

*Hall & Vogler Bx*

NORTH CAROLINA     )

RESTRICTIVE COVENANTS

DAVIE COUNTY        )

MARCHMONT ACRES

KNOW ALL MEN BY THESE PRESENTS that Robert L. & Cathy A. Kofke, hereinafter called the developer is the owner of the lands that are fully described on Exhibit A, attached hereto and incorporated herein by reference as fully as though set out verbatim herein, and that are to be subdivided and platted of record into "MARCHMONT ACRES", that whereas the developer has established a general plan for the improvement and the development of the said property and in pursuance thereof has formulated and agreed upon the covenants, conditions, reservations, and restrictions upon which and subject to which all lots and portions of such lots shall be improved or sold and conveyed by it as owner, each and every one of these covenants, conditions, reservation, and restrictions being for the benefit of each owner of land in such subdivision, that is to say "MARCHMONT ACRES", or any interest therein, and each and every one of these covenants, conditions, reservations, and restrictions to pass with each and every parcel of such subdivision, to bind the respective successors in interest of the present owners thereof, and to run with the land.

NOW, THEREFORE, in consideration of the premises, the developer does declare and establish covenants, conditions, reservations and restrictions for "MARCHMONT ACRES" to be developed from the lands described in Exhibit A, in manner and form as follows:

I

For the purpose of further insuring the development of "MARCHMONT ACRES" as an area of high standards, the developer hereby reserves to itself such powers to control the buildings, structures, and other improvements placed on each lot and such powers to make such modifications in these covenants, conditions, reservations, and restrictions as are hereinafter expressed and implied. In addition, the developer hereby reserves to itself the power to appoint to some other person or persons, at such time or times as the developer may seem fit and proper, in its uncontrolled discretion, any one or all of the powers herein reserved to itself.

II

All lots shall be used for residential purposes exclusively.

No structure, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on any lot other than on (1) detached single-family dwelling and one small one or two story accessory building, which may include a detached private garage and/or barn provided that the use of such dwelling or accessory building does not overcrowd the site, and provided further that such building is not used for any activity reasonably considered a business. Such accessory building must blend in with the general appearance of the house and be approved by the developers.

No lot shall be subdivided, or its boundary lines changed, except with the written consent of the developer.

No private dwelling erected upon any lot shall be occupied in any manner while in the course of construction, nor at any time prior to its being fully completed. Nor shall any residence, when completed, be in any manner occupied until made to comply with the approved plans, the requirements herein, and all other covenants, conditions,

reservations, and restrictions herein set forth.

The exterior of all houses and other structures must be completed within one (1) year after the construction of the same shall have commenced, except where such completion is impossible or would result in great hardship to the owner or builder because of labor strikes or national emergency or acts of God.

All plans for the construction of private roads and driveways and all building plans for any building, aircraft hanger or tie down, fence, corral, wall, or structure to be erected upon any lot, and any changes after approval thereof, any remodeling, reconstruction, alteration, or addition to any building, road, driveway, or other structure upon any lot in such premises shall require the approval in writing of the developer. Before beginning the construction of any road, driveway, building, fence, wall coping, or other structure whatsoever, or remodeling, reconstruction, or altering such road, driveway, or structure upon any lot, the person or persons desiring to erect, construct, or modify the same shall submit to the developer two complete sets of road, or driveway plans, showing the locations, course, and width of the same or two complete sets of building plans and specifications for the building, fence, wall coping, or other structure, as is applicable, so desired to be erected, constructed, or modified. No structure of any kind the plans, elevations, and specifications of which have not received the written approval of the developer and which does not comply fully with such approved plans and specifications shall be erected, constructed, placed, or maintained upon any lot. Approval of such plans and specifications shall be evidenced by written endorsement on such plans and specifications, a copy of which shall be delivered, prior to the beginning of such construction, to the owner or owners of the lot upon which the prospective building, road, driveway or other structure is contemplated. No changes or deviations in or from such plans and specifications as approved shall be made without the prior written consent of the developer, which shall not be responsible for any structural defects in such plans or specifications or in any building or structure erected according to such plans and specifications. Refusal of approval of plans, location or specifications may be based by the developer upon any ground, including purely aesthetic judgment, which in the sole discretion of the developer shall seem sufficient. No plans will be approved unless the proposed dwelling will have the minimum required square footage, as hereinbelow specified.

