pearl Lane in the City of Harrisonburg, Harrisonburg, Virginia, designated on a subdivision plat dated December 30, 1993, revised March 22, 1994 and January 10, 1995, made by Copper, Hamrick, Mars & Nicely, P.C. entitled FINAL PLAT BLUE STONE HILLS SUBDIVISION, SECTION 5, which is to be recorded in the Clerk's Office of the Circuit Court of Rockingham County, Virginia just prior to the recordation hereof (the "Property"). The subdivision is known as The Village at Bluestone.

B. The Property is subject to the lien of a deed of trust dated November 24, 1992 which is recorded in the Clerk's Office in Deed Book 1166 at page 545 (as modified by instrument dated March 18, 1993 which is recorded in Deed Book 1189 at page 290), wherein the property was conveyed unto Michael L. Layman and Henry C. Clark, Trustees, either of whom may act, in trust to secure an indebtedness in the original amount of \$1,385,000.00.

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.

ARTICLE 1

Definitions

§1.1 "Association" shall mean and refer to Blue Stone Hills Property Owners Association, and its successors and assigns.

§1.2 "Common Areas" shall mean and refer to all portions of the Property and all interest therein, including easements and improvements therein, owned or leased by the Association for the use and enjoyment of the Owners.

§1.3 "Declarant" shall mean Blue Stone Land Company, Inc. and its successors and assigns, but shall not include the purchaser of any Lot.

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

§1.5 "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 City of Harrisonburg, Virginia, unless an Owner notifies the Association of a different address.

§1.6 "Property" shall mean and refer to all of the real estate dedicated to BLUE STONE HILLS SUBDIVISION, SECTION 5.

ARTICLE 2

Association

§2.1 Every Owner shall be a member of the Association. The membership shall be appurtenant with and may not be separated from ownership of any Lot.

§2.2 The Association shall have two (2) classes of members:

Class A. Class A members shall include all Owners except the Declarant. Class A members shall be entitled to one (1) vote for each Lot owned. When a Lot is owned by more than one person or entity, the one (1) vote for such Lot may be cast by any Owner thereof unless an objection or protest by another co-owner is made prior to the completion of a vote. Upon such objection or protest, the one (1) vote shall be cast according to the majority vote (based on each Owner's percentage ownership interest) of the Owners of such Lot, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant. The Class B member shall be entitled to three (3) votes for each Lot it owns.

§2.3 The Association may be an unincorporated association or a non-stock corporation organized under the laws of the Commonwealth of Virginia. The Association is charged with the duties and vested with the powers prescribed by law and set forth in its organizational documents, as such may be amended from time to time, provided no such organizational documents shall be amended for any reason or otherwise changed or interpreted so as to be inconsistent with this declaration.

§2.4 The Association shall be governed by a board of directors consisting of at least three (3) members.

§2.5 All actions of the members shall be by majority vote unless otherwise provided herein.

§2.6 By way of example, and without limiting the generality thereof, the Association shall have the power and obligation to perform the following duties:

- (a) *Real and Personal Property.* To acquire, own, hold, improve, maintain, manage, lease, pledge, convey, transfer, mortgage, create a lien on or dedicate real or personal property for the benefit of the Association; and
- (b) *Rule Making.* To establish rules and regulations for the use of the Common Areas; and
- (c) *Assessments.* To fix, levy and collect assessments as provided in Article 4; and
- (d) *Easements.* To grant and convey easements over and across the Common Areas as may become necessary.

ARTICLE 3

Architectural Control

§ 3.1 No building, fence, wall, sign 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 construction plans and specifications showing the nature, color, kind, shape, height and materials, a plat showing the location of the same and a site grading plan showing the present and finished topographical contours 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 Review Committee ("ARC"). No landscaping of patios or yards visible from the street not involving the use of natural plants, grass, trees or shrubs, and which does involve the use of synthetic materials or concrete, rock or similar materials, shall be undertaken by any Owner until plans and specifications showing the nature, kind, shape and location of materials shall have been submitted to and approved in writing by the ARC. The ARC shall have full site plan approval.

§ 3.2 The ARC shall be composed of three members who 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 Association shall appoint the three members. The members appointed by the Declarant shall hold office until removed by the Declarant or their successors are elected. A majority of the committee may designate a representative to act for it. The ARC's approval or disapproval as required shall be in writing. In the event the ARC 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 ARC to act shall not otherwise be construed to waive any violation of these covenants.

