

Tax Map No.
See attached Exhibit "A"

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**AMENDED, RESTATED AND
CONSOLIDATED
DECLARATION OF RESTRICTIVE
COVENANTS
FOR
MARLBANK COVE ASSOCIATION INC.**

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**AMENDED, RESTATED AND CONSOLIDATED
DECLARATION OF RESTRICTIVE COVENANTS
FOR
MARLBANK COVE ASSOCIATION INC.
(SECTIONS ONE, TWO, THREE & FOUR)**

This Amended, Restated and Consolidated Declaration of Restrictive Covenants for Marlbank Cove, Sections One, Two, Three and Four is made this 31st day of December, 2014, by Marlbank Cove Association Inc., a Virginia nonstock corporation (the "Association"), Grantor.

WHEREAS, Marlbank Cove, a Virginia limited partnership, (the "Developer") subjected certain real property to four separate Declarations of Restrictive Covenants for Marlbank Cove recorded in the Clerk's Office of the Circuit Court of York County, Virginia (the "Clerk's Office"). The Section One Declaration is recorded in Deed Book 418, Page 25; the Section Two Declaration is recorded in Deed Book 493, Page 635; the Section Three Declaration is recorded in Deed Book 492, Page 635; and the Section Four Declaration is recorded in Deed Book 499, Page 431; and

WHEREAS, the Marlbank Cove subdivision is a residential neighborhood of the highest quality, with standards of excellence within York County, offering beautiful and well maintained surroundings, large wooded Lots, residences of highest quality and architectural beauty, and superior recreational facilities for its residents; and

WHEREAS, it is the continued intention of the Association that the community be unified, maintained and regulated in such a way as to protect and preserve all of these qualities for the Owners of Marlbank Cove; and

WHEREAS, it is now the desire of the Owners of Marlbank Cove Association, Inc. to amend, restate and consolidate the Original Declarations; and

WHEREAS, Sections 6.5 of the Original Declarations provide that the Original Declarations may be amended in whole or in part by an instrument signed by a majority of the Owners of the Lots, which instrument shall be recorded in the land records and is binding on all parties sharing any right, title or interest in the described Properties or any part thereof; and

WHEREAS, a majority of the Owners of the Lots approved this Amended, Restated and Consolidated Declaration and executed the Consent and Ratification document evidencing their agreement.

NOW, THEREFORE, Grantor declares that the Property as described herein, shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions contained in this Amended, Restated and Consolidated Declaration, which are for protecting the value and desirability of the Property which shall run with the real property and be binding on all parties having any right, title or interest in the described Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner.

ARTICLE I DEFINITIONS

- 1.1 **GENERAL DEFINITIONS.** The following words and terms when used in this Declaration shall have the following meaning, unless the context shall clearly indicate otherwise:
- a. "Association" shall mean Marlbank Cove Association, Inc.
 - b. "Common Areas" shall mean all real property owned by the Association for the common use and enjoyment of the Members.
 - c. "Declarant" or "Developer" shall mean Marlbank Cove, a Virginia limited partnership.
 - d. "Development" shall mean the real property described in the Articles of Incorporation for the Association and such additions thereto as may hereafter be brought within the jurisdiction of the Association.
 - e. "Dwelling Unit" shall mean the single-family Dwelling Unit constructed on a Lot.
 - f. "Governing Documents" shall mean this Amended, Restated and Consolidated Declaration, the Articles of Incorporation, the Bylaws and any rules and regulations as the same may be amended from time to time.
 - g. "Lot" shall mean any Lot of land shown upon any recorded subdivision map of any section of the Development and any improvements thereon, but shall exclude the Common Areas.
 - h. "MCEC" shall mean Marlbank Cove Environmental Committee.
 - i. "Member" shall mean those people entitled to membership in the Association as provided in these Covenants.
 - j. "Owner" shall mean the Owner of record, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Development.
 - k. "Property" or "Properties" shall mean the real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.
 - l. "Recreational Area and Facilities" shall mean the Marlbank Cove clubhouse as well as the pool area and all its facilities, the parking area, and the dock and all its facilities located at 111 Lookout Point. (The term "clubhouse" is used in its common meaning. The Marlbank Cove Association is not a "club.")

- 1.2 VIRGINIA PROPERTY OWNERS' ASSOCIATION ACT. The definitions set forth in the Virginia Property Owners' Association Act (Va. Code Ann. 55-509 *et seq.*) shall be applicable to the Governing Documents unless the context clearly indicates otherwise.

ARTICLE II THE LAND

- 2.1 PRESERVATION OF LAND. The natural beauty, integrity and grade of the land shall be protected and preserved to the greatest extent possible.
- 2.2 TREES. No trees in excess of six inches in diameter at a point two feet above ground level shall be removed without prior approval of the MCEC, with the following exceptions: dead trees, diseased trees, and trees within a ten foot perimeter around all buildings or other improvements. Trees within ten feet from "other improvements" may be removed without further approval, provided the location of all buildings and improvements are first approved pursuant to Article 4 below.
- 2.3 MAINTENANCE OF NATURAL AREAS. Areas left in their natural wooded state shall be kept clear of any fallen trees and branches, excess underbrush, and so maintained.
- 2.4 LAWNS. Areas converted to lawns and other landscaped areas shall be maintained year round. Owners shall keep their Lot in a neat, attractive, and well-groomed manner.
- 2.5 REQUIRED PLANTINGS. All Lots shall have planted in front of the Dwelling Unit at least one ornamental flowering tree. Foundation planting is required.
- 2.6 PROHIBITED PLANTINGS. Planting of Highly Invasive Plant Species is prohibited. Removal of Highly Invasive Plant Species shall be monitored by the MCEC. The MCEC will follow the Invasive Alien Plant Species of Virginia publication which is maintained by the Department of Conservation & Recreation, a Division of Natural Heritage in Richmond, Virginia.

