

STATE OF ALABAMA)
COUNTY OF SHELBY)

**DECLARATION OF EASEMENTS AND RESTRICTIVE COVENANTS
FOR LAKE USE FOR HIGH CHAPARRAL SECTOR B**

THIS DECLARATION OF RESTRICTIVE COVENANTS FOR LAKE USE FOR HIGH CHAPARRAL SECTOR B (the "Declaration") is hereby made and declared this 20th day of October, 1992, by **CHELSEA PROPERTIES, INC.** (formerly known as Cloud & Estes, Inc.), an Alabama corporation ("Developer") for the mutual benefit of the owners of lots 48-A, 49-A, 50-A, 51-A, 52-A, 53-A, 54-A, 55-A, 56-A and 57-A (the "Lots") according to the Resubdivision of Lots 48-57 of High Chaparral Sector B and Acreage, as recorded in Map Book 16, Page 69, in the Probate Office of Shelby County, Alabama (the "Resubdivision").

WHEREAS, Developer is the fee simple owner of the Lots; and

WHEREAS, each of the Lots includes within its boundaries a portion of a certain lake (the "Lake"), and the present and future owners of the Lots are and will be the owners of that portion of the Lake which borders and forms a part of each such owner's Lot as shown in the Resubdivision; and

WHEREAS, the Developer is also the fee simple owner of (i) that portion of the Lake not included in the Lots and (ii) that property lying south of and contiguous to the Lake, such property being more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "Acreage"); and

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WHEREAS, the Developer desires to create certain easements, covenants and restrictions regarding the use and maintenance of the Lake by the present and future owners of the Lots and the Acreage;

NOW THEREFORE, the Developer declares that the Lots and the Acreage are hereby owned and held, and shall continue to be owned and held, for the benefit of all present and future owners of the Lots and the Acreage (the "Owners") subject to and in compliance with the following terms, conditions, provisions and restrictions:

1. Erosion Control. The Owners shall construct and maintain, or cause to be constructed and maintained, during such times as any dwelling or other structure is being constructed on any Lot or any portion of the Acreage, a silt fence or barrier across the width of said Lot or across a sufficient portion of the Acreage to protect the Lake from soil erosion and silt. Such fence or barrier shall be constructed prior to the commencement of any construction, including clearing or grading, and shall remain in place until such time as the ground has settled from any construction disturbance which may cause mud, silt and debris to be dispersed into the Lake.

2. Pesticides and Other Chemicals. The Owners shall not use or suffer the use of any pesticides or other toxic, hazardous or harmful chemicals for any purpose whatsoever within twenty (20) feet of the Lake. Any such chemicals used or applied more than twenty (20) feet from the Lake shall be so used or applied as to prevent the spread or dissemination of such chemicals to the Lake.

3. Piers. No boat houses, storage facilities or other similar structures shall be constructed on the Lots or the Acreage. No pier or dock leading to or into the Lake shall be constructed on any of the Lots or the Acreage unless the same is constructed in accordance with the following criteria:

- (a) Any such structure shall not extend beyond twelve (12) feet from the Lake bank.
- (b) The highest point permitted for the floor of such structure shall be two (2) feet above the average water level of the Lake (as determined by a majority of the Owners).
- (c) Only one (1) dock or pier per Lot shall be permitted.

4. Boats and Other Machinery. Under no circumstances shall the following be permitted access to the Lake:

- (a) boats in excess of 12 feet;
- (b) sailboats of any size;
- (c) boats or other machinery operated by means of gasoline powered motors; or
- (d) boats or other machinery travelling at speeds in excess of 15 miles per hour.

Only boats or machinery operated by means of oars or paddles or by electric trolling motors shall be permitted in the Lake.

5. Horses. Any horses kept on the Lots or on the Acreage shall be maintained within a fence which shall be constructed no

closer than 50 feet to the Lake. Horses shall at no time be permitted in the Lake.

6. Maintenance of Lake.

(a) Each Owner shall be responsible for the maintenance and upkeep of that portion of the bank of the Lake which is included in such Owner's property. The bank of the Lake shall be maintained in a reasonable manner at the sole cost and expense of the Owner who owns such portion of the Lake bank. Such general maintenance shall include, at a minimum, mowing grass, trimming hedges and shrubbery, cutting weeds and removing all trash. No Owner, family member or guest shall permit trash or debris to be placed or to remain in the Lake or along the Lake bank, nor shall any Owner permit sewage or other waste to be discharged into the Lake.

