

DECLARATION OF RESTRICTIVE COVENANTS
FOR
MONTE VERDE SUBDIVISION UNIT THREE

The undersigned declarant, being the sole owner of Monte Verde Subdivision Unit Three, hereinafter called Monte Verde Three, desiring to insure for itself, its successors, legal representatives, assigns, grantees, that Monte Verde Three shall be a fully protected residential area, soundly developed with reference to the establishment of its character and to the maintenance of value levels through the regulation of type, size and placement of buildings, reservations of easements, and prohibition of nuisances and other land uses that might affect the desirability of such land as a residential area, hereby declares to and for the benefit of all persons who may hereafter purchase and from time to time own lots in Monte Verde Three, that said ownership and holding of said lots shall be subject to the following restrictive covenants and conditions, all of which shall be deemed to be appurtenant to and run with the land and inure to the benefit of and be binding upon the owners of said lots, their heirs, successors, and assigns.

NOW, THEREFORE, in consideration of the premises, declarant hereby states and affirms as follows:

1. Each and every lot shown on the plat of Monte Verde Three shall be used for a single family residence only. No improvements whatsoever other than one private, single-family residence shall be erected or placed on any lots. Garages or carports may be constructed but must either be attached to the residence as an integral part thereof or attached thereto by arbor or breezeway and shall conform to the architecture thereof. No more than one room in each residence may contain kitchen facilities except certain facilities may be permitted by agreement with the Architectural Board as a part of a den or play room. In addition to the single family as provided herein, bona fide domestic servants shall be permitted the use and occupancy of said residence while in the employment of said family.

2. No room or rooms in any residence may be rented or leased to any person, provided, however, that nothing contained herein shall be construed as preventing the renting or leasing of an entire lot together with its improvements as a single unit to a single family.

3. No business or profession of any nature shall be conducted on any lot or in any residence constructed thereon. No horses, cattle, sheep, goats, pigs, rabbits, poultry, or other livestock of any description shall be kept or maintained on any part of any lot. Residents may keep dogs, cats, or other animals which are bona fide household pets so long as such pets are not kept for commercial purposes and do not make objectionable noises or otherwise constitute a nuisance or inconvenience to any of the residents of Monte Verde Three.

4. Before anyone shall commence the construction, remodeling, addition to, or alteration of any building, swimming pool, wall, fence, coping, or other structure whatsoever, on any lot, there shall be submitted to the declarant for transmittal to the Architectural Board, two complete sets of the plans and specifications for said work and no such structure or improvement of any kind shall be erected, altered, placed or maintained upon any lot unless and until the final plans, elevations and specifications therefor have received such written approval as herein provided. Such plans shall include plot plans showing the location on the lot or property of the wall, fence, coping, or other structure proposed to be constructed, placed, altered, or maintained, and elevation of same, together with the proposed color scheme for roofs and exteriors thereof, indicating materials for same.

At the time of submission of the plans and specifications as set forth herein, the owner shall cause to be paid to the declarant a service charge in the amount of \$25.00. The declarant shall approve or disapprove said plans and specifications within thirty days from the receipt thereof. One set of said plans and specifications with the approval or disapproval endorsed thereon shall be returned to the owner and the other copy thereof shall be retained by the declarant. In the event no action is taken to approve or disapprove such plans and specifications within said thirty day period, the provision requiring approval of said plan shall be deemed to have been waived by the declarant.

The declarant shall have the right to disapprove any plans, specifications or details submitted to him as aforesaid in the event such plans and specifications are not in accord with all the provisions of this declaration, or if a design or color scheme in the proposed structure is not in harmony with the general surroundings of such lot or the adjacent structure, or if the plans and specifications submitted are incomplete, or if the declarant deems said plans and specifications to be contrary to the spirit and intent of these restrictive covenants, or contrary to the interest and the welfare and rights of all or any part of Monte Verde Three. The decision of the declarant in any of these matters shall be final, and no building or improvement of any kind shall be constructed or placed upon any lot in Monte Verde Three without the prior consent of the declarant.

The declarant shall not be responsible in any manner whatsoever for any defect in any plans or specifications submitted nor as revised by said declarant, or for any work done pursuant to the requested changes of said plans and specifications.