ARTICLE III LAND USE

In order to preserve the quality and integrity of the neighborhood, the following restrictions for land use are established for the mutual benefit of all Owners.

- 3.1 RESIDENTIAL USE. All of the numbered Lots shall be used exclusively for residential purposes with only one single-family Dwelling Unit per Lot. No additional or adjacent or connected buildings are to house additional persons as tenants or for any other purpose.
- 3.2 HOME BUSINESSES. No business shall be conducted from these Dwelling Units or on these Lots wherein any evidence of said businesses is apparent from outside of the

Dwelling Unit. This includes signs, marked vehicles, equipment and materials. Neither may any business generate a stream of traffic to constitute a nuisance to the neighbors.

- 3.3 SUBDIVISION. No Lot may be subdivided.
- 3.4 ANIMALS; PETS. No animals, livestock or poultry of any kind may be kept on any Lot except dogs, cats, and other household pets, provided they are not kept, bred, or maintained for any commercial purpose. No family shall have more than a total of three dogs, cats or combination thereof. All animals that spend time outdoors must be properly managed so as not to be a nuisance to neighbors and to the neighborhood. Nuisance includes, but is not limited to, barking and trespassing.
- 3.5 ANIMAL CONTROL FENCING. Animal control devices such as the brand "*Invisible Fence*" should normally start at one rear corner of the Dwelling Unit follow the Lot line around the back yard and return to the other rear corner of the Dwelling Unit. Owners may request an exception by submitting an application to the MCEC when necessary for pet ingress/egress, where there is a side door instead of a rear door. For Dwelling Units located on corner Lots, the side fence line shall be no closer to the side street than the property line. Rules for pets in front yards are outlined in the Association Rules and Regulations.
- 3.6 GARBAGE; TRASH. No Lot shall be used or maintained as a dumping ground for rubbish or other material prior to any construction. During construction, the area will be kept in a reasonably neat and clean condition by the builder, although some debris must be expected. Occupied Dwelling Units shall be kept in a good state of maintenance by the Owner. Trash, garbage, and other waste shall be kept in sanitary containers which shall be enclosed in a screening structure approved by the MCEC or shall be underground. Incinerators will not be permitted and all trash and refuse must be picked up and hauled away.
- 3.7 CLOTHESLINES. Clotheslines are prohibited unless small, well-screened and approved by MCEC.
- 3.8 ANTENNAS. No external antennas of any description are permitted except as herein after described: Antennas the installation of which is to enhance video programming signals through the use of (1) Direct Broadcast Satellite (DBS) receivers, which is one meter (thirty-nine inches) or less in diameter, (2) Multi-channel Multi-point Distribution (MMDS) systems which are one meter (thirty-nine inches) or less, or (3) Television Broadcast Stations (TVBS) the mast of which is not higher than twelve feet.
 - a. Each proposed antenna installation must be documented with the MCEC on a standard request form prior to the commencement of any part of the installation.
 - b. The location of the antenna and/or its mounting hardware, to the extent feasible without interfering with an acceptable quality signal, shall not be visible from the street in front of the Dwelling Unit. For Owners with corner Lots bordering on two streets, the

antenna shall be placed to minimize its visibility from the side street, to the extent feasible without interfering with acceptable quality signal. If an Owner plans placement in a location visible from the street, then the Owner must provide documentation from the provider that an acceptable quality signal cannot be received from any other location. If the antenna cannot be located so as not to be visible from the street in order to receive an acceptable quality signal, then the antenna and/or its mounting hardware shall be: (1) painted in a fashion that will not interfere with an acceptable quality signal and blend into the background against which it is mounted; or (2) screened from view by landscaping or other screening material compatible with the existing Dwelling Unit architecture.

Any modification of the landscaping for installation of the antenna, including the removal of trees, must be approved by the MCEC.

- 3.9 **SIGNS.** No sign of any kind shall be displayed to the public view on any Lot except (i) one sign of not more than five square feet advertising the Property for sale or rent; (ii) one sign of not more than five square feet used by a builder to advertise during construction and sales periods; and (iii) one sign of not more than one square foot in size advertising the provider of the home's security system.
- 3.10 **EASEMENTS.** Easements shown on the plats and/or plans for streets, drainage, utilities, screening, beautification, or recreation are for the benefit of the residents of Marlbank Cove and may be changed only by the County of York upon request by the Association. The Declarant reserves the right to require additional easements not to exceed five feet in width along any property line if drainage problems develop at a later date and require such easements.
- 3.11 **LEASING.** Any Owner renting or leasing their Dwelling Unit shall provide the Association with written notice of the tenant's name and contact information. The Owner shall provide written notice to the Association of the Owner's forwarding address for the purpose of receiving annual assessments, Association information and correspondence. It shall be the Owner's responsibility to ensure the lease is not in conflict with any of the terms and conditions of any of the Association's Governing Documents. The initial term of any lease shall be for at least one (1) year. It shall be the Owner's responsibility to provide the tenant with copies of the Governing Documents. Tenants and their family members who reside with the tenant, and the tenant's guests will be allowed to use the Marlbank Cove Facilities provided that (i) the Owner is in good standing with no outstanding fees or assessments due to the Association, and no outstanding covenant violations; and that (ii) the Owner and Tenant comply with all of the Governing Documents throughout the period of the lease and or their residency.
- 3.12 **SALE OF A LOT.** Upon the sale of a Lot by any Owner, the selling Owner shall give written notice of the sale to the Association, providing the name and contact information of the purchaser(s). In the event such notice is not given, the selling Owner shall remain personally responsible for Lot Assessments which may accrue after the date of conveyance until said purchaser(s) may be contacted. This provision shall in no way release the

