

**NOTE:** The following listing of the Marlbank Cove Restrictive Covenants is intended for reference purposes only. It is not intended as a representation of a legal document.

DECLARATION OF RESTRICTIVE COVENANTS

FOR

MARLBANK COVE, SECTIONS ONE, TWO, THREE AND FOUR

THIS DECLARATION, by MARLBANK COVE, a Virginia limited partnership, hereinafter referred to as "Declarant".

WHEREAS, Declarant is the owner of certain property situated in the County of York, Virginia, shown on that certain plat entitled, MARLBANK COVE, SECTION THREE, dated September, 1986, made by E. E. Paine, Inc., Engineers-Planners, duly recorded in the Clerk's Office of the Circuit Court of the County of York, Virginia, in Plat Book 10, at page 386; and

WHEREAS, the Marlbank Cove subdivision has been planned as a residential neighborhood of the highest quality, setting new standards of excellence within York County, and offers beautiful and well maintained surroundings, large wooded lots, residences of highest quality and architectural beauty, and superior recreational facilities including water access for its residents; and

WHEREAS, it is the intention of Declarant that the community be maintained and regulated in such a way as to protect and preserve all of these qualities for the good of the majority of the inhabitants of Marlbank Cove; and

WHEREAS, Declarant wishes to declare and make known the easements, restrictions, covenants and reservations to which said property shall be subject; and

WHEREAS, to further provide that Declarant's successors or assigns may exercise its rights, the term "Declarant" shall mean its successors or assigns;

NOW, THEREFORE, Declarant hereby declares that said property shall be held by it subject to the following covenants, conditions, restrictions, easement and reservations:

1. THE LAND

The natural beauty of the land shall be protected and preserved to the greatest extent possible.

1.1 The natural grade of the land shall not be altered without prior approval of the Marlbank Cove Environmental Committee (MCEC).

1.2 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.

\*\* Paragraph 1.2 was amended 5/1/1986 as follows:

1.2 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: except all dead trees and all trees within a ten foot perimeter around all buildings or other improvements may be removed without further approval, provided the location of all buildings and other improvements are first approved pursuant to paragraph 3.1 below.

1.3 Areas left in their natural wooded state shall be cleared of fallen trees and branches and of excess underbrush and so maintained.

- 1.4 Areas converted to lawns and other landscaped areas shall be maintained in a neat and attractive state.
- 1.5 All lots shall have planted in front of the residence at least one ornamental flowering tree to be specified by the MCEC. Foundation planting is required and must be provided with the completed house and approved by the MCEC.

## 2. LAND USE

- 2.1 All of the numbered lots shall be used exclusively for residential purposes with only one single-family residence per lot. No additional adjacent or connected buildings to house additional persons for rent or other purposes will be permitted.
- 2.2 No businesses shall be conducted from these residences or on these lots where in any evidence of said businesses is visible from without the residence. This includes signs, marked vehicles, equipment and materials. Neither may any home business generate a stream of traffic to constitute a nuisance to the neighbors.
- 2.3 No lots may be subdivided.
- 2.4 No animals, livestock, or poultry of any kind may be kept on any lot except dogs, cats, or 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 and cats. Animals must be properly managed so as not to be a nuisance to neighbors by barking or trespassing.
- 2.5 No lot shall be used or maintained as a dumping ground for rubbish or other material prior to construction. During construction the area will be kept in a reasonably neat and clean condition by the builder although some debris must be expected. After occupancy the property shall be kept in a good state of maintenance by the owner. Trash, garbage, and other waste shall not be kept except in sanitary containers which shall be enclosed in a screening structure or shall be installed underground. Incinerators will not be permitted and all trash and refuse must be picked up and hauled away.
- 2.6 Easements shown on the plan 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 Marlbank Cove Association (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. RESIDENCES

- 3.1 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. The MCEC must also approve add-on construction such as decks, fences, outbuilding, etc. If no action is taken by the MCEC within thirty (30) days after receipt of all required material, approval shall not be required and this paragraph shall be deemed fully satisfied.
- 3.2 The MCEC will consist initially of four members appointed by Declarant. Upon completion of all development, MCEC shall become a committee under the

supervision and control of the Association, and its members shall be selected in accordance with the by-laws of such Association.

- 3.3 While the emphasis in Marlbank Cove will be on design and construction excellence, rather than on size, the following minimum sizes are specified for the buildings. One-story buildings shall have a minimum of 1800 square feet of living space and two story buildings shall have a minimum of 2200 square feet of living space. Living space shall be heated areas exclusive of basements, porches, decks, breezeways, and garages. Any variances of these minimum size requirements must be approved by the MCEC.
- 3.4 A variety of architectural styles are desired in Marlbank Cove. Single story, two story, and split level are anticipated. The land elevation and topography supports the use of some basements. 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 earthtone colors and materials. Bright or strident colors will be discouraged.
- 3.5 In general no two identical designs will be permitted in Marlbank Cove. Closely similar designs must be sufficiently separated in distance so as not call attention to the similarity.
- 3.6 Garages are required. Side of rear entry is preferred, but not required.
- \*\* Paragraph 3.6 was amended 5/1/1986 as follows:
- 3.6 Garages are required. Side or rear entry garages shall be generally required, and any exceptions to this requirement must be approved by MCEC.
- 3.7 All dwellings shall be served by underground utility service, including sewer, gas, electric, telephone and cable TV. All dwellings shall have minimum 200 amp electric service. No above ground utilities will be permitted.
- 3.8 The following additional restrictions will be observed in the intent of preserving the architectural integrity of the buildings:
- a. No external antennas of any description.

