

FILED
CLERK OF CIRCUIT COURT
KENT COUNTY

2007 MAR 8 AM 8 57

LIBER 0512 FOLIO 024

DECLARATION OF RESTRICTIONS
MONTABELLO HILLS II

THIS DECLARATION, made this 7th day of March, 2007, by Coopers Lane, LLC, a Maryland Limited Liability Company, hereinafter referred to as "Developer".

WHEREAS, Developer is the owner of Montabello Hills II Subdivision, as shown on a Plat Entitled "Final Subdivision Plat of Montabello Hills II, Third Election District, Kent County, Maryland," and recorded among the Land Records for Kent County, Maryland in Plat Book MLM No. 3, folios 663A and 663B; and

WHEREAS, Montabello Hills II (the "Property") was conveyed to Developer by Partners II of Montabello, LLC, by deeds dated September 14, 2004, and recorded among the Land Records of Kent County, Maryland, in Liber M.L.M. No. 436, folio 342, and M.L.M. No. 436, folio 346, which property consists of lots, roads and open space; and

WHEREAS, the Property and the Lots are subject to a Declaration of Restrictions (the "Revoked Restrictions") dated October 13, 2004, and recorded among the Land Records of Kent County, Maryland in Liber M.L.M. No. 412, folio 224, which Developer desires to waive, revoke and terminate hereby; and

WHEREAS, Article VII of the Revoked Restrictions provides that they may be waived, abandoned and terminated, modified, altered or changed with the written consent of the owners of seventy-five percent of the total area of the lots in Montabello Hills II, and that Article II, Article III-A and Article V may not be modified without the consent of the Kent County Planning Commission; and

WHEREAS, the Developer owns all of the lots in Montabello Hills II, and the rights of Partners II of Montabello, L.L.C. under the Revoked Restrictions were assigned to the Developer by Assignment of Rights dated September 14, 2004, and recorded among the Land Records of Kent County, Maryland, in Liber M.L.M. No. 436, folio 342, and M.L.M. No. 436, folio 350; and

WHEREAS, Articles II, III-A and V are not modified, so the consent of the Kent County Planning Commission need not be obtained (Article II of the Revoked Restrictions is set forth herein as Article VI; Article III-A of Revoked Restrictions is set forth herein as Article VIII; Article V of Revoked Restrictions is set forth herein as Article IX).

These Articles are underlined

INVESTMENT \$ 20.00
RECORDING FEE 75.00
TOTAL 95.00
Rest # K101 Rcpt # 77057
Mar 08, 2007 Rk # 249
08:59 am

RETURN TO: Rasin & Wootton
P.O. Box 228
Chestertown, MD 21620

NOW, THEREFORE, Developer hereby declares (1) that the Revoked Restrictions are hereby waived, terminated, and revoked and shall hereafter be null, void and of no further force or effect and (2) that the Lots 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 such lots, and which shall run with the real property and be binding on all parties having any right, title or interest in the described Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof and Developer.

ARTICLE I DEFINITIONS

Section 1. "Association" shall mean and refer to Montabello Hills II Homeowners' Association, Inc., an unincorporated association, 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, including contract sellers, but excluding those having such interest merely as a security for the performance of an obligation.

Section 3. "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 Areas to be owned by the Association at the time of the conveyance of the first lot are those areas shown as "Open Space 34.652 Ac±" on the Plat.

Section 4. "Lot" shall mean and refer to any numbered plot of land shown upon the Plat or amendment or supplement thereof, exclusive of any Common Area, Open Space and road bed.

Section 5. "Property" shall mean and refer to that certain real property hereinabove described.

Section 6. "Declarant" shall mean and refer to Cooper's Lane, LLC, its heirs, personal representatives, successors and assigns, if such successors or assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development.

Section 7. "Plat" shall mean that plat entitled "Final Subdivision Plat of

Montabello Hills II, Third Election District, Kent County, Maryland", and recorded among the Land Records for Kent County, Maryland in Plat Book MLM No. 3, folios 663A and 663B.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Cannot Change
All of the Lots shown on the Plat, shall be transferred, held, sold, conveyed and occupied subject to this Declaration, and no other lands shall be affected by this Declaration of Restrictions.

ARTICLE III

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:

- Cannot Change*
- (a) the right of the Association to charge reasonable fees for routine maintenance, such as mowing and trimming trees and shrubs and other fees for the use and maintenance of any recreational facility situated upon the Common Area;
 - (b) the right of the Association to suspend the voting rights and/or the right to use of any recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid;
 - (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 two-thirds (2/3) of each class of members has been recorded;
 - (d) the right of the association to use the Common Area for productive farming and/or forestry operations;
 - (e) the right of the association to construct accessory buildings for the aforesaid purposes, provided, however, the Common Area may not be subdivided nor may buildings be constructed for residential, commercial or industrial purposes.