purchasing Owner from liability for Assessments arising after the purchase, nor shall it affect any other rights or remedies available to the Association, including the imposition and enforcement of liens against the Lot.

- 3.13 **OWNER'S RESPONSIBILITY.** Owners shall maintain their Lots and Dwelling Units and any other improvements located thereon, in a neat and orderly manner, and shall not permit the appearance of the Lot or Dwelling Unit, or any other improvements thereon to be unsightly, unsanitary or hazardous. The entire exterior of any building on any Lot shall be cleaned, painted, stained, repaired and/or replaced as necessary by each Owner to maintain the structural integrity and aesthetic appearance of said structure to the standard when initially constructed. Each Owner shall keep drainage ditches and swales located on his Lot free and unobstructed and in good repair, and shall provide for the installation of such culverts upon his Lot as may be reasonably required for proper drainage. Should any Owner fail to maintain his Lot, Dwelling Unit and/or improvements thereon or fail to keep drainage ditches and swales as required by this paragraph, the Association may, but is not obligated to, take action as set forth in Section 9.6 herein

ARTICLE IV ARCHITECTURAL CONTROL; DWELLING UNITS

- 4.1 **MARLBANK COVE ENVIRONMENTAL COMMITTEE: ARCHITECTURAL CONTROL STANDARDS.** The Board of Directors shall appoint the members of the Marlbank Cove Environmental Committee ("MCEC"). The MCEC shall be under the supervision and control of the Association via the Board of Directors. Its members shall be selected and it shall operate in accordance with the Governing Documents of the Association. The MCEC shall consist of at least four (4) members. The Board of Directors shall have the authority to establish, adopt, amend and modify architectural control standards to address the application process for approval, design standards, building procedures, exterior appearance, and other processes and requirements necessary for approval of submitted plans.
- 4.2 **APPROVAL REQUIRED.** The MCEC shall regulate the external design, construction, appearance and location of all buildings, improvements, structures, decks, porches, fences, outbuildings, accessory buildings, driveways, walkways, hardscaping and landscaping and any other type of addition on every Lot. All construction plans, including architecture, siting, grading, driveway and parking areas, color and materials, and other pertinent details shall be submitted to the MCEC for review and approval prior to commencement of construction. Renovations and upgrades must also be submitted to the MCEC for review and approval. Such items would include without limitation, replacement windows, doors, garage doors, gutters, shutters, trim, roof, and all exterior features of the Dwelling Unit. If no action is taken by the MCEC within thirty (30) days after the MCEC confirms, (in writing) receipt of all required material, approval shall not be required and this paragraph shall be deemed fully satisfied. **Approval by the MCEC does not supersede State/County laws and or permits.**

The Board of Directors reserves the right to waive individual restrictions on a case by case basis where the situation warrants and does not conflict with the overall intent of these covenants to achieve and preserve a quality community.

- 4.3 **ARCHITECTURAL STYLES.** A variety of architectural styles are desired in Marlbank Cove. Period designs should strive for authenticity. Contemporary designs should be tasteful and seek to blend with the land. The blending of contrasting architecture will be facilitated by the use of earth-tone colors and materials. Bright, strident colors will not be approved. In general, no two identical designs will be permitted in Marlbank Cove. Closely similar designs must be sufficiently separated in distance so as not to call attention to the similarity.
- 4.4 **SIZE OF DWELLING UNITS.** The following minimum sizes are specified for Dwelling Units. One-story buildings shall have a minimum of 1800 square feet, and two-story buildings shall have a minimum of 2200 square feet of living space. "Living space" shall be the heated areas of the Dwelling Unit, exclusive of basements, porches, decks, breezeways, and garages. Any variances of these minimum size requirements must be approved by the MCEC.
- 4.5 **GARAGES.** Each Lot is required to have a garage. Side or rear entry garages shall be generally required, and any exceptions to this requirement must be approved by the MCEC.
- 4.6 **DRIVEWAYS.** All driveways shall be brown exposed aggregate extending at least as far as the property line closest to the street. If the remaining section is not completed with matching brown exposed aggregate, it must be filled with matching brown pea gravel extending to the street.
- 4.7 **EXTERIORS.** No exposed bright metal is permitted on the Dwelling Unit, for example flashings, screens, windows. Siding and trim shall be of brick, stone, wood or composite materials, including but not limited to, fiber cement siding (e.g. James Hardie or similar products.) Approved siding and trim material includes stained western red cedar; stained salt treated pine; stained cypress; or Owners may submit a sample of treated stained natural wood siding/trim for approval by the MCEC.

No aluminum, vinyl or sheet siding will be allowed. Owners shall submit all siding/trim materials to The MCEC for approval. Additionally, Owners shall submit sufficient materials for The MCEC's approval of windows, doors, garage doors, gutters, moldings, railings, decking, porches, screening, etc. All chimneys shall be of brick except for special architectural reasons approved by The MCEC.