5. The Architectural Board referred to in these restrictions shall be a Board appointed from time to time by the declarant, said Board to serve in an advisory capacity to said declarant. The number of members of said Board and the length of service of said members shall be as from time to time fixed by the declarant. Declarant contemplates that so far as practicable, the Board of Directors of the Country Club contemplated to be organized in connection with Monte Verde One shall act as such Architectural Board.

6. Each single-family residence constructed shall have not less than 1,000 square feet of floor area devoted to living purposes exclusive of unroofed or roofed porches, terraces, basements, garages, and carports.

7. No temporary house, trailer, tent, garage or outbuilding shall be placed or erected upon any part of any lot and no residence placed or erected on any lot shall be occupied prior to its being fully completed in accordance with plans approved by the declarant nor shall any residence when completed be in any manner occupied until made to comply with all requirements, conditions, and restrictions contained herein; provided, however, that during the actual construction of any improvement on any lot, necessary temporary building for the storage of materials may be erected and maintained by the person doing such construction. The work of construction, altering, or remodeling of any building or part thereof shall be prosecuted diligently and shall be completed no later than 365 days after the issuance of the building permit for same.

8. Every building, structure, or other improvement, other than fences, terraces, and steps shall be set back in accordance with the following conditions from the lot lines:

- A. Front yard setbacks; not less than 30 feet from any street lot line.
- B. Side yard set backs; not less than 10 feet from any side lot line.
- C. Rear yard setbacks; not less than 20 feet from any rear lot line.

9. No wall, coping or fence exceeding six feet in height measured from the adjoining ground surface inside the wall may be erected or maintained on any lot. Boundary planting along any lot lines, except trees with single trunks, shall not be permitted to grow higher than eight feet. No walls, coping, fences, hedges, or plantings other than the grass shall be permitted on the street frontage beyond the setback line.

10. No trash shall be burned on the premises except in approved incinerators located indoors or within service yard. No garbage shall be burned or placed in exterior containers. No barbecue or other outdoor cooking facility shall be located thereon nearer than ten feet from either side of lot line unless made a part of the residence.

11. Any building placed, erected, or maintained upon any lot in Monte Verde Three shall be entirely constructed thereon, and the same shall not, or any part thereof, be moved to or from said lot.

12. No outside toilets shall be placed on any lot.

13. No derrick or other structure designed for the use of boring for water, oil, or natural gas shall be erected, placed or permitted upon any part of said property, Nor shall any water, oil or natural gas be produced or abstracted therefrom except by the declarant. All right to water, oil and natural gas underlying same are reserved to the declarant.

14. No advertising or signs of any character shall be erected, placed, permitted or maintained on any lot or on any building within Monte Verde Three other than:

- A. A name plate of the occupant and a street number.
- B. "For Sale" sign approved by the declarant.

15. No elevated tanks of any kind shall be erected, placed, or permitted upon any part of said property. Any tanks to be used in connection with any residences constructed in Monte Verde Three including tanks for the storage of gas, oil, or water must be below ground or with service yard. All types of refrigerating, cooling, or heating apparatus must be concealed.

16. There shall be with each residence a service yard area of at least 100 square feet, fully enclosed with a solid type wall or solid type fencing to conceal clotheslines, trash cans, wood piles, and storage piles from adjoining lots, roads, and the Monte Verde Golf Club. No laundry or bedding shall be hung on the premises where it shall be visible to the public. All articles necessary to be hung out of doors shall be hung in the service yard area.

17. All radio and television antennae more than ten feet higher than the highest point of the dwelling are prohibited except with the written consent of the declarant.

18. Each lot at all times shall be kept in a clean, sightly and wholesome condition. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber, or other building materials shall be permitted to remain exposed on any lot so as to be visible to any neighboring lot, road, or the Monte Verde Golf Course, except as is necessary during the period of construction.

19. In the event that a structure is destroyed, wholly or partially by fire or any other casualty, said structure shall be properly rebuilt or repaired to conform to this declaration or, all the remaining structure, including the foundations and all debris, shall be removed from the lot.

20. Each lot shall, at all times, be kept clear of weeds and other unsightly growth, and any and all landscaping that becomes objectionable or interferes with the operation of the Monte Verde Golf Club located adjacent to the property, on demand by the declarant, shall forthwith be removed by the property owner. In case the property owner shall fail to keep his lot clear of weeds or other unsightly growth or shall fail to remove any objectionable landscaping upon the demand of the declarant, the declarant shall have the right to clear such lot or lots at the owner's expense and the declarant shall have a lien against the property to secure the payment from the owner for this expense.

