

DECLARATION

BOOK 393 PAGE 56

OF COVENANTS, CONDITIONS, AND RESTRICTIONS
OF MILL CREEK LANDING

THIS DECLARATION, made on the date hereinafter set forth by John Grier Construction Company, a Virginia corporation, hereinafter referred to as "Declarant."

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property in the County of James City, Virginia, State of Virginia, which is more particularly described on Schedule "A" which is attached hereto and made a part hereof.

NOW THEREFORE, Declarant hereby declares that all of the properties described in Schedule "A" shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and 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 thereof.

ARTICLE I

Section 1. "Association" shall mean and refer to Mill Creek Landing Homeowners Association, Inc., its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinafter described in Schedule "A" and Schedule "B" and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association is described in Schedule "B" which is attached hereto and made a part hereof. The Declarant shall have the option to retain title to the Common Area, but only until such time as all lots have been conveyed to Owners, at which time the Common Area must be conveyed to the Association or it may convey title at any time prior thereto.

Section 5. "Lot" shall mean and refer to any numbered plot of land shown upon any recorded subdivision map of the Properties, with the exception of the Common Area and any property which constitutes Mill Creek Pond.

Section 6. "Declarant" shall mean and refer to John Grier Construction Company, a Virginia corporation, its successors and assigns. It is expressly intended that the Association shall succeed to all the rights and responsibilities of the Declarant as contained in this Declaration, upon conveyance of the Common Area to the Association.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. 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 following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by at least 51% of each class of members has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, who shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised, as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to five (5) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) on December 31, 1992.

ARTICLE IV

ADMINISTRATION OF THE COMMON AREA AND COVENANTS

BY THE HOMEOWNERS ASSOCIATION

A nonprofit, nonstock Virginia corporation known as Mill Creek Landing Homeowners Association, will function as the Property Owners Association (the "Association"). The Association will administer the operation and management of the Common Area and shall have the power to perform all acts and duties incident to such administration in accordance with the terms of its Articles of Incorporation and its Bylaws which are filed with the Secretary of the Association. The Association shall have and is hereby granted the authority to enforce the provisions of this Declaration, the Articles of Incorporation and Bylaws and to enforce such rules and regulations governing the use of the Lots and all Common Areas of the Subdivision as the Board of Directors of the Association may determine.

The Board of Directors of the Association shall have, and is hereby granted, the authority and duty to levy and enforce the collection of general and special assessments for the common expenses of the Association.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Except for any Lot owned by the Declarant, the 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: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used: (a) to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area and the improvements thereon, the payment of all legal taxes and assessments for said Common Area, and all reasonable expenses related thereto.

The Association shall keep the Common Area, and all improvements therein or thereon, free of debris and in good order and repair, including, but not limited to the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery and the

maintenance of the roadways and parking lots thereon, if any, all in a manner and with such frequency as is consistent with good property management and so as not to detract from the overall quality of the Properties and the health and safety of the residents. It is specifically provided hereby that the Association shall be responsible for all regular and special maintenance for the Mill Creek Pond in accordance for impounding structures as promulgated from time to time by the State Water Control Board. Therefore, it is understood and agreed by all Owners, their successors and assigns, that the assessments provided for herein shall be kept at a reasonable and adequate level to accomplish the foregoing purposes at all times.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be ONE HUNDRED TWENTY DOLLARS (\$120.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the Common Area to the Association, the maximum annual assessment may be increased each year by the Board of Directors of the Association, not more than 50% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the Common Area to the Association, the maximum annual assessment may be increased above 50% by a vote of at least 51% of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at any amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including the dam for Mill Creek Pond, fixtures and personal property related to the Common Area, provided that any such assessment shall have the assent of 51% of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 and 4 shall be sent to all members not less than 20 days in advance of the meeting. At the

first such meeting called, the presence of members or of proxies entitled to cast fifty percent (50%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-third (1/3) of the required quorum at the preceding meeting. No such subsequent meeting shall be held less than 20 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots except those owned by the Declarant, on the first day of the month following the conveyance of the Common Area to the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge,

furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 12 percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay same, or foreclose the lien against the said property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VI

PLANNING CONTROLS

Section 1. Purpose. The Declarant and its assigns shall regulate the external design, appearance, use and location of all improvements on the Property in such a manner so as to preserve and enhance values, to maintain a harmonious relationship among structures and the natural vegetation and topography, to conserve existing natural amenities and ecologically sensitive areas.