- 4.8 **UTILITIES.** All Dwelling Units shall be served by underground utility service, including sewer, gas, electric, telephone, and cable. All Dwelling Units shall have minimum 200 amp electric service. Above ground utilities are prohibited. Utilities for outbuildings or accessory structures shall be underground. Whole house generators shall be permitted upon approval by the MCEC. In general, a whole house generator shall be installed at the rear

of the Dwelling Unit and not visible to the neighboring property, and the Owner shall take such steps as necessary to limit the impact of generator noise on neighboring properties. All screening will be approved by the MCEC.

- 4.9 **REPAIRS AND MAINTENANCE.** All repairs, painting, replacements and maintenance to any Lot, Dwelling Unit, outbuilding, accessory structure or other improvement, shall be carried out in such a manner so as to conform to the materials, architecture, style color and quality of construction initially established in the development.
- 4.10 **AIR CONDITIONERS.** Window air conditioners are prohibited.
- 4.11 **SWIMMING POOLS.** Above-ground swimming pools are prohibited. In-ground swimming pools must be submitted to the MCEC for approval.
- 4.12 **FENCES AND GATES.** The location and construction of fences (the term "fence" as used herein includes any gates) shall be in accordance with this section and the approval requirements of the MCEC. No fencing shall be erected on any residential Lot located within Marlbank Cove without the written approval of the MCEC. Approval by the MCEC will be on an individual Lot basis and will take into consideration Lot location, appropriateness of fence on the aesthetics, neighbor concerns, etc. Fence approval is not automatic. What is acceptable on one Lot may not be approved at other locations. Fencing shall be subject to the following requirements:
- a. Chain link fences are prohibited on any portion of a Lot. This includes, but is not limited to dog pens and dog runs.
 - b. Fences shall only be constructed of material approved by the MCEC as described in this Article IV.
 - c. No fences shall be erected, placed or permitted to remain on any Lot nearer to any street than the rear of the Dwelling Unit.
 - d. All fence requests must fall into one of the following categories:
 - i. Privacy fence
 - ii. Swimming pool security fence
 - iii. General containment fence (Please note: for animal containment systems see section 3.5)
- 4.13 **PRIVACY FENCES AND GATES.** Privacy fences will be approved only for the purpose of shielding the Owner from the excessive noise and exposure of traffic along the two main roads which border Marlbank Cove; namely Old York-Hampton Highway to the west and Wormley Creek Drive to the north.
- a. Privacy fences will be allowed only along that portion of the Owner's property line adjacent to and running along these two roads. Privacy fencing will not be approved

along the side Lot property line except where the side Lot line also runs along one of these roads. Privacy fences will be located within three (3) feet of the Lot line and shall extend for the entire length of the Lot line bordering the roads. Approval of a privacy fence will automatically bind the Owner to allow adjacent Lot Owners the option to attach their approved privacy fence to the applicant's fence.

b. Privacy fences shall be constructed with appropriate materials as follows:

- i. Modified Texas stockade style 6 feet in height.
- ii. Posts and horizontal boards shall be located on the Lot Owner side of the fence.

4.14 **SWIMMING POOL FENCES AND GATES.** Swimming pool security fences will be approved only for the purpose of providing a State/County required safety barrier around in ground swimming pools. (Please Note: Above ground swimming pools are not allowed in Marlbank Cove).

a. Swimming pool security fences shall fall into one of two categories:

- i. Fences which are located along the Owners property line; or
- ii. Fences which enclose the immediate pool area only.

b. Property line pool fences will normally start at one rear corner of the Dwelling Unit follow the Lot line around the back yard and return to the other rear corner of the Dwelling Unit. Fences shall at no time be closer to the front street than the rear of the Dwelling Unit. For Dwelling Units located on corner Lots the side fence shall be no closer to the side street than the corresponding side of the Dwelling Unit. Approval of a property line pool fence will automatically bind the Owner to allow adjacent Lot Owners the option to attach their approved fence to the applicant's fence.

c. Property line pool fences shall be constructed of either wood or wrought iron as follows:

Wooden Fence Requirement

- i. Modified Texas stockade style four (4) feet in height, or alternating board on board four (4) feet in height of appropriate material;
- ii. Posts and horizontal boards shall be located on the Lot Owner side of the fence.

Wrought Iron Fence Requirements:

- i. Fence construction shall be of vertical metal rods 1" or less in width and with spacing between rods of 5" or less. Horizontal tie rods shall be located at the bottom and top of the fence only;
- ii. Support posts for the fence shall be either metal or brick;
- iii. Wrought iron fences shall be four (4) feet in height;

- iv. Immediate pool enclosure fences shall be located in the general proximity of the swimming pool with at least three (3) sides of the fence within fifteen (15) feet of some part of the pool edge;
 - v. Fence plans shall be reviewed with the MCEC at the same time that pool plans are submitted for approval and prior to signing any pool construction contract;
 - vi. Since immediate pool enclosure fences are generally located well inside of the property line and will not normally have to blend with neighbor's fences, considerably more latitude shall be given in the selection of fence materials; and
- d. Approval of a swimming pool security fence is conditional on the installation of the approved in-ground pool. Fence construction shall not start until the MCEC has reviewed the initial pool construction phase and released the conditional hold on the fence. Construction of the fence without removal of the conditional hold shall not be subject to the 30 day regulation as outlined in paragraph 4.2 of this document.