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 such Owner's Lot.

ARTICLE IV 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, and 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 shall be the Declarant and shall be entitled to three (3) 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 Class A membership equal the total votes outstanding in Class B membership, or
- (b) on January 1, 2015.

*Coopers have LLC gets 3 votes
Per Lot Right Now*

ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot, hereby covenants, and 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: (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, upon compliance with the Maryland Contract Lien Act or any similar act enacted by the State of Maryland, 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 his successors in title

unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to: (1) promote the recreation, health, safety, and welfare of the residents on the Lots; and (2) for the improvement and maintenance of the Common Area, including specifically all landscaping, afforestation, and reforestation which the Developer shall incorporate in the Open Space.

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

(a) From and after January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 5% by a vote of two-thirds (2/3) 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 an 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 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 fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) 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 Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) 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-half (1/2) of the required

quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 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 shall be collected on an annual basis.

Section 7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area to the Association; provided, however, that no assessment shall be due or payable by the Declarant for any year or any portion of any year during which the Declarant owns any Lot. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year and shall be paid thereafter on or before January 15 for each 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 adjusted 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 10 percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the 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 become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability of any assessments thereafter becoming due or from the lien thereof.

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ARTICLE VI
APPROVAL OF PLANS

No building, fence, wall, driveway, underground tank (except heating fuel tank) septic systems or other structure whatsoever, and no subsequent remodeling or a addition thereto, shall be commenced, erected, maintained or altered upon such land until the plans and specifications showing the nature, kind, object, height and other dimensions, shape, materials, exterior color scheme and location of such structure shall have been submitted to an approved in writing by the Developer or their nominee designated by them to exercise their powers hereunder.

No trees shall be removed, it being the intent of the Developers to preserve the park-like nature of the area and to preserve the existing aesthetic and scenic qualities throughout the neighborhood. Pine trees at the rear of a lot may not be removed or destroyed. They may be thinned by transplanting to another location on the same lot. Trees along Cooper's Lane on Lots 34, 35, 36, 37, 39 and 40 are planted pursuant to binding agreement with Kent County Department of Planning and Zoning and may not be removed, except in cases of storm damage or blight, and must be replaced by trees of the same species and number pursuant to the Site and Planting Details contained in the Site Plan at L.2.3 as recorded among the Land Records as aforementioned. Maintenance of these trees, as well as clearing brush and weeds from the planted area, will be the responsibility of the lot owner after settlement.

In the event said Declarant, or its designated assignee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. Architectural approval shall be deemed to have been given for any building, fence, wall or other structure erected or for any exterior addition, change or alteration thereto, if it has been maintained upon the Property for three (3) years without any written objection for the same having been made within such three (3) years to the Owner of the Lot on which the improvement was erected.

Approval of plans and specifications by the Declaration is in addition to any approvals required by Kent County or any other governmental agency. All governmental rules, regulations and codes must be adhered to.

ARTICLE VII
USE OF THE LAND

Section 1. Residential use. The Lots shall be used for private residential purposes only, and no building of any kind whatsoever shall be erected or maintained thereon except (a) private dwelling houses, and (b) private garages for the sole use of

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the respective Owners or occupants of the lots upon which such garages are erected, and (c) such outbuildings as are customarily appurtenant to residences, including but not limited to, swimming pools and structures accessory thereto.

The following restrictions shall apply to all residences constructed on a Lot:

1. Each residence shall contain a minimum of 2,000 square feet of floor space for a one-story house, and 2,500 square feet of floor space for a two-story house, exclusive of garages, breezeways or porches.
2. The dwelling must have multiple roof lines.

***Section 2. No trade or business.** No trade or business of any kind or character, nor the practice of any profession, nor any building designed or intended for use for any purpose connected with any trade, business or professions shall be erected, permitted, maintained, conducted, or operated upon any land included within the aforementioned tract, except "Home occupations" as defined in the Kent County Zoning Ordinance, as amended from time to time, which shall be permitted. No signs connected with the aforementioned home occupations will be permitted.

* Cannot
sell Eggs,
Milk,
Meat, etc
From
Backyard
Animals
←

Section 3. Trash; weeds. All lots shall be maintained free from trash, weeds, undergrowth, discarded vehicles and equipment. Declarant or its nominee or assignee reserve the right to enter upon any lot and remove trash, abandoned vehicles and equipment and to cut grass, weeds and undergrowth at the Lot Owner's expense. All trash and refuse shall be kept in a clean and sanitary condition and shall be so maintained as to keep such items from animals and public view.