§ 3.3 The ARC shall have full, absolute and complete discretion to approve or disapprove proposed buildings, fences, walls 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 contained herein or are equal in cost or value to buildings and improvements on other Lots. The ARC 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 absolute discretion of the committee, such deviations are not harmful to the value of the adjoining property. The ARC shall be under no duty to exercise this power, however. The ARC shall have no power to permit a deviation from § 6.1 of this instrument.

§ 3.4 The ARC may base its approval or rejection of plans or specifications upon any grounds, including purely esthetic considerations, which in the sole discretion of the committee shall seem sufficient. Representatives of the ARC 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 ARC 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 ARC shall operate as a default under this covenant and shall give the ARC, in addition to any rights under general law, all of the rights and powers set out in this declaration.

§ 3.5 The ARC shall have absolute discretion to specify building setback lines from any street upon which any Lot abuts, providing said minimum requirements comply with applicable zoning regulations.

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

§ 3.7 The plans and specifications of any improvements shall be deemed approved under § 3.1 if the ARC 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 4

Covenant for Maintenance Assessment

§4.1 Each Owner (except for the Declarant as provided in § 4.2 below) by acceptance of any Lot, whether or not it shall be so expressed in any document conveying title to the Lot, shall be deemed to covenant and agree to pay to the Association:

- a. Regular assessments or charges;
- b. Special assessments for capital improvements;

which may be fixed, established and collected from time to time. Each type of assessment shall be based on a uniform rate. The regular and special assessments, together with such interest thereon as determined by the Association and costs of collection thereof, including

attorney's fees, shall be a charge on each Lot and shall be a continuing lien upon each Lot until payment. Each such assessment, together with such interest thereon and costs of collection thereof, also shall be the personal obligation of the Owner (jointly and severally in the case of multiple Owners) of each Lot at the time when the assessment fell due and shall not pass as a personal obligation to his successors in title unless expressly assumed by such successor.

§4.2 No assessment shall be due or payable for any Lot owned by the Declarant which is held for sale. This exemption shall not apply to any Lot which has been initially sold by Declarant and subsequently reacquired.

§4.3 The regular and special assessments levied by the Association shall be used exclusively for a) the purpose of promoting the permitted uses of the Property in a safe and orderly manner; b) the improvement, management, care and maintenance of services and facilities related to the use and enjoyment of the Common Areas; and c) repair and maintenance of the private detention ponds and related facilities serving the Property.

§4.4 Until the first day of the fiscal year following commencement of assessments, the maximum regular assessment shall be twenty dollars (\$20) per month. The levy of a regular assessment less than the maximum in any month shall not affect the Association's right to levy a regular assessment equal to the maximum assessment in subsequent months.

Change in Maximum. From and after the first day of the fiscal year immediately following the commencement of assessments, the Association may increase the maximum assessment each year by the greater of: (1) a factor of not more than ten percent (10%) of the maximum regular assessment for the previous fiscal year; or (2) the percentage increase, if any, over the twelve (12) month period ending five (5) months prior to the start of the fiscal year, in the Consumer Price Index, U.S. City Average, all items (1982-84 = 100), or equivalent, as published by the U.S. Labor Department; such increase shall become effective the first day of the new fiscal year.

From and after the first day of the fiscal year immediately following the commencement of assessments, the maximum regular assessment may be increased above the amount which can be set by the Association with the affirmative vote of at least sixty-seven percent (67%) of the members who are present and voting, in person or by proxy, at a meeting at which a quorum of members is present.

§4.5 In the event that any maintenance or repair is caused by the willful or negligent act of any Lot Owner or the employees, agents, guests or invitees of any Lot Owner, the cost of such maintenance and repair shall be paid for by such Lot Owner. If any building is totally or partially damaged by fire, wind or other hazard, the Owner shall within a period of nine (9) months after the damage a) repair the damage or b) tear the building down and remove the debris from the Lot.

§4.6 If any Owner fails to make any required repairs or maintenance after notice from the Association, the Association may make such repairs on behalf of the Owner, and the cost thereof shall be deemed a special assessment as to such Lot. Each Owner authorizes the Association and its agents to enter the Lot at reasonable hours to perform any required repair or maintenance on behalf of the Owner.