4.15 GENERAL CONTAINMENT FENCES AND GATES. General containment fences will normally start at or near one rear corner of the Dwelling Unit; follow the Lot line around the back yard and return to the other rear corner of the Dwelling Unit. Fences shall at no time be closer to the front street than the rear of the Dwelling Unit. For Dwelling Unit located on corner Lots, the side fence shall be no closer to the side street than the corresponding side of the Dwelling Unit. Approval of a containment fence will automatically bind the Owner to allow adjacent Lot Owners the option to attach their approved fence to the applicant's fence.

a. General containment fences shall be constructed as follows:

- i. Wooden split rail type with two or three rails;
- ii. Four (4) feet or less in height; and
- iii. Welded wire on inside if desired.

4.16 MAINTENANCE OF FENCING. All fences shall be maintained in a neat and attractive manner. Fences not kept in a good state of repair or not properly maintained shall be subject to removal at the Owner's expense. The Association may, but is not required to, cause the fence to be removed. The costs and expenses associated with removal shall be assessed against the Owner as an Individual Assessment.

4.17 MAILBOXES. All mail and newspaper boxes shall conform to the standard Marlbank Cove design as established by the MCEC.

ARTICLE V VEHICLES

5.1 PARKING. Overnight parking in the street will not be permitted except on an emergency basis. No more than four (4) ungaraged vehicles will be permitted to be consistently parked on the premises, and these must be in the driveway or on a parking apron off the driveway. These vehicles will be restricted to; licensed, with current inspection tags if applicable,

operable, untarped automobiles, mini-vans and pickup trucks not to exceed ¾ ton in capacity.

- 5.2 **RECREATIONAL VEHICLES; BOATS.** No trailers, campers, RVs, boats, jet skis or similar equipment or vehicles shall be stored in view on any Lot. Owner's boats and trailers (the term "trailer" shall include but not be limited to: utility, mobile home, boat/jet-ski trailer or car trailer) must be parked in a garage or in Owner's rear yard shielded from public view with shrubs or suitable screening to minimize unsightliness, with a total of one per Lot. The parking and screening must be approved by the MCEC so that they are not generally visible from adjacent properties or the street. Such boats, jet-skis, and trailers shall not be parked on driveways.
- 5.3 **OVERSIZED AND COMMERCIAL VEHICLES.** No large trucks or large commercial vehicles may be parked in the street or in front yards beyond time needed for them to carry out their objectives for being present.
- 5.4 **ABANDONED/INOPERABLE VEHICLES.** Abandoned or inoperable vehicles shall not be permitted to remain on the Properties.
- 5.5 **VEHICLE MAINTENANCE.** No major vehicle maintenance or overhaul of ungaraged vehicles will be permitted if unsightly and requiring more than two days. Winterizing and de-winterizing of ungaraged boats, jet skis, or other watercraft that requires more than three (3) days, will need approval from the MCEC.
- 5.6 **MOTORCYCLES.** Motorcycles, trail bikes, and mopeds may only be used for point to point transportation on established roadways and not for joyriding around the neighborhood.

ARTICLE VI CONSTRUCTION

This section shall also apply to any additions to property such as, but not limited to sheds, garages, repairs or rebuilding following extensive damage due to catastrophic natural events such as, but not limited to, tornado, hurricane and flood, and repairs or rebuilding following extensive damage due to, but not limited to, catastrophic fire or water damage.

- 6.1 **COMPLETION OF CONSTRUCTION.** Any construction must be completed within one year of start, including all necessary appurtenances and ground work to constitute a finished project.
- 6.2 **TEMPORARY STRUCTURES; DUMPSTERS; PODS.** No structure of a temporary character, such as, by way of illustration and not limitation, sheds, trailers, tents, shacks, temporary or movable building, "PODs" or similar storage units, portable lavatories or dumpsters shall be erected, used or maintained on any Lot except during the period of actual construction of improvements on the Lot.

- 6.3 CONSTRUCTION VEHICLES. During construction, the MCEC reserves the right to prescribe the ingress and egress routes utilized by construction vehicles, including those delivering materials, equipment, and supplies. This applies to the vehicles which are operated by construction personnel. Construction vehicles must be parked on or at the building site and must not obstruct traffic.
- 6.4 CONSTRUCTION SITE. The construction site must be kept reasonably well cleaned and a single entrance with sufficient gravel must be established at the commencement of construction and used to prevent undue mud from being tracked into the street.
- 6.5 YORK COUNTY. All information regarding water or sewer line availability, grinder pumps, depths, etc., must be obtained from the York County Department of Public Works.
- 6.6 ARCHITECTURAL CONTROL STANDARDS; MCEC. Additional instructions for the builders are provided in Architectural Control Standards. Any further detailed restrictions on construction which may be necessary and which are not addressed in these documents will be handled by direct discussion between the MCEC and the builders.