Section 2. Conditions. No building or other improvement shall be erected, placed, or altered on any of said lots until construction plans and specifications for building or improvement have been submitted in writing and approved in writing by the Declarant, or its assigns, as to external design and materials, harmony of external design with existing structures, and as to location on the lot. No fence, wall, or any other exterior structure or device (such as outbuildings, antennae, satellite dishes) shall be erected, placed or altered on said lot unless similarly approved. If any such improvements are erected or placed on a lot without prior written approval, as aforesaid, then such improvements shall be removed forthwith upon written notice from the Declarant or its assigns.

Section 3. Temporary Structures. Except for the use of temporary construction sheds, trailers or portable lavatories during the period of actual construction of improvements on a lot, no shed, shack,

trailer, tent or any temporary or movable building or structure of any kind shall be erected on or permitted to remain on any residential Lot. Runs and housing for pets, exterior heating, ventilation, air conditioners and mechanical equipment, barbecue pits, jungle gyms, sand boxes, swings, sliding boards, playhouses, tree houses and other recreational equipment may be erected only if adequately screened from the street and adjacent lots, so as not to be visible therefrom. Above ground outdoor pools shall not be permitted under any circumstance.

Section 4. Substantially Similar Structures. Substantially similar duplications of exterior architectural design will not be permitted when both structures are visually within range of each other.

ARTICLE VII

CONSTRUCTION CONTROLS

Section 1. Single Family Residences. The aforesaid lots shall be used for no purpose except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any of said lots other than one detached private single family dwelling and its attendant outbuildings. Further, the use of a building for dwelling purposes shall be limited to a single family, as provided by the terms and provisions of any applicable zoning ordinance of the government in which the property is located.

Section 2. Minimum Dwelling Size. The floor area of the enclosed portion of the main structure on any Lot shall not be less than 1,800 square feet for a one story structure, or less than 2,200 square feet for any structure of more than one story, without prior written consent of the Declarant. A dwelling shall be deemed to be more than one story if the upper level has a floor area of more than eighty percent (80%) of the lower level. "Enclosed portion" shall mean that portion of the structure heated or otherwise temperature-controlled by the Occupant of the structure, but excluding basements, garages, porches, balconies and decks. Declarant in its sole discretion, may consent to a lesser floor area for the enclosed portion of the main structure if, in Declarant's sole opinion, the plans and specifications for the structure exceed the requirements of these covenants and restrictions and demonstrate excellence in design, engineering, materials, and/or energy efficiency.

Section 3. Completion of Structures. All structures must be substantially completed in accordance with the plans and specifications approved by the Developer within twelve (12) months after construction of the same shall have commenced, except that the Declarant may grant written extensions where such completion is made impossible because of matter beyond the control of the Owner or builder, such as strikes, casualty losses, national emergencies or acts of God. The building site must be kept clear of trash and other debris during the entire period of construction.

Section 4. Site Work.

(i) Each lot has building setback lines, as shown on the subdivision plats, which limit the lot area on which to construct a living unit, which setback lines must be observed in all particulars.

(ii) Slopes resulting from site grading which do not permit maintenance of a lawn, must be stabilized with other appropriate ground cover. All site grading must be done in a manner to avoid drainage of surface water onto adjoining lots, to the detriment of those lots, but in any event, natural drainage patterns must not be interrupted so as to impede the normal flow of surface water. Furthermore, all site grading must be done with an ecological concern for the natural preservation of Mill Creek Pond.

(iii) Retaining walls are subject to the prior written approval of the Declarant and will be permitted only if designed and constructed with approved brick, stone or wood.

(iv) All swimming pools must be screened from view so as not to be seen from the street.

(v) Implementation of site work must provide for necessary drainage pipes, and drainage ways, to insure stabilization and prevent future erosion. Appropriate erosion control, including but not limited to, straw bales, straw, matting, silt fences and seeding or sodding, must be used to prevent the washing of earth into drainage ways,

ravines, and Mill Creek Pond, during and after construction. Provisions must be made for existing drainage courses and structures. No existing drainage structures may be tapped or altered without the prior written approval of the Developer.

(vi) At the designated street entry to any Lot, a sufficient amount of gravel on a firm, well-drained sub-grade must be installed to prevent mud and other debris from being tracked on the street during construction.