(b) Each Owner shall be responsible for his or her proportionate share (as defined hereinbelow) of the cost of construction, repair or maintenance of the dam for the Lake. In the event that any Owner determines that the dam is in need of repair, such Owner shall obtain an estimate of the cost of such repair and shall present the estimate in writing, along with notice of the repairs to be made, to the other Owners. All Owners, within ten (10) days following receipt of the estimate and notice, shall send written notice of his or her approval or disapproval of the repairs to the Owner who obtained the estimate. If a majority of the Owners approve the repairs, the Owner who obtained the estimate shall authorize and direct such repairs to be made, and each Owner, regardless of whether he or she approved such repairs, shall pay

his or her proportionate share of maintenance costs thereof immediately upon receipt of an invoice therefor. The Owners of the Lots shall be equally responsible for seventy percent (70%) of any such costs, e.g., each individual Lot Owner's proportionate share shall be that amount which equals 70% of the cost of repairs divided by the total number of Lots. The Owners of the Acreage shall be jointly and severally liable for thirty percent (30%) of any such costs unless and until the Owners of the Acreage enter into a covenant or covenants for the sharing of such costs and record such covenants with the Probate Office of Shelby County, Alabama.

7. Easements.

(a) The Developer does hereby proclaim, publish, declare and covenant for itself, its successors and assigns, that the present and future Owners of the Lots and the Acreage, their respective family members, guests, agents and licensees, shall have the nonexclusive right, privilege, license and easement to use all or any portion of the Lake for the purpose of engaging in recreational activities, including fishing and boating, in accordance with the restrictions contained herein (the "Lake Easement"). The Lake Easement declared in this paragraph 7(a) shall not extend to the banks of the Lake or any grounds included in the Lots or the Acreage.

(b) Developer does hereby proclaim, publish and declare an easement in, over and across Lots 55-A, 56-A and 57-A for the benefit of all Owners as may be necessary to access the dam for the

Lake for the sole purpose of construction, maintenance and repair thereof in accordance with the provisions of paragraph 6(b) above (the "Dam Easement"). Any damage to such lots resulting from the use of the Dam Easement granted in this subparagraph (b) shall be repaired at the cost and expense of all Owners proportionately in the manner provided in paragraph 6(b) hereof.

(c) The Developer does hereby proclaim, publish, declare and covenant for itself, its successors and assigns, for the benefit of all present and future owners of Lot 57-A, their family members, guests, agents and licensees, an easement over and across Lots 55-A and 56-A for the purposes of: (i) ingress and egress; and (ii) installation, maintenance and repair of utilities (the "57-A Access"); provided, however, that such easement shall extend only over such area of Lots 55-A and 56-A as described on Exhibit B attached hereto and as designated on the Resubdivision. In connection with the use of the 57-A Access, the present and future owners of Lot 57-A shall have the right to construct, improve and maintain a roadway of up to twenty feet in width over and across Lots 55-A and 56-A within the area designated for the 57-A Access. All costs of maintaining such roadway will be borne exclusively by the present and future owners of Lot 57-A; provided, however, that any present or future owner of Lot 57-A shall not construct any gate or other obstacle across or beside such roadway or on any portion of the 57-A Access. The Developer hereby reserves for itself, and for all present and future owners of Lots 55-A and 56-A the right to cross and otherwise use that portion of the 57-

Access, including the roadway, as may be situated on such respective lots, for ingress and egress to and from the Lake, and for any other purpose; provided, however, that the present and future owners of Lots 55-A and 56-A shall not construct any gate, fence or other obstacle or otherwise interfere with the 57-A Access, and provided further, that no boats or other vehicles shall be permitted to block said roadway within the 57-A Access.

8. Term of Restrictions.

(a) The restrictions and covenants contained herein shall run with the land and shall be binding upon all persons or entities claiming an interest in the Lots or the Acreage until such time as a majority in interest of the Owners shall elect to terminate these restrictions by executing and recording an instrument to such effect in the Shelby County Probate Office.

(b) The easements declared pursuant to paragraph 7 hereof shall run with the land and shall be binding upon all persons or entities claiming an interest in the Lots or the Acreage; provided, however, that notwithstanding anything to the contrary contained herein:

(i) the Lake Easement and the Dam Easement may be terminated or amended at such time as all the Owners of the Lots and the Acreage consent to such termination or amendment and execute and file for record in the Probate Office of Shelby County, Alabama an instrument to such effect; and

(ii) the 57-A Access may be terminated and amended only at such time as the Owner of Lot 57-A shall consent to such

termination or amendment and shall execute and file for record in the Probate Office of Shelby County, Alabama an instrument to such effect.

9. Enforcement. Each Owner shall have the right to enforce the covenants and restrictions set forth in this Declaration and may proceed at law or in equity to compel compliance with the terms hereof and to prevent the violation or breach of any covenant or restriction contained herein. Any Owner seeking to enforce the terms hereof may give written notice of a breach hereof to any defaulting Owner (and any institutional mortgagee of such Owner, if an address for notice has been provided) and if such breach is not cured within a reasonable period of time, may bring an action against such defaulting Owner for contribution in the amount of such defaulting Owner's proportionate share of any cost or expense incurred pursuant hereto or for specific performance of any action required hereby. Any remedy granted herein shall be deemed to be cumulative, and the exercise of any one or more remedy shall not be deemed to constitute an election of remedies, nor shall it preclude the availability of any other legal or equitable remedies.