ARTICLE VII MARLBANK COVE ASSOCIATION, INC.; ASSESSMENTS

- 7.1 MEMBERSHIP. Every person, group of persons, corporation, trust, or other legal entity, or any combination thereof, that owns a Lot within the Properties, shall be a member of the Association, provided, however, that any person, group of persons, corporation, trust or other legal entity, or any combination thereof, that holds such interest solely as security for the performance of an obligation shall not be a member. Any Owner of a Lot may act through a duly authorized agent, and any number of such authorized agents may be elected or appointed to any office or position set forth in the Bylaws. Membership shall be appurtenant to and may not be separated from the ownership of any Lot.
- 7.2 CREATION OF THE LIEN AND PERSONAL OBLIGATION OF FEES AND ASSESSMENTS. The Original Declarations required each Owner of a Lot to pay reasonable dues (assessments) to the Association, and by this amendment each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) Annual Assessments or charges; (ii) Special Assessments; (iii) Reserve Funding and (iv) Individual Assessments (collectively "Assessments"), such Assessments to be established and collected as hereinafter provided. The Assessments, together with interest, late fees, costs of collection, reasonable attorneys' fees, court costs, and any other amounts provided or permitted by law shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such charge is made. Each such Assessment, together with interest, late fees, costs of collection, reasonable attorneys' fees, court costs, and any other amounts provided or permitted by law shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to his successors in title unless expressly

assumed by them. No Owner may avoid liability for Assessments by non-use of the Common Area or by abandonment of his Lot.

- 7.3 **AUTHORITY.** As set forth in the Property Owners' Association Act (Va. Code Ann. § 55-508, *et seq.*), this Declaration, or the Bylaws, the Board of Directors has the power and authority to establish Annual Assessments, Special Assessments, Reserve Funding and Individual Assessments.
- 7.4 **PURPOSE OF ASSESSMENTS.** Assessments levied by the Association shall be used exclusively for the management, maintenance, improvement, care, operation, renovation, repair, replacement, and/or acquisition of the Common Area and all improvements thereon, and capital assets; for modifying, improving or adding Common Area or amenities; for the procurement of insurance for the Association; for the establishment of reserves with respect to Association obligations; for the discharge of such other obligations of the Association imposed or assumed by the Association pursuant to the Governing Documents; for the acquisition, the administration of the Association; and to promote the recreation, health, safety, welfare, common benefit and enjoyment of the Owners of the Property.
- 7.5 **ANNUAL ASSESSMENT.** The amount of Annual Assessments shall be based on the annual budget adopted pursuant to the Bylaws. In the event that an annual budget is not adopted or if it is not approved as required in the Bylaws, the prior year's annual assessment shall continue for the current year's annual assessment until such time as the annual budget is adopted.
- 7.6 **SPECIAL ASSESSMENTS.** The Board of Directors may levy, for any fiscal year, a Special Assessment applicable to that year, but not longer than the following year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital asset or the Common Area, including fixtures and personal property related thereto, or for acquisition of any Common Area, or for the purpose of modifying, improving or adding Common Area or amenities, or for any other area of Association responsibility as provided for in this Declaration, if the purpose in doing so is found by the Board of Directors to be in the best interest of the Association. In addition, the Board may levy Special Assessments in accordance with Va. Code. Ann. § 55-514.
- 7.7 **RESERVE FUNDING.** The Board of Directors shall include in the Association's annual budget a reserve fund in accordance with the Bylaws.
- 7.8 **INDIVIDUAL ASSESSMENTS.** Individual Assessments shall be those expenses directly related to a Lot, as an exercise of an Association remedy, as set forth in Article 9.6 herein, and shall further include violation charges levied pursuant to the Governing Documents and Va. Code Ann. § 55-513(B). If an Individual Assessment is levied on multiple Lots owned by one Owner it shall be allocated among that Owner's Lots as the Board of Directors directs or, in the absence of such direction, equally among such Lots. Notwithstanding the concept of Individual Assessments, the Association is not obligated to

provide any service or maintenance to Lots except as expressly provided in the Governing Documents.

- 7.9 **UNIFORM RATE OF ASSESSMENT.** Annual and Special Assessments and Reserve Funding shall be fixed at a uniform rate for all Lots and may be collected on an annual, semi-annual, quarterly, or monthly basis as determined by the Board.
- 7.10 **NONPAYMENT OF ASSESSMENTS.** The Assessment liens provided for in this Declaration may be perfected and enforced in the manner provided by Va. Code Ann. § 55-516. A statement from the Association showing the balance due on any Assessment shall be *prima facie* proof of the current Assessment balance and the delinquency, if any, due on a particular Lot. The Association shall be entitled to foreclose the lien, and/or bring an action at law against any Owner personally obligated to pay the same, either in the first instance or for a deficiency judgment following foreclosure. Late fees, interest from the due date, all costs of collection, reasonable attorneys' fees in a minimum amount of 25% of the amount due, court costs, and other amounts provided or permitted by law shall be added to the amount of such Assessment and shall be secured by the assessment lien. Late fees, interest, costs of collection, reasonable attorney fees, and court costs shall be added to the account whether or not any legal action is initiated. The Board is authorized to establish, from time to time, the amount of the late fees and the interest rate to be charged to the account, and may change the initial late fees or interest rate as set forth herein. Assessments that are unpaid for a period of ten (10) days after the due date shall incur an initial late fee of five percent (5%) of the unpaid assessment. Interest shall accrue on the unpaid assessment from the due date at the rate of twelve percent (12%) per annum until paid. Upon the failure of an Owner to pay any installment when due, the Board may accelerate the remaining year's installments and declare the entire amount due and payable.
- 7.11 **APPLICATION OF PAYMENT.** All payments shall be first applied to costs of collection, attorney fees and court costs, then to late fees, then interest charges, then to any delinquent assessment, and then to any unpaid installments of assessments that are not part of the collection effort or lawsuit in order of the installment first coming due.
- 7.12 **SUBORDINATION OF THE LIEN TO MORTGAGES.** The lien of Assessments shall be subordinate to the lien of any prior mortgage or deed of trust. Sale or transfer of any Lot shall not affect the lien. However, the sale or transfer of any Lot by foreclosure of a prior mortgage or deed of trust, shall extinguish the lien of such charges as to payments which become due prior to such sale or transfer, provided that there is no surplus from the sale to pay the lien in full or in part. No sale or transfer shall relieve such Lot from liability for any charges thereafter becoming due or from the lien thereof, and any personal liability for the Assessments shall not be extinguished by foreclosure.
- 7.13 **EXEMPT PROPERTY.** Common Area shall be exempt from any Assessments, charges and liens created herein. All other Properties are subject to Assessments as set forth herein.

