

# **Declaration**

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Mill Creek Harbor  
Homeowners Association

THIS DECLARATION, Made this 29 day of April, 2002:

WHEREAS, MILL CREEK HARBOR, LLC, a Virginia limited liability company, hereinafter referred to as "Developer", is the fee simple owner of that certain real estate located in the City of Chesapeake, State of Virginia, and is shown on that certain plat entitled "Subdivision of Mill Creek Harbor, Deep Creek Borough, Chesapeake, Virginia", which said plat is recorded in the Clerk's Office of the Circuit Court of the City of Chesapeake, Virginia in Map Book 143, at Pages 172, 172A-  
172I

WHEREAS, said Developer intends to develop said lots shown on the aforementioned plat according to a common scheme of development, and it is the purpose of this Declaration to declare and make known certain covenants, restrictions and reservations to which the said development and its subsequent lot owners may be subject.

NOW, THEREFORE, the said Developer does hereby declare and make known that the following covenants are to "run with the land" and be binding on all parties, legal entities and persons claiming under them, for a period of Thirty (30) years from the date of the recordation of these covenants, 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 then owners of the lots has been admitted to record, agreeing to change said covenants in whole or in part; except for the provisions outlined in paragraphs 27, 28, & 29 herein, which are irrevocable and shall run with the land as they relate to the City of Chesapeake approval of Mill Creek Harbor subdivision. Nevertheless, said Developer reserves unto itself the right to waive the enforcement of restrictions, covenants and reservations or to amend same; except for the provisions outlined in paragraphs 27, 28, & 29 herein, which are irrevocable and shall run with the land as they relate to the City of Chesapeake approval of Mill Creek Harbor subdivision. Enforcement of these covenants shall be by proceedings at law or in equity against any persons, parties or legal entities, violating or attempting to violate any covenants, either to restrain the persons violating or attempting to violate any covenants, or to recover damages therefore. It shall also be understood that it is the intention of these restrictive covenants to affect the entire tract of land comprising the subdivision irrespective of whether or not there is or is not a future resubdivision of any one or more of the tracts or lots as shown on the foregoing plat. The intention that the restrictive covenants shall thereafter affect any and all resubdivision of these lots, and that the easements shown on said subdivision plats of subdivisions shall be substituted for the easement shown on the aforesaid original plats as they may affect the lots being resubdivided, and the same substitution of lot lines shall become the new site lines. Invalidation of any of these covenants or conditions by court order shall in no way affect any of the other provisions which shall remain in full force and effect.

1. No lot shall be used except for residential purposes. No building shall  
Prepared by & Return to: Basnight, Kinper  
M&P: see attached

be erected, altered, placed or permitted to remain on any lot other than the one-detached single family dwelling of at least 1,800 sq. feet of heated living space for a one story and at least 2,000 sq. feet of heated living space for a two story, not to exceed two and one-half stories in height, and a private garage minimum 20X20 two car garage and not more than three cars. Dwelling to be constructed on crawl space foundation. However, it shall not be considered a violation of this restriction if any builder or developer maintains sample houses, warehouses, sales and administrative offices on any of the properties covered by these restrictions so long as such builder has properties for sale or is servicing properties under warranties within the boundaries of the tract known as "MILL CREEK HARBOR".

2. No building shall be located on any lot nearer than 25 feet to the front lot line, or nearer than 15 feet to any side street line, or nearer than 6 feet to an interior side lot line or as specified by applicable zoning ordinances. For the purpose of this covenant, eaves, steps and open porches shall not be considered as a part of the building, provided, however, that this shall not be construed to permit any portion of a building on one lot to encroach upon another lot. Construction of any building nearer to the lot than the footage specified herein shall not be construed as a violation of this restriction unless the variation be to a substantial degree.

3. Developer expressly reserves to itself, or its assigns, a five (5) foot easement (unless a greater width is noted on the recorded plat) along and adjacent to all side and rear lot lines as well as front lines of all lots for the installation and/or maintenance of drainage and utility facilities, including but not limited to, electric cables, poles, wires, fixtures, circuitry, etc., for electric and telephone service, and for the purpose of audio and video transmissions.

4. Developer reserves the right to lay and operate gas, water and sewer mains and to construct and operate telephone electric lines and cable or community television lines and circuitry in, on, over and under all streets and roadways shown as a part of "Mill Creek Harbour", on the recorded plat thereof, and to put the same to such other reasonable uses as may serve the comfort and convenience of the purchasers and owners of said lots or property of Developer.

5. Antennae. Subject to rules as may from time to time be adopted by the Association, exterior television, satellite dishes, or other antennae are prohibited, except as approved in writing by the Architectural Review Board. In the event the Architectural Review Board approves the installation of a satellite dish, only "mini" satellite dishes not exceeding one meter will be allowed.

