

BRANDERMILL COMMUNITY ASSOCIATION, INC.

WATERFRONT MAINTENANCE COVENANT AGREEMENT

(Required for all Waterfront Structure Applications)

In order for your application to be fully approved by the BCA Architectural Review Board to construct or maintain a waterfront structure in the BCA buffer area along the shoreline of the Swift Creek Reservoir, you must complete the following.

- The enclosed document must be completed, notarized and filed with the Chesterfield County Clerks Office as part of the land record for your property. (See instructions on Shoreline Buffer Applications & Review Process)
- Return a recorded copy to the BCA.

Adopted: September 8, 2009

GPIN # _____

**BRANDERMILL COMMUNITY ASSOCIATION, INC.
WATERFRONT EASEMENT & MAINTENANCE COVENANT AGREEMENT
PARTIAL CLEARING FOR VIEW AND BREEZE**

This Waterfront Easement and Maintenance Covenant Agreement (hereafter, "Agreement") entered into this _____ day of _____, _____, by and between _____ (hereafter, "Owner" or "Grantee"), and Brandermill Community Association, Inc. ("Association" or "Grantor").

W I T N E S S E T H :

WHEREAS, the Lot and the Association are subject to the Declaration of Rights, Restrictions, Affirmative Obligations and Conditions Applicable to all Property In Brandermill, as amended, recorded in the Clerk's Office of the Circuit Court of Chesterfield County in Deed Book 1130, Page 378, on August 30, 1974 (hereinafter, "General Covenants"), and the Declaration of Covenants and Restrictions of the Brandermill Community Association and Brandermill, a Joint Venture, as amended, recorded in the Clerk's Office of the Circuit Court of Chesterfield County, Virginia in Deed Book 1130, Page 332 on August 30, 1974 (hereinafter, "Declaration");

WHEREAS, the Association's Articles of Incorporation, General Covenants and Declaration provide for and create the Association of which all owners of Lots subject to the same are members and which Association, in accordance with the General Covenants and Declaration is responsible for certain insurance, maintenance, repair, replacement and administration of the common area property of the Association, including the open space area which is located within eighty (80) feet of the one hundred and seventy-eight (178) foot elevation contour around the Swift Creek Reservoir, in the direction away from the Reservoir (hereafter, "Buffer Area");

WHEREAS, _____ are the record owners ("Owners") of Lot No. _____, _____ (name of subdivision), with the following street address _____, Midlothian, Virginia 23112 (hereafter, "Lot");

WHEREAS, Association is the owner of certain real property (the "Property") in the County of Chesterfield, Virginia, and more particularly described in the attached plan (Exhibit "A"), which is attached hereto and incorporated herein by reference;

WHEREAS, Owner desires to conduct some partial clearing of vegetation on the Property in a limited area for enhancement of view and breeze on Owner's Lot;

WHEREAS, Association agrees to grant Owner an easement over the Property for view and breeze, subject to the limitations in this Agreement and limited to that portion of the Property that is more specifically indicated on the plat attached hereto and incorporated herein as Exhibit "B" (hereinafter referred to as the "Easement Area");

WHEREAS, it is the intention of the parties that the Owner shall have an easement over, and along the Easement Area on the Property for view and breeze; and

NOW THEREFORE, that for the consideration of the parties herein, the receipt and sufficiency of which is hereby acknowledged, the Association, does hereby grant and convey with General Warranty unto Owner, and his successors and assigns, the following:

A view and breeze easement upon the Property in the Easement Area, including ingress and egress over and upon the Property for reasonable maintenance of the Easement Area to preserve the view and breeze easement in a manner consistent with all applicable requirements and this Agreement.

Grantee hereby accepts such easement as described herein and covenants and agrees for himself and his heirs, successors and assigns, to hold the easement subject to the applicable liens, conditions, restrictions, and agreements set forth herein or of record in the Clerk's Office of the Circuit Court of Chesterfield County, Virginia. The parties hereby agree to the following terms and conditions:

1. Right of Ingress and Egress. Grantee shall have the right of ingress and egress over and upon, the Property for the purposes named herein and that the utilization of such rights shall not be deemed a trespass.

2. Removal of Timber and Vegetation. Grantee shall have maintenance or repair obligations with respect to the view and breeze easement in the Easement Area, including, at his expense, the removal from the Easement Area and the Property of any and all timber and vegetation related to the creation or preservation of the view and breeze easement within five (5) days of it being cleared, cut, trimmed, sawed or felled.

3. Approval. Grantee agrees not to commence any clearing, cutting, trimming, sawing or felling of timber or vegetation in or on the Easement Area until such time as Grantee has filed the required Association Application and has obtained written approval from the Chesterfield County Environmental Engineering Department outlining the limitations and parameters of such activity. Further, Grantee agrees that no activity shall commence until the appropriate Association representative has delivered the approved application as required by the policy. Any clearing, cutting, trimming, sawing or felling of timber or vegetation in the Easement Area shall be in compliance with the General Covenants, the Declaration, the Association's rules and regulations, and the Shoreline Buffer Policy.

4. Maintenance. Any and all subsequent maintenance in and on Property pertaining to the preservation of the easement for view and breeze shall be limited to the Easement Area and limited to the scope and parameters as originally approved, unless modified by the written

Agreement. Grantee acknowledges that any deviation from the approved plans will constitute a violation and agrees to be responsible for any costs incurred with correcting such violation.

5. Association's Maintenance, Repair, Replacement or Removal at Expense of Owners.

The Association, through its Board, reserves, and the Grantees, on behalf of themselves and their heirs, successors and assigns, grants to the Association, the right, after notice to the Grantees and opportunity to cure, to replant areas that were cleared in excess of what was approved by the Association, at the expense of the Grantees, their heirs, successors, or assigns, in the event that the Board, in its discretion, believes after investigation that the clearing in the Buffer Area exceeded what was approved by the Association.