Since the establishment of standard, inflexible building setback lines for location of dwellings on lots tends to force construction of dwellings both directly behind and directly to the side of other homes, with detrimental effects on privacy, view, preservation of important trees, and so on, no specific setback lines are established by these covenants. In order to assure however, that location of dwellings will be staggered, where practical and appropriate, so that the maximum amount of view will be available to each dwelling, that the dwellings will be best located with regard to the topography of each individual lot, taking into consideration the height of the hills, the location of large trees and similar considerations, there is reserved unto the developer, its successors and assigns, the right to control absolutely and solely, subject to Health Department requirements, the precise siting of any dwelling or other structure upon all lots; provided, however, that such location shall be determined only after reasonable opportunity is afforded the lot owner to recommend a specific site, and provided further, that in the event an agreed location is stipulated in writing in the contract of purchase, the developer shall approve automatically such location for a dwelling.

One story dwellings shall contain not less than 2,000 square feet of heated living space.

No trailer, tent, barn, tree house or other similar out-building or structure shall be placed on any lot at any time, either temporarily or permanently, unless approved by the developer.

No trucks and no commercial-type vehicles shall be stored or parked on any lot except while parked in a closed garage nor parked on any street in the subdivision except while engaged in transporting goods or person to or from a residence in the subdivision or except while being used to furnish commercial or construction or utilities services to a residence or to a lot in the subdivision. No trailers or habitable motor vehicles of any nature shall be kept or stored on any part of the property except within an enclosed garage or approved storage area. A pleasure boat on its trailer may be parked or stored on that portion of the lot away from the street lying beyond the front building line.

### III.

Each lot owner shall provide, prior to the occupancy of any dwelling constructed on the said lot, space for parking two automobiles off the street, in accordance with reasonable standards established by the developers. All driveways must be paved.

No cattle, swine, goats, poultry, sheep, or fowl shall be kept on any lot. Horses are allowed, equal in number to the immediate members of the family in residence. Livestock, type and number, may be kept in designated areas if approved in writing by the developer. No more than four pets of the customary household variety, (including birds) may be kept on any lot in the subdivision, except upon the express written permission of the developer; provided, however, that the provisions hereof shall not be deemed to permit the keeping of domestic fowl. No clotheslines or drying yard shall be permitted unless concealed by hedges, lattice work, or screening acceptable to the developer. Each lot owner shall provide receptacles for garbage in a screened area not generally visible from the road, or provide underground garbage receptacles or similar facility in accordance with reasonable standards established by the developer. No fuel tanks or similar storage receptacles may be exposed to view. No weeds, underbrush or other unsightly growth shall be permitted to grow or remain upon the premises, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. In the event that any owner of any property in the subdivision shall fail or refuse to keep such premises free from weeds, underbrush, or refuse piles or other unsightly growths or objects, then the developer may enter upon such lands and remove the same at the expense of the owner and such entry shall not be deemed a trespass and in the event of such a removal a lien shall arise and be created in favor of the developer and against such lot for the full amount chargeable to such lot and such amount shall be due and payable within 30 days after the owner is billed therefore.

No boundary wall shall be constructed with a height of more than four feet and no boundary-line hedge of shrubbery shall be permitted with a height of more than four feet. No wall of any height shall be constructed on any lot until after the height, type, design, and approximate location thereof shall have been approved in writing by the developer. The heights and elevations of the property at or along the applicable points or lines. Any question as to such heights may be completely determined by the developer.

No commercial signs, including, but not limited to, "for rent", "for sale", and other similar signs, shall be erected or maintained on any lot except with the written



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permission of the developer or except as may be required by legal proceedings it being understood that the developer will not grant permission for the said signs unless their erection is reasonably necessary to avert serious hardship to the property owner. If such permission is granted, there is reserved to the developer the right to restrict size, the color, and the content of such signs. Property identification and like signs exceeding a combines total two (2) square feet may not be erected without the written permission of the developer.

No lot will be "clear cut" and maximum effort will be maintained to retain all trees in excess of 10".

There is reserved unto the developer, its successors and assigns a perpetual, alienable, and releaseable easement and right on, over, and under the ground to erect, maintain, and use electric and telephone poles, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities on, in or over the rear ten (10) feet along one (1) side of each lot and such areas as are shown on the applicable plat; provided, further, that developer may cut drainways for surface water wherever and whenever such action may appear to the developer to be necessary to maintain reasonable standards of health, safety, and appearance. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. Such rights may be exercised by any licensee of the developer, but this reservation shall not be considered an obligation of the developer to provide or to maintain any such utility or service.

Prior to the occupancy of a residence on any lot, proper and suitable provision shall be made for the disposal of sewage by connection with sewer mains of Davie County, or, if no such main has been constructed in the vicinity of such lot, then such disposal shall be made by means of a septic tank or tanks constructed on such lot for the disposal of all sewage shall be emptied or discharged into such main or tanks. No sewage shall be emptied or discharged into any creek or lake. No sewage-disposal system shall be permitted on any lot, nor may any sewage disposal system be used unless such system is designed, located, constructed, and maintained in accordance with the requirements, standards, and recommendations of the appropriate public-health authority. Approval of such system shall be obtained from such authority after the completion of the said system and prior to the use of the system.