6. All sewage emanating from any residence shall be disposed of by some system conforming to the law.

7. No noxious or offensive activity of any character shall be carried on

upon any of said lots, nor shall anything be done thereon which may reasonably be considered a nuisance.

8. No lot in this subdivision shall be subdivided so as to make more than one building lot out of same, but portions of a lot may be in violation of Restriction No. 2; nothing herein contained shall prevent the resubdivision of all or portions of the lands shown on said plats into lots of approximately the same or greater area.

9. No dwelling shall thereafter be placed, moved, altered or constructed on any lot to face any direction different from that in which the dwelling constructed by the original builder faces.

10. No building, fences, well or other structures, including trailers, tents, shacks, garages and barns shall be commenced, created or maintained on any lot, nor shall any addition to or material change or alteration thereon be made, nor change in the present grades of said lots be made until plans and specifications therefore have been approved by the Developer. In the event the Developer fails to approve or disapprove, within sixty (60) days after plans and specifications have been submitted to it in writing, approval will not be required and the related covenants shall be deemed to have been fully complied with. Thereafter said responsibility shall be assumed by the Homeowners' Association of the community at such time as the Developer deems appropriate. Thereafter, the Developer shall have no further or continuing responsibility in this regard.

11. No boats, campers or other recreational vehicles shall be parked or stored in front of the front house line (must be located in side or back yard) and must be appropriately screened from view from public streets and neighboring lots.

12. Fence restrictions - In order to retain the aesthetic qualities of the neighborhood, the following restrictions relating to fencing will be enforced:

- a) All fences shall be constructed of wood or vinyl, with no fencing allowed in any front yards, with the exception of temporary model homes maintained by the Developer or other builders.
- b) No fence shall be in excess of 6 feet and no chain link fences shall be allowed. Small dog kennel fencing may be allowed so long as it is properly screened and located away from neighboring properties and public right-of-ways.

Placement of fencing shall be as follows:

- a) On all lots other than corner lots, no fence shall be installed in front of the front lines of any house, and those fences in locations where fence

erection is permissible shall not be more than 6 feet in height.

- b) On all corner lots, no fence shall be installed in front of any front line of any house nor shall any fence be installed closer to the side street than the side set back line of 15 feet from the property line or approximately 25 feet from the street.

In any event, all fencing must be approved as outlined in Restriction No. 10.

13. No business shall be allowed upon the said numbered lots, except as provided in Restriction No. 1.

14. Any dwelling constructed on any of the said lots in this subdivision shall have brick, horizontal lap-board, vinyl siding, or stucco.

15. All storage buildings shall be constructed in a manner of like materials and colors as the primary residence. No metal buildings will be allowed. Approval must be obtained, as outlined in Restriction No. 10, prior to the commencement of any work.

16. No sign of any kind shall be displayed to the public view on any lot except one sign of not more than six (6) square feet advertising the property during the construction or sale period.

17. No outside stairway shall be permitted to the second floor.

18. No trees greater than 6" in diameter are to be cut down without the Developer's permission.

19. No public right-of-ways are to be used for recreational purposes, specifically basketball goals. Basketball goals may be temporarily placed in drive-ways in front of the dwelling, but they must be stored behind houses at the end of each day. Any permanent installation must be behind the rear house line.

20. Developer forbids blocking of natural drainage by any means and alteration to or building on any designated wetland area.

21. Developer reserves the right to allow variations from above restrictions at his sole discretion.

22. No repair of any vehicle or equipment other than owners personal vehicle on premises and that is to take place behind the rear line of house, in garage or other area screened from view from all adjacent properties.

*what or who after developer is gone*

23. No modular or mobile homes, definition of which shall be determined solely by Developer, shall be erected on any lot.

24. No animals, fowl, or swine shall be permitted upon any lot in the subdivision, save and except those customarily considered as household pets.

*from what point*

25. For all lots that abut the BMP drainage lakes as shown on the subdivision plat, fences, when approved, shall not be allowed to extend beyond a point five feet from the top of bank as shown on the subdivision plat. In no instance shall fences be allowed to extend into the lake. Further owner's of said lots shall maintain grass to edge of lake to a height of not less than six inches, so as to prevent erosion into said lake.