6. Indemnification. Grantees covenant and agree for themselves and their heirs, successors, and assigns, that they shall indemnify and hold harmless the Association, its members, the Board of Directors, officers, contractors or employees, and any delegated committee of the Association from any and all costs and damages, including, but not limited to, all costs, expenses, loss, damages and attorney's fees, including damages to third persons or their property or damage to the common area or other lots in Brandermill arising from the Owners clearing of the Buffer Area. This Agreement shall not relieve the Association through its Board of Directors of any obligation to insure the common area property, excluding any additions, alterations, and/or improvements, described and provided for in the Association's documents, including the General Covenants and the Declaration.

It is the intention of undersigned to exempt, relieve and release the Association from liability for personal injury, wrongful death, or property damage arising out of the alteration, modification, restoration and/or maintenance of the Easement Area, and/or the use, maintenance or operation of the equipment used therefore or any activities incidental thereto.

7. Right to Revoke. Grantee acknowledges that the Association has the authority, pursuant to Part V of the General Covenants, to temporarily or permanently revoke the rights set forth in this Agreement, if it is determined that this Agreement is in conflict with Part V of the General Covenants or if the Grantee does not follow the approved plans. The Owner acknowledges that, but for execution of this Agreement, he would not be permitted to make any alteration, modification, restoration or to maintain the Easement Area.

8. Right to Grant Easement. Grantor acknowledges and agrees that it has the right to grant the easement herein; and that Grantee shall have a right to the use and enjoyment of the aforesaid easement in accordance with this Agreement.

9. Non-Exclusive Easement. The easement granted in this Agreement is non-exclusive. Grantee agrees not to interfere with Grantor's right to use the Easement area, or to, in any way, impede Grantor's, or any Lot Owner in Brandermill, access to use of the Easement in accordance with any previously recorded covenants, restrictions or deeds.

10. Recordation. This Agreement shall be recorded by Grantee in the Clerk's Office of the Circuit Court of Chesterfield County, Virginia, at his expense and shall be deemed to run with title to the Property.

11. Encumbrance and Disclosure. Grantees agree for themselves, their heirs, successors and assigns that they shall specifically reference this Agreement as a valid encumbrance of the Lot in any instrument transferring, conveying, assigning or otherwise alienating said Lot. In response to any request for a disclosure packet related to the Lot, as contemplated by Section 55-512 of the Code of Virginia, the Association shall have the right to identify this Agreement in its response. The terms of this Agreement expressly survive any failure of the Association to identify this Agreement in response to a disclosure packet request or, if the Lot is conveyed absent the Association being provided with a disclosure packet request.

12. Breach, Attorney's Fees and Costs. In any action arising out of or under the terms of this Agreement, or in any action to enforce this Agreement, the prevailing party shall be entitled to its costs and reasonable attorneys' fees as determined by a court.

13. Venue. This Agreement shall be interpreted and enforced in accordance with the laws of the Commonwealth of Virginia and Chesterfield County. Both parties hereto expressly agree that if legal action is required to interpret or enforce this Agreement said action shall be filed in Chesterfield County, Virginia.

14. Modification of Agreement. This Agreement may only be amended, modified or terminated by another agreement in writing, executed by Grantor and Grantee, or their successors or assigns. In the event of any conflict between this Agreement and the "Uniform Rules and Regulations established by Brandermill" ("Rules") as set forth in Part V, Section 2 of the General Covenants, the Rules shall prevail.

15. Limitations. This Agreement is made subject to all recorded easements, conditions, restrictions, and agreements on the Property and to all matters shown on the face of any plats referenced in the attached Exhibit "A" as they may lawfully apply to the Property or any part thereof.

16. Severability. In the event that any part or provision of this Agreement shall be adjudged unlawful or unenforceable under Virginia law, any lawful intent of the provision and the remainder of this Agreement shall nonetheless survive and remain in full force and effect.

IN WITNESS WHEREOF, the Grantor and Grantee have caused this Brandermill Community Association, Inc. Waterfront Easement and Maintenance Covenant Agreement to be executed in their names as of this _____ day of _____, 200__.

{The remainder of this page is intentionally blank.}

Witness: _____
Owner

COMMONWEALTH OF VIRGINIA)
CITY/COUNTY OF _____) To-Wit:

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that _____, as Owner of _____, Midlothian, Virginia 23112, whose name is signed to the foregoing instrument, personally appeared before me and acknowledged the foregoing Waterfront Easement and Maintenance Covenant Agreement to be his respective act.

Given under my hand this ___ day of _____, ____.

Notary Public

My Commission Expires: _____.
Notary Registration #: _____.

Witness: _____
Owner

COMMONWEALTH OF VIRGINIA)
CITY/COUNTY OF _____) To-Wit:

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that _____, as Owner of _____, Midlothian, Virginia 23112, whose name is signed to the foregoing instrument, personally appeared before me and acknowledged the foregoing Waterfront Easement and Maintenance Covenant Agreement to be her respective act.

Given under my hand this ___ day of _____, ____.

Notary Public

My Commission Expires: _____.
Notary Registration #: _____.

By: _____

President, Brandermill Community Association, Inc.

COMMONWEALTH OF VIRGINIA)
CITY/COUNTY OF _____) To-Wit:

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that _____, as President of the Brandermill Community Association, Inc. whose name is signed to the foregoing instrument, personally appeared before me and acknowledged the execution of the foregoing Waterfront Easement and Maintenance Covenant Agreement to be his respective act on behalf of the Association.

Given under my hand this ____ day of _____, _____.

Notary Public

My Commission Expires: _____.

Notary Registration #: _____.