All of the foregoing covenants, conditions, reservations, and restrictions shall, unless theretofore modified by the developer, as hereinafter provided, continue and remain in full force and effect at all times as against the owner of any lot in Marchmont Acres regardless of how he acquired title, until the commencement of the calendar year 2000, on which date these covenants, conditions, reservations and restrictions shall terminate and end, and thereafter be of no further legal or equitable effect on such premises or any owner thereof; provided, however, these covenants, conditions, reservations and restrictions shall be automatically extended for a period of ten (10) years, and thereafter in successive ten-year periods, unless on or before the end of one of such extension periods or the base period the owners of a majority of the lots in Marchmont Acres shall be written instrument duly recorded in the Davie County Registry declare a termination of the same.

It is expressly understood and agreed that the several covenants, conditions, reservations, and restrictions herein shall attach to and run with the land and it shall



be lawful not only for the developer, its successors and assigns, but also for the owner or owners of any lot or lots in "Marchmont Acres" to institute and prosecute any proceedings at law or in equity against the person or persons violating or threatening to violate the same. Should the developer employ counsel to enforce any of the foregoing covenants or conditions or reservations or restrictions, all costs incurred in such enforcement, including a reasonable fee for counsel, shall be paid by the owner of such lot or lots and the developer shall have a lien upon such lot or lots to secure payment of all such accounts.

Provided, that the breach of any of the foregoing covenants or conditions or reservations or restrictions, shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value as to any lot or lots or portions of lots in such premises, but these covenants, conditions, reservations, and restrictions shall be binding upon and effective against any such mortgagee or trustee or owner thereof, whose title thereto or whose grantor's title is or was acquired by foreclosures, trustee's sale, or otherwise.

Provided, further, that no delay or omission on the part of the developer or the owners of other lots in "Marchmont Acres" in exercising any rights or power or remedy here in provided, in the event of any breach of covenants, conditions, reservations, or restrictions herein contained, shall be construed as a waiver thereof or acquiescence therein, and no right of action shall accrue nor shall any action be brought or maintained by anyone whosoever against the developer for or on account of its failure to bring any action on account of any breach of these covenants, conditions, reservations, or restrictions, or for imposing restrictions herein which may be unenforceable by the developer or the owner or owners of any lot or lots in "Marchmont Acres".

Provided, further, that in the event any one or more of the foregoing covenants, conditions, reservations, and restrictions shall be declared for any reason, by a court of competent jurisdiction, to be null and void, such judgment or decree shall not in any manner whatsoever affect, modify, change, abrogate, or nullify any of the covenants, conditions, reservations, and restrictions not so declared to be void, but all of the remaining covenants, conditions, reservations, and restrictions not so expressly held to be void shall continue unimpaired and in full force and effect.

Provided, further, that in the event the provisions hereunder are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then in that event such terms shall be reduced to a period of time which shall not violate the Rule against Perpetuities under the laws of North Carolina.

Any or all of the foregoing conditions and restrictions may be removed or modified or changed by the written consent of the developer, which written consent shall be duly executed, acknowledged, and recorded in the Davis County Registry, and which written consent may be given or withheld within the discretion of the developer as it may deem best in the interest of the development and the maintenance of the "Marchmont Acres", according to the overall plan for which development and maintenance are herein evidenced and detailed.

IN WITNESS WHEREOF, the developer has signed and sealed these presents, through all of its general partners, on this the 11<sup>th</sup> day of July, 1986.

Marchmont Acres

By: Robert L. Kofke (SEAL)  
Robert L. Kofke, Developer

Cathy A. Kofke (SEAL)  
By: Cathy A. Kofke, Developer

STATE OF NORTH CAROLINA

COUNTY OF DAVIE

I, Sylvia E. LAGLE, a Notary Public of the County and State aforesaid, certify that Robert L. Kofke and Cathy A. Kofke, developers of Marchmont Acres, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

1986.

Witness my hand and notarial seal this 11<sup>th</sup> day of July,

My Commission expires: 6-24-88

Sylvia E. Lagle



OFFICIAL SEAL  
Notary Public - Davie Co. N. C.  
SYLVIA E. LAGLE  
My Commission Expires 6-24-88

NORTH CAROLINA

DAVIE COUNTY

The foregoing certificate of Sylvia E. Lagle  
Notary Public of Davie Co. is certified to be correct.

Filed for registration on the 11 day of July  
1986, at 2:40 P.M. and recorded in Deed Book 132, page 334.

J. K. Smith  
Register of Deeds