Section 4. Nuisance. No nuisance shall be permitted or maintained upon any of Lot or Common Area.

ARTICLE VIII LANDSCAPING

Maintenance of all landscaping provided by the Developer, except that located on lots conveyed out, and maintenance of the designated "open space" shall be the obligation of the Developer until such time as the Homeowners' Association is formed and the obligation is assigned to that Association and accepted by it. Trees in the planted buffer area shall be maintained as set forth in Article VI hereinabove.

**ARTICLE IX
EASEMENTS RESERVED**

Easements and rights of way are hereby expressly reserved in, on, under and over a strip ten (10) feet wide inside the perimeter of each lot or parcel hereafter conveyed by the Developer. In addition, certain other easements are shown on the aforementioned Plat are also hereby reserved. Such easements and rights of way are for the following purposes:

For the erection, construction and maintenance of wires and conduits, including underground installations and the necessary or proper attachments in connection therewith for the transmission of electricity and for telephone and other purposes.

For the construction and maintenance of stormwater drains, land drains, public and private sewers, pipelines for supplying gas, water and heat, and for any other public or quasi-public utility or function conducted, maintained or furnished or performed in any manner or by any method beneath the surface of the ground.

All persons lawfully authorized by the Developers shall have the right to enter upon said reserved areas of land for any of the purposes for which said easements and rights of way are reserved.

**ARTICLE X
COMPLIANCE WITH REGULATIONS**

All construction, building, electrical and planning work must be performed in accordance with BOCA code, whether or not such code is imposed by Kent County. All construction shall comply with pertinent Federal State and local statutes, ordinances and regulations, including Kent County Zoning regulations. All construction of the approved plan shall be completed within one year of commencement.

**ARTICLE XI
USE OF ROADWAYS AND PATHS**

The Declarant hereby gives and grants to the Owner of any lot or parcel hereafter conveyed by the Declarant, an easement to use the roads on the Plat in common with others. The Declarant hereby reserves to itself, its successors and assigns, fee simple title to the beds of all roads shown on the Plat, and the right to convey said roadways to Kent County.

**ARTICLE XII
GENERAL PROVISIONS**

Section 1. Enforcement. 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 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.

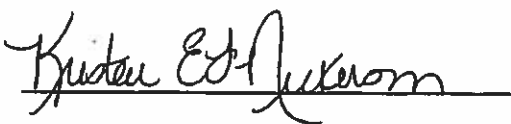
Section 2. Severability. Invalidity of any one of these covenants or restrictions by judgment or court order shall no wise affect any other provisions which shall remain in full force and effect.

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. The covenants, agreements, conditions, reservations, restrictions and charges created and established herein may be waived, abandoned and terminated, modified, altered or changed with the written consent of the owners of seventy-five percent of the total area of the lots in Montabello Hills II. Article VI, Article VIII and Article X may not be modified without the consent of the Kent County Planning Commission. No such waiver or abandonment, termination, modification, or alteration shall become effective until a proper instrument in writing shall be executed and recorded among the Land Records for Kent County, Maryland. This Article shall have no application so long as the Developer evidences its consent to such waiver, abandonment, termination, modification or alteration by joining in the execution of such instrument in writing.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 7th day of March, 2007.

WITNESS:

Cooper's Lane, LLC



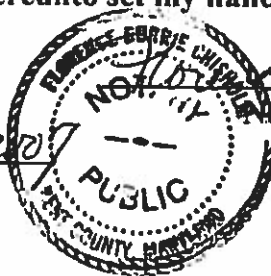
By:  [SEAL]
Albert H. Nickerson, member

LIBER 0512 FOLIO 034
STATE OF MARYLAND, COUNTY OF Kent, to wit:

I HEREBY CERTIFY, that on this 7th day of March, 2007, before me, a Notary Public of the State of Maryland, personally appeared Albert H. Nickerson, known or satisfactorily proven to me to be the person whose named is subscribed to the within instrument and acknowledged himself to be the a member of Cooper's Lane, LLC, and that he, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My commission expires: July 1, 2007



Florence Berrie Chisholm
Notary Public

3-8-07 THE FOREGOING DECLAR FILED
FOR RECORD AND IS ACCORDINGLY RECORDED AMONG
THE LAND RECORDS OF KENT COUNTY, MARYLAND, IN
LIBER MLM NO. 512 FOLIOS 24-34
Mark L. Hamford CLERK