§4.7 The assessments may be collected for any time period the Association desires, including but not limited to monthly, quarter-annually or annually.

§4.8 The Association shall furnish to any Owner, upon request, a certificate in writing signed by an officer of the Association, setting forth whether the assessment for his Lot has been paid, and if not, the amount of the unpaid assessment. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

§4.9 The lien of the assessments shall be subordinate to the lien of real estate taxes and any first deed of trust lien. Such lien shall not bind or affect a subsequent bona fide purchaser of any Lot for valuable consideration without actual notice of the lien until a

memorandum, verified by an officer of the Association, is recorded in the deed records in the Clerk's Office of the Circuit Court of Rockingham County, Virginia. The memorandum shall contain (a) a description of the subdivision and Lot number; (b) the name(s) of the Owners; and (c) the amount of the unpaid assessment(s).

§4.10 The provisions of the Property Owner's Association Act (§55-508, *et seq.* of the Code of Virginia, 1950) shall apply to the extent not inconsistent herewith.

§4.11 The regular assessments shall commence when the first Lot is sold by the Declarant. The first assessment on any Lot shall be collected at the time of conveyance of the Lot and shall be prorated based on the number of days remaining in the fiscal year.

ARTICLE 5

Common Areas

§5.1 The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the management and control for the benefit of the Owners of the Common Areas conveyed to it.

§5.2 Easement of Enjoyment.

Subject to the provisions herein, every Owner shall have a right and nonexclusive easement of enjoyment in and to the Common Areas, which shall be appurtenant to and shall pass with the title to every Lot, and every member shall have a right of enjoyment to the Common Areas.

§5.3 Extent of Members' Easement. The members' easement of enjoyment created hereby shall be subject to the following:

(a) The right of the Association to establish rules and regulations for the use of the Common Areas.

(b) The right of the Association to suspend the right of a member to use the Common Areas for any period during which any assessment against his Lot remains unpaid for more than thirty (30) days after notice until such default has been remedied; the

right of the Association to suspend the right of a member to use the Common Areas for a period not to exceed sixty (60) days for any other infraction.

(c) The right of the Association to mortgage any or all of the Common Areas upon at least a sixty-seven percent (67%) affirmative vote of the members.

(d) The right of the Association to convey, or transfer, all or any part of the Common Areas, upon at least a sixty-seven percent (67%) affirmative vote of the members.

§5.4 Title to Common Areas. The Declarant hereby covenants that areas designated as open space, or Common Areas which the Declarant conveys to the Association as Common Areas shall be free and clear of all liens and financial encumbrances at the time of conveyance. In the event a lien or encumbrance shall attach to all or a portion of the Common Areas, one or more of the lienholders and/or mortgagees shall have the right to discharge said lien or encumbrance after reasonable notice to the Association and to seek reimbursement for amounts paid to discharge the lien or encumbrance.

ARTICLE 6

General Use Restrictions

§6.1 No Lot shall be used except for single family residential purposes.

§6.2 The minimum first (main level) floor area (exclusive of porches, breezeways and garages) of any dwelling shall be 2,000 square feet for one-story dwellings and 1,200 square feet for a dwelling of more than one story provided such dwelling has a minimum total floor area of at least 2,400 square feet. No building or other structure of any kind in excess of three (3) stories in height above ground level shall be erected on any Lot.

§6.3 No dwelling having a flat roof comprising more than 25% of the total roof area shall be constructed upon any Lot.

§6.4 No dwelling shall be permitted on any Lot with any type of exterior finish except brick, stone, faux stucco or wood siding, a sample of which shall be submitted to

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the ARC for approval prior to construction, provided, however, that aluminum soffits, guttering, and fascia boards are permitted.

§6.5 No antennae or satellite receiving devices of any kind shall be erected on any Lot or on any structure located thereon, except as approved by the ARC.

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

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

§6.8 No dwelling shall be permitted on any Lot unless adequate off-street parking for at least three (3) vehicles is provided on the Lot. 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.

§6.9 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.

§6.10 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.

§6.11 Whenever animals are permitted outside a building or other enclosed area approved by the ARC for the maintenance and confinement of animals, they must be secured by a leash or lead or be under the control of a responsible person and obedient to that person's command at all times.