ARTICLE VIII COMMON AREAS

- 8.1 **MAINTENANCE RESPONSIBILITY OF THE ASSOCIATION.** The Association shall be responsible for the management, maintenance, improvement, care, operation, repair, renovation, replacement, and control of the Common Areas and all improvements thereon, including related fixtures, personal property, and equipment, and shall keep the same in good, clean, and attractive condition, order, and repair. Unless otherwise determined by the Board of Directors, all repairs and replacements shall conform to the original construction and installation, and shall be of equal or better quality.
- 8.2 **OWNERS' EASEMENTS OF ENJOYMENT.** Subject to the provisions of the Governing Documents, every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the rights of the Association as follows:
- a. To establish reasonable rules and regulations with respect to use of the Common Areas and with respect to such other areas of responsibility assigned to the Association by the Declaration, except where expressly reserved by the Declaration to the Owners;
 - b. To establish reasonable rules and regulations pertaining to Owners' and Tenants' family and guests;
 - c. To charge reasonable fees and dues for the use of the Common Areas and certain facilities;
 - d. To suspend an Owner's right to use or benefit from any of the Common Areas for any period during which any assessment, charges, fees, or dues are more than 60 days past due, subject to any limitations in the Property Owners' Association Act (Va. Code Ann. § 55-508, *et seq*);
 - e. To suspend an Owner's right to use or benefit from any of the Common Areas for any period during which any other infraction of the Governing Documents by the Owner remains uncorrected after the last day of the period established for correction by the Board;
 - f. To grant permits, licenses and easements under, through and over the Common Areas or other areas of Association responsibility for drainage, utilities, roads, access and other purposes which are reasonably necessary to the ongoing development and operation of the Properties as approved by the Board, or as deemed by the Board of Directors to be in the best interest of the Association;
 - g. To dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be approved in accordance with the Articles of Incorporation;

- h. To sell, lease, exchange, dispose of, encumber, or mortgage all or any part of the Common Area in accordance with the Articles of Incorporation;
 - i. To enter into shared use and maintenance agreements; and
 - j. Such other rights as set forth by law or by the Governing Documents.
- 8.3 **DELEGATION.** Any Owner may delegate his right of enjoyment to the Common Area and facilities to the members of his family who reside with the Owner, or to his tenants. When an Owner delegates his right of enjoyment to the Common Area and facilities to his tenants, the Owner shall no longer have those rights of enjoyment to the Common Area and facilities.
- 8.4 **DAMAGE OR DESTRUCTION OF COMMON AREA BY OWNER.** In the event any Common Area or improvement thereon is damaged or destroyed by an Owner, his tenants, guests, licensees, agents, or members of his family, the Association may repair such damage at the Owner's expense. The Association may repair such damage in a good and workmanlike manner in conformance with the original plans and specifications of the Common Area or improvement involved, or as the Common Area or improvement may have been modified or altered, at the sole discretion of the Board of Directors. The cost of such repairs shall become an Individual Assessment, as described more particularly herein, upon the Lot of such Owner and shall constitute a lien upon such Owner's Lot and be collectible in the same manner as other assessments set forth in Article 7 herein.
- 8.5 **EMINENT DOMAIN; CONDEMNATION.** Whenever all or any part of the Common Area is taken or damaged under the power of eminent domain, the proceedings, rights and responsibilities of the Association and the Owners shall be determined by Va. Code Ann. § 55-516.2.

ARTICLE IX GENERAL; ENFORCEMENT

- 9.1 **AMENDMENT.** These covenants are the run with the land and shall be binding on all parties and persons claiming under them. These covenants may be amended or modified by an instrument signed by a majority of the Owners of the Lots.
- 9.2 **SEVERABILITY.** Invalidation of any one of the covenants by judgment or court order shall not affect any of the other provisions, which shall remain in full force and effect.
- 9.3 **FIDUCIARY DUTY.** The Board is charged with a fiduciary duty to ensure that the Association is operated in accordance with the Declaration. Any decision to enforce the Declaration should not be discriminatory. The Board owes a duty of trust to each Owner to act in the best interests of the Association as a whole. Additionally, each Owner has an obligation to the Association to be familiar with and comply with the provisions of the Declaration. The Association shall have the right to determine all questions arising in

connection with this Declaration and to construe and interpret its provisions. The Association's determination or interpretation shall be final and binding.