(vii) Within six months of substantial completion of a dwelling on a lot, the owner shall pave the driveway from the street entrance to the house, using asphalt, concrete or brick, or cover the driveway with pea stone.

(viii) No Lot or portion thereof may be used as an access way or right of way for ingress and egress to any other lot, piece or parcel of land, without the prior written approval of the Declarant.

Section 5. Exterior Colors and Materials.

(i) Any surface material that tends to reflect light, such as mirrors and artificial ornamental devices, are prohibited on exterior surfaces.

(ii) Exterior materials of plastic, vinyl, aluminum, plywood, including such wood panels known as T-111, simulated brick or simulated stone are prohibited, except that vinyl siding may be used on the exterior of any dwelling above the first story of any dwelling unit.

Section 6. Roofing.

(i) All plumbing vents, fan exhausts, solar panels and any other roof equipment, whether necessary or unnecessary, must be on the rear slope of the roof, unless an architectural problem would require otherwise, in which case the prior written approval of the Declarant must be first obtained.

(ii) Flat roofs are prohibited.

(iii) Roofing materials exposed to view or on slopes shall be of permanent quality, such as wood shingles or shakes, slate, cement-asbestos, asphalt shingles, standing seam material, fiberglass shingles or exposes aluminum.

Section 7. Fences. Only wooden fences, not exceeding four feet in height, are allowed, but no fence shall be built in front of the plane created by the dwelling unit. Plywood, stockade, concrete, stone, chain-link, wire and other similar types of fences are prohibited.

ARTICLE VIII

PROTECTIVE COVENANTS

Section 1. Use Controls.

(a) Restriction on Further Subdivision. No Lots shall be further subdivided or separated into smaller lots by any Owner (other than Declarant), without the written consent of the Declarant, or its

assigns, and no portion less than all of any such Lot, shall be conveyed or transferred by an Owner (other than the Declarant), provided, however, that this shall not prohibit deeds of correction, deeds to resolve boundary line disputes, and similar corrective instruments.

(b) Nuisances. No nuisance, or anything obnoxious or harmful, shall be permitted to exist or operate upon any Lot so as to be detrimental to any other person or property in the vicinity thereof.

Section 2. Maintenance of Property. Each Owner shall keep all Lots owned by him, and all improvements thereon, free of debris and in good order and repair, including, but not limited to the seeding, watering, and mowing of all lawns, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management and so as not to detract from the overall beauty of the Property and the health and safety of the residents.

Section 3. Utility and Drainage Easements. The Declarant reserves unto itself, its successors and assigns, a perpetual, alienable easement and right of way:

(i) to construct, maintain, inspect, replace and repair electric and telephone wires, cables, conduits, sewer pipes, water mains, other

suitable equipment and facilities for the conveyance of water, sewer, gas, telephone, electricity, television cable communications or other utilities or public convenience on, over and under each Lot in such locations as may be designed for such purposes; and

(ii) for storm and surface water drainage, including the right to construct, maintain, inspect, replace and repair pipes, ditches, culverts and other suitable facilities for the disposition of storm and surface water drainage, on, over and under each Lot in such locations as may be designated for such purposes on the appropriate recorded plats of the subdivision.

The easements provided in Section 3(i) and (ii) shall include the right of ingress and egress and the right to cut any trees, brush and shrubbery, make any grading of soil, and take other similar action reasonably necessary to provide economical and safe utility installation and drainage facilities. The rights herein reserved may be exercised by any licensee of the Declarant, but shall not be deemed to impose any obligation upon the Declarant to provide or maintain any utility or drainage services.

In any event, all telephone, electric and other utility lines and connections between main utility lines and any and all structures on a Lot must be located underground.

Section 4. Household Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot. Generally recognized household pets in reasonable numbers, such as dogs and cats, may be kept and maintained at an occupant's residence, provided such pets are not kept or maintained for commercial purposes.

Section 5. Signs. No sign of any kind shall be displayed to the public view on any Lot except one sign of not more than four (4) square feet advertising the property for sale or rent, or signs used by a building contractor to advertise the property during the construction and sales period.

Section 6. Trash Receptacles. None of said lots shall be used or maintained as a dumping ground for rubbish. Trash, garbage and other waste shall be kept in sanitary and closed containers and screened from view from any street.