10. Amendment. This Declaration may be amended upon approval of a majority in interest of the Owners by instrument recorded in the Shelby County Probate Office.

11. Relation to Other Covenants. This Declaration and the terms and restrictions contained herein shall be in addition to and not in lieu of any other covenants and restrictions applicable to the Lots or the Acreage and placed of record in the Office of the

Judge of Probate of Shelby County, Alabama; provided, however, that this Declaration shall not be deemed to protect or encumber any property other than the Lots or the Acreage.

12. Limitation of Liability. The Lake Easement granted hereby shall be used solely for the non-commercial, recreational purposes of boating and fishing (as provided herein), and the responsibility of Developer, its successors and assigns with respect to the Lake for liability for injury or damage to persons (including death) or property is intended to be limited by Section 35-15-1, et seq. of the Code of Alabama (1975) (the "Statute"). However, in the event the Statute is deemed inapplicable to the Developer and its successors and assigns with regard to the Lake, the Owners, by their use of the Lake, under the Lake Easement and this Declaration, covenant and agree that the Developer and its successors and assigns shall have no duty of care to keep the Lake safe for entry and use by the Owners, their family members, guests, agents and licensees, or to give any warning of hazardous conditions, use of structures or activities on or about the Lake to any person entering the Lake; and the Developer and its successors and assigns shall have no liability for any injury to person (including death) or property caused by any act or omission of an Owner or any other person or relating to or arising out of the use of the Lake by an Owner or any other person.

13. No Right of Reverter. No covenant, condition or restriction set forth in this Declaration is intended to be, or

shall be construed as, a condition subsequent or as creating the possibility of reverter.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be duly recorded as of the day and year first above written.

CHELSEA PROPERTIES, INC.

By: James H. Estes
Its: President

STATE OF ALABAMA)
COUNTY OF Jefferson)

I, a Notary Public in and for said County, in said State, hereby certify that James H. Estes whose name as President of Chelsea Properties, Inc. (f/k/a Cloud & Estes, Inc.), an Alabama corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this the 20th day of October, 1992.

Parkey D. Davis
Notary Public

My Commission Expires:

2-7-93

The undersigned, as mortgagee of the Lots encumbered by this Declaration, does hereby consent to the terms and provisions of the Declaration as set forth herein.

FIRST ALABAMA BANK

By: Paul Walker
Its: Vice President

STATE OF ALABAMA)
COUNTY OF _____)

I, a Notary Public in and for said County, in said State, hereby certify that Charles L. Witherington whose name as Vice President of First Alabama Bank, an Alabama banking association, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said association.

Given under my hand and official seal this the 28th day of October, 1992.

Dennis G. Pharris
Notary Public

MY COMMISSION EXPIRES DECEMBER 11, 1993

My Commission Expires:

EXHIBIT A
Legal Description - Acreage

The Southeast quarter of the Southwest quarter of Section 7, Township 20 South, Range 1 West and the Northeast quarter of the Northwest quarter of Section 18, Township 20 South, Range 1 West, Shelby County, Alabama. LESS AND EXCEPT that part of said property as shown on map of High Chaparral Sector B, as recorded in the Office of the Judge of Probate, Shelby County, Alabama, in Map Book 16, Page 69.

EXHIBIT B

LEGAL DESCRIPTION - 57-A ACCESS

Description of easement for ingress-egress, public utilities and utility services:

Part of the Southeast quarter of the Southwest quarter of Section 7, Township 20 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

From the northwest corner of Lot 55, High Chaparral Sector B, run in a northeasterly direction along the north line of said Lot 55 and along the south right of way line of El Camino Real for a distance of 20.0 feet; thence turn an angle to the right of 90 degrees 00 minutes and run in a southeasterly direction for a distance of 382.7 feet to the point of beginning; thence continue along last mentioned course for a distance of 267.30 feet; thence turn an angle to the left of 27 degrees 19 minutes 11 seconds and run in a southeasterly direction for a distance of 95.0 feet; thence turn an angle to the left of 84 degrees 00 minutes and run in a northeasterly direction for a distance of 33.62 feet; thence turn an angle to the left of 62 degrees 46 minutes 29 seconds and run in a northwesterly direction for a distance of 276.19 feet; thence turn an angle to the left of 63 degrees 49 minutes 50 seconds and run in a westerly direction for a distance of 121.95 feet, more or less, to the point of beginning, containing 26,715 square feet, more or less.

High Chaparral Sector B is recorded in the Office of the Judge of Probate, Shelby County, Alabama, in map book 16, page 69.

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