- 9.4 **RIGHT TO ENFORCE.** The Association shall have the right to enforce against any Owner, by any proceeding at law or in equity, all restrictions, easements, conditions, covenants, reservations, liens, and charges now or hereafter imposed by decision of the Association or by the provisions of this Declaration or other Governing Documents. The cost incurred in taking such action and the attorneys' fees incurred therein shall constitute an Individual Assessment upon the defaulting Owner's Lot and shall be collectible in the manner provided in Article 7 herein for the payment of Assessments.
- 9.5 **PROPERTY OWNERS' ASSOCIATION ACT.** The Board shall have the power, to (i) suspend an Owner's right to use facilities or services, including utility services, provided directly through the Association for nonpayment of Assessments which are more than 60 days past due, to the extent that access to the Lot through the Common Areas is not precluded and provided that such suspension shall not endanger the health, safety, or property of any Owner, tenant, or occupant and (ii) assess charges against any Owner for any violation of the Declaration or Rules and Regulations for which the Owner or his family members, tenants, guests, or other invitees are responsible, provided, that the Board of Directors complies with the procedure set forth in Va. Code Ann. § 55-513, as amended. The Covenants Committee is designated as the tribunal for purposes of Va. Code Ann. § 55-513.
- 9.6 **ASSOCIATION ACTION.** If any Owner shall fail to keep such Owner's Lot, Dwelling Unit or any improvement thereon, in as good repair and condition as when initially constructed and accepted by the MCEC as applicable, normal wear and tear excepted, and in a neat and orderly condition consistent with the Governing Documents, then the Board of Directors may, pursuant to resolution, give notice to the Owner of the condition identified, specifying generally the action to be taken to rectify that condition. If the Owner fails to take the actions specified by the Board of Directors or to otherwise rectify the condition within thirty (30) days after the date the notice is given, or such other period as may be specified in the notice should the circumstances warrant a different time period, the Board of Directors shall have the right to rectify that condition by taking such action or by causing such action to be taken as was specified in the notice. Such right shall include, without limitation, the right: (i) to mow the grass thereon; (ii) to remove any debris therefrom; (iii) to trim or prune any hedge or planting that, in the opinion of the Board of Directors, by reason of its location or height or the manner in which it has been permitted to grow, is detrimental to the enjoyment of adjoining property or is unattractive in appearance; (iv) to clean, paint, stain, repair or replace the exterior of the Dwelling Unit or any improvement; (v) to abate or remove any improvement, item, or condition which violates the Governing Documents; and (vi) to do any and all things necessary or desirable in the opinion of the Board of Directors to place such Lot, the Dwelling Unit and the improvements thereon, in a neat and attractive condition consistent with the intention of this Declaration, or to address any potential safety hazard. The costs incurred in rectifying that condition shall be assessed against such Owner's Lot, in accordance with Article 7 hereof, and shall be a personal obligation of the Owner. The Owner shall

*Amended Restated and Consolidated Declaration
Marlbank Cove Association, Inc.*

reimburse the Association within thirty (30) days after receipt of a statement for such expenses from the Board. The Association shall have all rights and remedies set forth herein and in § 55-513 of the Virginia Code in the event of non-payment by the Owner.

- 9.7 **WAIVER.** Failure by the Association to enforce any provision of this Declaration or any Supplemental Declaration shall in no event be deemed a waiver of the right to do so thereafter. In addition, should any person violate or attempt to violate any of said covenants, restrictions, conditions or reservations, the Association or any Owner may prosecute by a proceeding at law or in equity against the person or persons violating or attempting to violate any such covenant, restriction, condition or reservation, either to prevent him or them from so doing, or to recover damages or other costs for such violation, and the attorney's fees and costs incurred in prosecuting such action.
- 9.8 **ELECTION OF REMEDIES.** All rights, remedies, and privileges granted to the Association or to any Owner pursuant to the Governing Documents or by law shall be deemed to be cumulative and the exercise of any one or more shall not be deemed an election of remedies, nor shall it preclude the party exercising the same from exercising such other additional rights, remedies and privileges as may be available to such party.
- 9.9 **DURATION.** The foregoing easements, restrictions, covenants and reservations shall be covenants, real, running with the land and applicable and binding upon the present and future Owners of the same.
- 9.10 **EFFECTIVE DATE.** This Declaration shall take effect immediately upon it being recorded.

IN WITNESS WHEREOF, the Association has caused this Amended, Restated and Consolidated Declaration to be executed by Timorah S. Beales, Vice President of Marlbank Cove Association Inc. and attested by, the Secretary, who certify that the requisite majority of the Owners consented to and ratified this Amendment as evidenced by their signature on the Consent & Ratification forms on file with the Association.

Marlbank Cove Association, Inc.

By: Tim

Timorah S. Beales, President

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF YORK, to-wit:

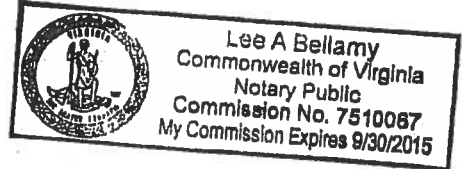
Timorah S. Beales, Vice President of Marlbank Cove Association, Inc. on behalf of the corporation, acknowledged the foregoing Amended, Restated and Consolidated Declaration of Covenants before me this 31 day of December, 2014.

Lee A. Bellamy
Notary Public

My commission expires: 09/30/2015

ATTEST:

Thomas W. VanDerPloeg
Thomas W. VanDerPloeg, Secretary



COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF YORK, to-wit:

The foregoing Amended, Restated and Consolidated Declaration of Covenants was acknowledged before me this 31 day of December, 2014 by Thomas W. VanDerPloeg, Secretary of Marlbank Cove Association, Inc. on behalf of the corporation.

Lee A. Bellamy
Notary Public

My commission expires: 09/30/2015