Section 7. Boats, Trailers, etc. Overnight parking or storage of boats, trailers and all vehicles other than licensed, operable private passenger vehicles shall be kept in garages or screened enclosures approved in writing by the Declarant. Except for emergency repair, no Owner shall repair or store or permit others to repair or store any vehicle, boat or trailer upon any portion of the Property except in garages or screened enclosures approved by the Declarant.

Section 8. Clothes Drying and Equipment. No clothesline or laundry drying area shall be situated upon any Lot.

Section 9. Trash Burning. Trash, leaves and other similar material shall not be burned without the consent of appropriate governmental authorities.

ARTICLE IX

MILL CREEK POND AND COMMON AREAS

Section 1. Use. It is intended that all owners of lots in Mill Creek Landing shall have the use and enjoyment of Mill Creek Pond and the Common Areas as shown on the subdivision plats. In order to provide for reasonable and orderly use thereof, the Declarant and/or the Association shall publish Rules and Regulations from time to time which shall be binding and which shall control the Owners' use and enjoyment thereof. The Declarant has established initial Rules and Regulations which are available to any interested party who makes written request therefor from the Declarant, its current real estate agent or the Secretary of the Association. These Rules and Regulations may be modified or amended by the Declarant during the time that it has a majority of the voting rights, as provided by Article III. Thereafter, the Association shall be free to make amendments or modifications to the Rules and Regulations by appropriate action of its Board of Directors.

HOWEVER, THE DECLARANT RESTRICTS ANY USE OF PIERS, DOCKS, WHARFS, WHETHER FIXED OR FLOATING, AND SIMILAR STRUCTURES FROM BEING CONSTRUCTED OVER OR ON ANY PORTION OF MILL CREEK POND EXCEPT IN THE COMMON AREAS WHERE THE ASSOCIATION SHALL HAVE COMPLETE AND EXCLUSIVE AUTHORITY AND CONTROL OVER SUCH PIERS, DOCKS, WHARFS AND SIMILAR STRUCTURES.

Section 2. Compliance with Governing Law. Each Owner shall comply with all local, State and Federal laws regulating in any way the use of the waters and the land which comprise Mill Creek Pond.

Section 3. Declarant's Notice of Danger. The Declarant hereby gives notice to all prospective Owners and those who become Owners of Lots in Mill Creek Landing, together with all of those persons who have the right of enjoyment of the Common Area, as set forth in Article II, Section 2, that there are both hidden and obvious dangers to anyone who goes near to or uses a body of water, such as Mill Creek Pond. The Declarant has provided this Lake for the aesthetic value, use and enjoyment of the Owners and their designated users. Unsupervised children are always in danger around water and the Declarant will not provide any security or guards to control those who approach near or upon the waters of the Pond. Therefore, all Owners are hereby notified and cautioned to approach Mill Creek Pond with the care and caution that is reasonable under all circumstances, and to see that all children under their control are given adequate warnings and instructions concerning approaching or using said Pond.

ARTICLE X

GENERAL PROVISIONS

Section 1. Enforcement. The Declarant, the Association, or any Owner, shall have the right to enforce, by any proceeding at law or in

equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Declarant, the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or Court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by the Declarant at any time prior to the conveyance of the Common Area, and thereafter by an instrument signed by not less than sixty-six and two-thirds percent (66 2/3%) of the Lot Owners. Any amendment must be recorded, and if made solely by the Declarant, a true copy must be mailed by first class mail to each lot owner of record.

Section 4. Various Section of Mill Creek Landing. Eight sections of Mill Creek Landing will be developed by the Declarant, containing a total of ninety-two (92) individual Lots. It is the intent of the Declarant to integrate all sections into the common plan of development

of Mill Creek Landing as approved by James City County and any other governmental authorities. Therefore, Mill Creek Landing Homeowners Association, Inc. shall serve as the single Association for all phases of Mill Creek Landing.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set it hand and seal this 15th day of MARCH, 1988.

JOHN GRIER CONSTRUCTION COMPANY

By Joseph S. Terrell
Joseph S. Terrell, Vice President

STATE OF VIRGINIA

CITY OF WILLIAMSBURG, to-wit:

The foregoing Declaration was acknowledged before me by Joseph S. Terrell, Vice President of John Grier Construction Company, a Virginia corporation, on behalf of said corporation, on this 15th day of MARCH, 1988.

My commission expires: 12-6-88

[Signature]
Notary Public