21. No trees shall be removed from any lot if the diameter at the base of said tree exceeds three inches, except with the written approval of declarant, or for the purpose of clearing for the site of the residence and its driveway.

22. No lot or lots shall be subdivided, except for the purpose of combining portions with an adjoining lot, provided that no additional lot or building site is created thereby and then only with the express permission of the declarant. Any ownership or single holding by any person comprising the whole of one lot and part or parts of one or more adjoining lots shall, for all purposes of these covenants and restrictions, be deemed a single lot. Not less than one entire lot as originally platted shall be used as a building site.

23. Easements and rights of way in perpetuity are hereby reserved for the erection, construction, maintenance, and operation of wires, cable, pipe, conduits, and apparatus for the transmission of electrical current, telephone, television and radio lines and for the furnishing of water, gas, sewer service, or for the furnishing of other utility purposes together with the right of entry for the purpose of installing, maintaining, and reading gas, electric, and water meters together with the further rights to the declarant to convey or lease the whole or any portion of such easements, rights of way, right of entry, to any person or persons or to any corporation or municipal body, under, along, across, upon and through a strip of land eight feet in width along the rear and side lot lines of all lots in Monte Verde Three.

24. All the restrictions contained herein shall constitute covenants running with the land as to all of the lands within Monte Verde Three. It shall continue to be binding upon the owners of said land and all persons claiming by, through or under said owners for a period of twenty-five years from the date this document is filed for record with the clerk and recorder of Colfax County, New Mexico, and shall thereafter automatically be extended for a further period of twenty-five years; provided, however, that the owners of 75% of the lots in Monte Verde Three may at any time after ten years from the date thereof, release all of the lots hereby restricted from any one or all of these restrictions by executing and acknowledging an appropriate agreement in writing for said purpose and filing the same for record with the clerk and recorder of Colfax County, New Mexico, in the manner then required for the recording of land instruments.

25. The provisions contained herein are for the benefit of each and all of the lots in Monte Verde Three and shall inure to the benefit of and be binding upon the declarant, its purchasers, and subsequent owners of each of said lots. Each purchaser of lots included within this declaration, by acceptance of a deed to same, shall be subject to each and all of the restrictions, conditions, covenants, and agreements contained herein and to the jurisdiction, right, and power of the declarant. And by such acceptance, shall be himself, his heirs, personal representatives, successors and assigns, covenant and agree and consent to and with the grantees and subsequent owners of each of said lots, to keep, observe, comply with and perform said restrictions, covenants, conditions and agreements contained herein.

26. Any violation of the provisions, conditions, or restrictions contained herein shall warrant the declarant or any other lot owner to apply to any court of law or equity having jurisdiction thereof for an injunction or proper relief in order to enforce same in the court, and in its discretion, may award the plaintiff his court costs and reasonable attorney fees. No delay on the part of the declarant or any other person in the exercising of any right, power, or remedy contained herein shall be construed as a waiver thereof or an acquiescence therein. Various rights and remedies of all persons hereunder shall be cumulative and the declarant or any other property owner may use any or all of said rights without in any way affecting the ability of the declarant or any other property owner to use or rely upon or enforce any other right.

27. In the event any one or more of the provisions, conditions, restrictions, or covenants contained herein shall be held by any court of competent jurisdiction to be null and void, all remaining restrictions and covenants herein set forth shall remain in full force and effect.

28. The declarant hereby reserves the right to grant a reasonable variance or adjustment to these conditions and restrictions in order to overcome practical difficulties and prevent unnecessary hardships arising by reason of the application of the restrictions contained herein. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to other property or improvements of the neighborhood and shall not defeat the general intent and purpose of these restrictions.

29. Any and all of the right, title, interest and estate given to or reserved by the declarant herein or on the plat of Monte Verde Three may be transferred or assigned to any person, firm or corporation by appropriate instrument in writing duly executed by the declarant and recorded in the office of the clerk and recorder of Colfax County, New Mexico, and wherever the declarant is hereby referred to, such reference shall be deemed to include its successors and assigns.

IN WITNESS WHEREOF the undersigned declarant has caused these presents to be executed in its corporate name this _____ day of _____ 1968.

MONTE VERDE CORPORATION