\*\* Paragraph 3.8a was amended on 1/9/1998 as follows:

- a. No external antennas of any description are permitted except as hereinafter described:
- Antennas whose installation 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 Television Broadcast Stations (TVBS) whose mast is not higher than twelve feet.
- i. 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.
- ii. 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 residence. For homeowners 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 a homeowner plans placement in a location visible from the street, then the homeowner must document 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 home architecture.

- iii. Any modification of the landscaping, including the removal of trees, must be approved by the MCEC.
- b. No window air conditioners.
- c. No clotheslines unless small and well screened and approved by MCEC.
- d. No fencing nearer to the street than the front of the residence.

\*\* Paragraph 3.8d was amended on 5/26/1993 as follows:

- d. Location and construction of fences shall be in accordance with paragraph 3.9.
- e. No chain link fence except around dog runs, limited to 120 square feet of run area.
- f. All mail and newspaper boxes shall conform to the standard Marlbank Cove design.
- g. 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 the construction and sales period.
- h. All driveways shall extend to the street and be either gravel or concrete with exposed aggregate.

\*\* Paragraph 3.8h was amended on 10/1/1986 as follows:

- h. All driveways shall extend to the street and be either gravel or concrete with exposed aggregate so as to blend with the streets.
- i. Outbuildings and fencing may be constructed or installed only with the permission of the MCEC.
- j. No exposed bright metal is permitted (flashing, screens, windows).
- k. Siding shall be of brick, stone, or wood. No aluminum, vinyl or sheet board shall be used.

- I. All chimneys will be of brick except for special architectural reasons approved by the MCEC.

\* Paragraph 3.9 was added on 5/26/1993 as follows:

- 3.9 No fencing shall be erected on any residential lot located within Marlbank Cove without the written approval of the Marlbank Cove Environmental Committee (MCEC).

Approval by the MCEC will be on an individual lot basis and will take into consideration lot location, appropriateness of fence on the lot, aesthetics, neighbor concerns, etc. Fence approval is not automatic. What is acceptable on one lot may not be approved at other locations.

All fence requests must fall into one of the following categories:

1. Privacy fence.
2. Swimming pool security fence or,
3. General containment fence.

a. **PRIVACY FENCE**

Privacy fences will be approved only for the purpose of shielding the lot owner from the excessive noise and exposure of traffic along the two main roads which border Marlbank Cove; Namely Old York Hampton Road to the west and Wormley Creek Drive to the north.

Privacy fences will be allowed only along that portion of the lot 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 homeowner to allow adjacent lot owners the option to attach their approved privacy fence to the applicant's fence.

Privacy fences shall be constructed as follows:

1. Modified Texas stockade style 6 feet in height.
2. Materials of construction shall be western cedar, unstained, or salt treated pine and,
3. Posts and horizontal boards shall be located on the lot owner side of the fence

b. **SWIMMING POOL SECURITY FENCE**

Swimming pool security fences will be approved only for the purpose of providing a State/County required safety barrier around in ground swimming pools. (Note: Above ground swimming pools are not allowed in the Cove).

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

1. Fences which are located along the lot owners property line or,

2. Fences which enclose the immediate pool area only.
- (1) Property line pool fences will normally start at one rear corner of the house follow the lot line around the back yard and return to the other rear corner of the house. Fences shall at no time be closer to the front street than the rear of the house. For houses located on corner lots the side fence shall be no closer to the side street than the corresponding side of the house.

Approval of a property line pool fence will automatically bind the homeowner to allow adjacent lot owners the option to attach their approved fence to the applicant's fence.

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

#### Wooden Fence Requirement

1. Modified Texas stockade style four (4) feet in height, or alternating board on board four (4) feet in height.
2. Materials of construction shall be western red cedar unstained, or salt treated pine and,
3. Posts and horizontal boards shall be located on the lot owner side of the fence.

#### Wrought Iron Fence Requirements:

1. Fence construction shall be of vertical metal rods 1" or less in width and with a spacing between rods of 5" or less. Horizontal tie rods shall be located at the bottom and top of the fence only,
  2. Support posts for the fence shall be either metal or brick and,
  3. Wrought iron fences shall be four (4) feet in height.
- (2) 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. 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.