§6.12 All Lots shall be kept at all times in a sanitary, healthful, attractive and safe condition.

§6.13 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.

§6.14 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.

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

§6.16 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.

§6.17 No house or camping trailer, truck larger than three-quarter ton, bus, wrecker, motor home, boat or trailer shall be parked upon any Lot or street unless within a garage.

§6.18 No more than two (2) unrelated persons may occupy any dwelling on any Lot. As used herein, "unrelated persons" shall mean persons unrelated by either blood, adoption or marriage.

§6.19 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.

§6.20 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.

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§6.21 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 ARC.

§6.22 No exterior watch light shall be erected on any Lot without the prior approval by the ARC. 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 ARC determines casts an unacceptable level of light on neighboring properties.

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

§6.24 All chimneys on all dwellings or other buildings constructed on Lots shall be equipped with suitable spark arrestors, screens or other spark detention devices which shall be approved by the ARC.

§6.25 No trees measuring six (6) inches or more in diameter at a point two (2) feet above ground level may be removed without the written approval of the ARC, building site and driveway excluded, unless located within ten (10) feet of the approved site for such building. No trees shall be removed from any Lot without the consent of ARC until the Owners shall be ready to begin construction. Brush and dead trees may be removed from the Lot at any time. No trees growing within ten (10) feet at the side or rear line of any Lot shall be cut or removed in any manner; however, trees growing within such ten (10) foot space may be limbed up from the ground to a reasonable height and in a manner to avoid killing the trees.

§6.26 No structure, roadway or excavation shall be allowed and no trees except dead or diseased trees may be cut within the "Restricted Green Space" shown on the subdivision plat unless approved by the ARC.

ARTICLE 7

Miscellaneous Provisions

§7.1 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 ARC.

§7.2 All drainage, access and utility easements shown on the subdivision plat are hereby reserved to Declarant. Except as such rights as may be granted to governmental entities or private utility companies by recorded easements, 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. Declarant may convey to the Association title to the property included in such drainage, access and utility easements.

§7.3 These restrictions, conditions, covenants, and limitations shall continue in force until January 1, 2015, 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.

§7.4 Any water drainage or detention system traversing or abutting any Lot and servicing the Property shall be mowed by the Owner of the Lot, however, all other cost of maintenance and repair not caused by the Owner of such Lot shall be the responsibility of the Association.

§7.5 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 § 3.2 (a).

§7.6 The Declarant, the ARC and the Association 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, the ARC or the Association, whether given, granted, or withheld.

§7.7 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.

§7.8 Michael L. Layman as sole acting Trustee, at the request of the holders of the obligations secured by the deed of trust (as modified) set forth in paragraph B of the Preamble, joins herein to evidence his consent to this Declaration.

ARTICLE 8

Validity and Enforcement

§8.1 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.

§8.2 Enforcement of this instrument shall be by proceedings instituted by any Owner or the Association at law or in equity against any persons or other entities violating or attempting to 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 signatures and seals.

BLUE STONE LAND COMPANY, INC.

By: 
Daniel W. Brubaker, President

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Michael L. Layman, Trustee
Michael L. Layman, Trustee

STATE OF VIRGINIA
CITY OF HARRISONBURG

The foregoing instrument was acknowledged before me in the aforesaid jurisdiction this 25th day of April, 1995, by Daniel W. Brubaker, President, of Blue Stone Land Company, Inc., on behalf of said corporation.

My commission expires: June 30, 1998

Maurice H. Alley
Notary Public

STATE OF VIRGINIA
CITY OF HARRISONBURG

The foregoing instrument was acknowledged before me in the aforesaid jurisdiction this 26th day of April, 1995, by Michael L. Layman, Trustee.

My commission expires: April 30, 1998

Kyocum Amestine
Notary Public

NOTARIAL In the Clerk's Office of the Circuit Court of Rockingham County, Virginia, the foregoing instrument of this day presented in the office aforesaid, and together with the certificate of acknowledgment annexed, admitted to record on the 1st day of May, 1995 at 12:04 P.M. I certify the fees were paid when applicable.

Sec. 52.54 - State _____ County _____ City _____

Sec. 52.53.1 - State _____ County _____ City _____ Transfer _____

Recording 25.00 FEE

L. WAYNE HARPER
CLERK

and Book No 1346 Page 790

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REC'D BY CLERK