

Adopted: September 8, 2009

GPIN# _____

**BRANDERMILL COMMUNITY ASSOCIATION, INC.
WATERFRONT EASEMENT & MAINTENANCE COVENANT AGREEMENT
STRUCTURES IN BUFFER AREA**

This Waterfront Easement & 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, pursuant to Part V of the General Covenants, no alteration of the Buffer Area may be performed by an Owner without the express written consent of the Association;

WHEREAS, the Owners desire to _____

{description of the intended structure to be installed, constructed or erected in the Buffer Area}

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WHEREAS, Association agrees to grant Owner an easement over the Buffer Area to install, construct, erect and maintain the above-described structure in the Buffer Area;

WHEREAS, the Board of Directors of the Association hereby consents to such architectural additions, alterations and/or improvements on the condition that the Owner agrees for themselves, their heirs, successors, and/or assigns to maintain, repair, insure and replace such additions, alterations and/or improvements as they have made in accordance with the plans, as approved by the Board of Directors or the Architectural Review Board, which are incorporated herein by reference, at their own expense, as though the additions, alterations and/or improvements were a part of the Lot as defined in the General Covenants and Declaration;

WHEREAS, Association agrees to grant Owner an easement over the Buffer Area to maintain, repair and replace such additions, alterations and/or improvements in the Buffer Area;

NOW, THEREFORE, 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 Grantee, and his successors and assigns, the following:

An easement upon the Buffer Area, including installing, erecting, constructing, and maintaining the above-described structure(s) in the Buffer Area and ingress and egress over the Buffer Area, in a manner consistent with all applicable requirements and this Agreement, and the utilization of these rights shall not be deemed a trespass;

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. Approval of Plan and Recording of Agreement. Owners shall not alter the Property in any fashion until a plan for the proposed installation, construction or erection of the _____

(hereafter, "Improvement") has been approved by the Association through the Board or the Architectural Review Board ("ARB") and until this Agreement has been recorded in the Clerk's Office of the Circuit Court of Chesterfield County, Virginia.

2. Improvement. The specified additions, alterations, and/or improvements to the Property are: _____

(“Improvement”), as made by the Owners and as more thoroughly set forth in the approved plan attached hereto as Exhibit “A” and incorporated herein by reference. [Note: The approved plan shall contain a plat of the Lot and the adjacent Buffer Area which accurately depicts the location and dimensions of the Improvement]

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3. Compliance With Guidelines. The Improvement will be constructed and created in accordance with the Guidelines For Installation, as attached hereto as Exhibit "B" and incorporated herein by reference.

4. Non-Exclusive Easement. The Grantee agrees that the easement granted in this Agreement is non-exclusive and that it shall not interfere with any rights of Grantor, or any Lot Owner in Brandermill, that were provided in any previously recorded covenants, restrictions or deeds.

4. Binding Effect. Owners covenant and agree for themselves, their heirs, successors, and assigns to comply with this Agreement and with the Association's Declaration, General Covenants, rules and regulations and Shoreline Buffer Policy.

5. Maintenance. Owners, at their expense, shall insure, maintain, repair and replace the Improvement in a manner consistent with this Agreement.

6. Code Compliance and Quality of Improvement. The Owners covenant and agree that they will construct and install the Improvement in accordance with applicable Chesterfield County and Virginia Building Code standards and regulations. The construction and installation of the Improvement shall be maintained in a good, workmanlike manner with standard or better grade materials.

7. Association's Maintenance, Repair, Replacement or Removal at Expense of Owners. The Association, through its Board, reserves, and the Owners, on behalf of themselves and their heirs, successors and assigns, grants to the Association, the right, after notice to the Owners and opportunity to cure, to maintain, repair, replace or remove the Improvement as installed, at the expense of the Owners, their heirs, successors, or assigns, in the event that the Board, in its discretion, believes after investigation by an expert that the Improvement has fallen into significant disrepair or may cause harm to others, common area property or other lots. Further, the Association reserves, and the Owners, on behalf of themselves and their heirs, successors and assigns, grants to the Association the right, after notice to the Owners and opportunity to cure, to maintain, repair, replace or remove the Improvement as installed, at the expense of the Owners, their heirs, successors, or assigns, in the event that the Association determines that the Improvement fails to comply with the submitted plan for such Improvement.

In addition, the Association reserves the right in the event repairs or replacements may be necessary to portions of the common area or other property for which the Association or the Board are responsible under the documents of the Association except as modified by this Agreement, to remove or dismantle the Improvement as installed at the expense of the Owners, their heirs, successors, or assigns. The Association shall not be responsible for restoring the Property to its original condition and shall not be responsible for any damage to the Improvement or its components.

8. Indemnification. Owners covenant and agree for themselves and their heirs,

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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 construction, installation, repair or existence of the Improvement or the Owner's failure to maintain, repair and replace the Improvement. 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

9. Right to Revoke. Owners acknowledge 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. The Owner acknowledges that, but for execution of this Agreement, he would not be permitted to install, construct or erect the Improvement.

10. Conflict with Rules. 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.

11. 180 Foot Contour. No portion of the Improvement, shall be constructed, installed or placed below the one hundred eighty (180) feet elevation contour around the Swift Creek Reservoir, without the express written approval of the Association.

12. Insurance. Owners covenant and agree for themselves, their heirs, successors and assigns that they shall be responsible for providing their own insurance on the Improvement. For the purposes of this Agreement, the Improvement is intended to be and shall remain a fixture on or to the property involved.

13. Encumbrance and Disclosure. Owners 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.

14. Recordation. This Agreement shall be recorded by the Association at the expense of

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the Owners and shall be deemed to run with title to the Lot.

15. 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.

16. Limitations. This Agreement is made subject to all recorded easements, conditions, restrictions, and agreements on the Property and to Exhibits "A" and "B" to this Agreement.

17. Breach, Attorney's Fees and Costs. In the event either party to this Agreement is required to file a legal action due to a breach hereof, the costs of the action, including, but not limited to, reasonable attorneys' fees as determined by the Court, shall be paid to the prevailing party.

18. 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.

19. 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, this Waterfront Easement and Maintenance Covenant Agreement is executed the day and year first above written.

{The remainder of this page is intentionally blank.}

Witness: _____

Owner

COMMONWEALTH OF VIRGINIA)

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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)

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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 #: _____.