Since immediate pool enclosure fences are generally located well inside of the property lot and will not normally have to blend with neighbor's fences, considerably more latitude can be given in the selection of fence materials.

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 3.1 of this document.

#### c. GENERAL CONTAINMENT FENCE

General containment fences will normally start at one rear corner of the house, follow the lot line around the back yard and return to the other rear corner of the house. Fences shall at no time be closer to the front street than the rear of the house. For houses located on corner lots, the

side fence shall be no closer to the side street than the corresponding side of the house.

Approval of a containment fence will automatically bind the homeowner to allow adjacent lot owners the option to attach their approved fence to the applicant's fence.

General containment fences shall be constructed as follows:

1. Wooden split rail type with two or three rails,
2. Four (4) feet or less in height and,
3. Welded wire on inside - Optional.

d. **MAINTENANCE**

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.

4. **VEHICLES**

Sine the unregulated use of vehicles can destroy the appearance of a neighborhood the following restrictions will apply.

- 4.1 Overnight parking in the street will not be permitted except on an emergency basis.
- 4.2 No more than three 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, operable automobiles, mini-vans and pickup trucks not to exceed  $\frac{3}{4}$  ton in capacity.
- 4.3 Pickup trucks over  $\frac{3}{4}$  ton capacity, recreational vehicles and boats on trailers must be garaged. Recreational vehicles too large to garage and large vans may be stored behind the house on a parking apron with suitable screening to minimize unsightliness and with a total of one per family. The parking and screening must be approved by the MCEC. Trailers, buses and trucks over  $\frac{3}{4}$  ton capacity are not permitted.

\*\* Paragraph 4.3 was amended on 5/25/1989 to read as follows:

- 4.3 Pickup trucks over  $\frac{3}{4}$  ton capacity, recreational vehicles and boats on trailers must be garaged. Large vans may be stored behind the house on a parking apron with suitable screening to minimize unsightliness and with a total of one per family. The parking and screening must be approved by the MCEC. Trailers, buses and trucks over  $\frac{3}{4}$  ton are not permitted.
- 4.4 No major vehicle maintenance or overhaul of ungaraged vehicles will be permitted if unsightly and requiring more than two days.
- 4.5 Motorcycles, trail bikes, and mopeds may only be used for point to point transportation on established roadways and not for joyriding around the neighborhood.

5. **CONSTRUCTION**

- 5.1 Any residence must be completed within one year of start, including all necessary appurtenances and ground work to constitute a finished project.
- 5.2 Except for the use of temporary construction sheds or portable lavatories during the period of actual construction of improvements on the lot, no shed, shack, trailer, tent or other temporary or movable building or structure of any kind shall be erected on or permitted to remain on any residential lot.
- 5.3 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.
- 5.4 Construction vehicles must be parked on or at the building site and must not obstruct traffic.
- 5.5 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.
- 5.6 All information regarding water or sewer line availability, grinder pumps, depths, etc., must be obtained from the York County Department of Public Works.
- 5.7 Additional instructions for the builders are provided in Architectural Control Standards.
- 5.8 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.

## 6. MARLBANK COVE ASSOCIATION

- 6.1 All lot owners automatically will become members of the Association without initiation fee and subsequently shall pay reasonable dues and be subject to the rules and regulations of the Association, which will be established and published separately from these Covenants. The amount of dues, which will be applied primarily to maintaining Marlbank Cove recreational areas and facilities, will be initially established by the Declarant but subsequently by the Association upon its establishment. An owner does not have the right to refuse membership or to withdraw from membership in subsequent years. This rule and the assessments for dues may be enforceable by filing a lien on the lot of an owner.
- 6.2 This membership will carry with it the privileges of the Lookout Point Clubhouse and boating facilities.
- 6.3 Residents may also join the existing Marlbank Recreational Association and thus gain access to the swimming and tennis facilities of the sister organization.
- 6.4 It shall be the responsibility of the Association to insure that these foregoing conditions and restrictions are complied with and to take appropriate action against any individual who violates them. Such actions may include direct correction of the conditions, fines, or assessments to cover same, recovery of damages (including reasonable attorneys fees) and/or legal action. In all cases,

however, the first efforts will be to settle the matter amicably by common sense discussion and negotiation.

- 6.5 These covenants are to run with the land and shall be binding on all parties and persons claiming under them until January 1, 2015, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the owners of the lots has been recorded agreeing to change said covenants in whole or in part.

\*\* Paragraph 6.5 was amended 11/11/1988 as follows:

- 6.5 These covenants are the run with the land and shall be binding on all parties and persons claiming under them until January 1, 2015, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the owners of the lots of all four sections, taken as a whole and not as to individual sections, has been recorded agreeing to change said covenants in whole or in part.

- 6.6 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.

- 6.7 These Restrictive Covenants are subject to revision by Declarant during the remainder of 1987 as the project proceeds. It is expected that such revision will be minor and will not impact any ongoing construction or sales.

- 6.8 The MCEC 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.

- 6.9 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.