26. Subject to the provisions contained in the Articles of Incorporation hereinafter described, each Owner of a lot is entitled to, and shall automatically, become a Member (as defined in the Articles of Incorporation) of Mill Creek Harbor Homeowners Association, Inc., a nonstock nonprofit Virginia corporation (the "Association"), which Association is intended to own, control, maintain and operate certain Common Areas or Open Space shown on any subdivision plats of Mill Creek Harbor. Any Common Areas or Open Spaces that are required by any stipulations for approval of any Plats of Mill Creek Harbor by the City of Chesapeake cannot be conveyed by and must remain in the ownership and control of the Association in perpetuity. Any Open Spaces that contain any wetlands or frontage on any tidal areas, will include all "Riparian Rights" that would be associated with said "Open Space". Additional common areas may be added. As a member of the Association, each owner shall have the rights and obligations set forth in the Articles of Incorporation of the Association dated April 29, 2002. The Articles of Incorporation provides, among other things, in short as follows:

- (a) That every owner of a lot subject to assessment by the Declaration as heretofore or herein amended, shall automatically become a member of the Association;
- (b) That as a member of the Association, each owner of a lot will have an Easement of Enjoyment (as defined in the Articles of Incorporation) in, and to use, the Common Areas, if any, of the Association, subject to the reasonable rules, regulations and charges of the Association; and
- (c) That each owner shall be obligated to pay the reasonable and uniform and special assessments and charges of the Association therein provided. The annual and special assessments provided for in the Articles of Incorporation, together with interest, costs and reasonable attorney's fees, are intended to be a charge or lien upon each lot (as herein defined) and shall be a continuing lien upon

each lot, as well as the personal obligation of the owner of each lot at the time the assessment falls due. The personal obligation shall not pass to successors in title unless expressly assumed by them. Such assessments shall be subordinate to the lien of any first mortgage or first Deed of Trust on any lot. Any sale or transfer pursuant to foreclosure of any such first mortgage or first Deed of Trust shall extinguish assessment lien as to assessments made prior to such sale or transfer.

27. The Developer further Declares, that in complying with the City of Chesapeake's Zoning Ordinance under Section 13-1800 that the following provisions are Declared and are not subject to alteration as specified in the Ordinance, and shall run in perpetuity with the land so long as common open spaces are required as part of the stipulations for subdivision approval by the City of Chesapeake:

- (a) The City of Chesapeake is granted the authority to review all Financial and related records of the Association to ensure its continued solvency and capacity to maintain all common open space and common improvements.
- (b) The City of Chesapeake is granted the right of entry upon all common open space areas for city personnel, including but not limited to: law enforcement officers, rescue squad personnel and firefighting personnel in the performance of their duties; public utility and public works vehicles in the performance of their installation, maintenance and repair duties; and inspections personnel for the purpose of reviewing the Association's proper maintenance of the Common Open Space Areas.
- (c) The City of Chesapeake is granted the authority to:
  - (1) Repair or maintain common property upon a finding by the City that such property is not being maintained by the Association.
  - (2) Assess the cost of such maintenance and of all associated administrative costs on a pro rata basis against the properties within the development having a right to use such properties, which assessments shall become a charge on said properties and may be collected by the City as taxes and levies are collected.

28. The Owner or Owners of any Lot which contains a "Preservation Easement" as shown on the subdivision plat of Mill Creek Harbor duly recorded in the

Clerk's Office of the Circuit Court of the City of Chesapeake, Virginia in Map Book 143 at Page 172, shall comply with note # 17 on such plat which specifically provides that, "within the area designated as "50' Preservation Easement" being the entire area between the "50' RPA Buffer" and the "Limits of CBPA Wetlands", all trees (whether pre-existing or planted with this subdivision) shall be preserved. Diseased, dying or dead trees may be removed only upon the express prior consent of the City Arborist or his successor. Any tree that dies before January 1, 2005 shall be replaced with a large canopy tree approved by the City Arborist." This provision runs with the land and is irrevocable as it relates to the requirements of the City of Chesapeake Zoning Ordinance and the Chesapeake Bay Preservation Area Guidelines for the CBPA Overlay District. \*172A-172I.

29. The Owner or Owners of any lot that contains a Chesapeake Bay Preservation Area (CBPA) Buffer acknowledges that a CBPA exception has been granted by the City of Chesapeake for the construction of a single family residential structure within the limits of the 50-foot landward portion of the 100 foot CBPA buffer. Any accessory structures to be built in the Buffer area would require an additional exception from the City of Chesapeake, and would have to meet all guidelines for the Chesapeake Bay Preservation Area Overlay District established by the City of Chesapeake.

The aforesaid covenants are to run with the land and shall be binding on all parties and persons claiming under them.

IN WITNESS WHEREOF, MILL CREEK HARBOR, LLC., a Virginia corporation, has caused its presence to be signed.

MILL CREEK HARBOR, LLC,  
a Virginia corporation

By: WJ (SEAL)  
William J. Hearing, Manager

COMMONWEALTH OF VIRGINIA,  
CITY OF CHESAPEAKE, to-wit:

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of April, 2002, by William J. Hearing, Manager of Mill Creek Harbor, LLC, a Virginia limited liability company.

Pamela B Smedley  
Notary Public

My commission expires: March 31, 2003



EXHIBIT "A" continued

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INSTRUMENT #020024426  
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 CHESAPEAKE ON  
 JUNE 25, 2002 AT 11:37AM  
 LILLIE M. HART, CLERK

BY: *Valerie [Signature]* (DC)  
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