

RESTRICTIVE COVENANTS FOR CLOUD COUNTRY SUBDIVISION
UNIT II

The undersigned, Cloud 9, a joint venture, being the owner of all the lots located in Cloud Country Subdivision, Unit II, a subdivision located in Otero County, New Mexico, a plat of which was recorded in Book 16 at Pages 23-6 of the records of Otero County, New Mexico, on the 18 day of January, 1973, do hereby consent and agree that the following restrictive covenants shall be in full force and effect upon all property within said Cloud Country Subdivision, Unit II, from the date of recording this instrument, to-wit:

1. There shall not be erected on any one lot (except those zoned, designated, or platted as multi-family apartment, or condominium) more than one (1) single private family dwelling house together with the necessary and appurtenant attached building such as servant quarters, garages, and car ports customarily used in connection therewith. No structure shall have more than two (2) stories unless otherwise approved by the Architectural Control Committee named below.

2. No business or profession, manufacturing operation, commercial enterprise, or public or commercial amusement enterprise shall be conducted, operated or maintained on any lot. It is understood that the right to operate and manage a condominium or cooperative apartment by a management group, business or club, is specifically granted to a group or groups of condominium owners.

3. There is hereby created the Cloud 9 Architectural Control Committee (hereinafter sometimes referred to as the "Committee") composed of C. W. Ritter, Jack L. Stahl, and John Petty. In the event of the death, resignation, or incapacity of any member of said committee, the remaining member or members shall have full authority to appoint a successor member or members. Any member of said Committee may be removed for cause upon the vote of two (2) members thereof. Said Committee shall have the power to make, alter and amend its own rules and regulations with regard to meetings, quorums and other procedural matters. Members of the Committee shall be entitled to reasonable compensation for services performed pursuant to these covenants. The powers and duties of the Committee shall, on December 31, 1985, or on such sooner date as the members of the Committee all have resigned, died or become incapacitated for thirty (30) days without replacement, automatically become vested in the Board of Directors of Cloud 9, a joint venture, or a committee of three (3) persons designated by said Cloud 9.

(a) No dwelling house, garage, car port, cutbuilding, fence, wall, retaining wall, pier, breakwater, or other structure of any kind shall be erected, constructed, placed, moved on or maintained on any lot or lots, or any parcel or portion thereof, nor shall any alterations, additions, change or repair be made to the exterior thereof, unless prior to the commencement of any construction, excavation, grading, or other work, two complete sets of the plans and specifications thereof, including front, side and rear elevations, and floor plan for each floor and basement, color scheme thereof, and plot plan, indicating and fixing the exact location of such structure or such altered structure thereof, shall have first been submitted to the Committee in writing for its approval and such approval obtained in writing from the Committee.

(b) All structures must have a slanting roof with a minimum of a two and one-half in twelve pitch. Roofing materials must be wood shakes or other material approved by the Committee. Variances below the minimum pitch requirement may be granted by the Committee.

(c) Approval by the Committee of such plans, specifications, and location of buildings shall be endorsed on both sets of plans and specifications, and one set thereof shall be returned to the person submitting the same and the other set shall be retained by the Committee.

(d) In the event that the proposed improvements be for the repairing and/or redecoration of the exterior of a structure, without remodeling the same or making additions thereto, it shall be necessary only to file the color scheme of such proposed work with the Committee and have the same approved in writing by it prior to commencement of such repairs and/or redecoration.

(e) After such plans and specifications and other data submitted have been approved by the Committee, no building, garage, fence, wall, car port, or other structure of any kind shall be erected, constructed, placed, altered, or maintained upon said property unless the same shall be erected, constructed, placed, altered or maintained in conformity with the plans and specifications, color scheme, and plot plan theretofore approved by the Committee. If any building, garage, car port, fence, wall, retaining wall, or other structure of any kind shall be erected, constructed, placed, altered or maintained on said property other than in accordance with the plans and specifications, color scheme, and plot plan theretofore approved by the Committee, such erection, construction, placing, alteration, and maintenance shall be deemed to have been undertaken without the approval of the Committee.

(f) Buildings or structures shall not be constructed of a building material that will cause the sunlight to be reflected therefrom; nor shall any building or other structure be painted with any paint or other substance that will cause the sunlight to be reflected therefrom.

(g) All plans for septic tanks to be installed in the subdivision shall first be submitted to the Architectural Control Committee for its approval. The Committee may base its decision on the installation of such septic tanks on the then existing or anticipated municipal, County, State or Federal regulations regarding septic tanks or other methods of sewage disposal. The Committee may require that the lot owner construct a septic tank of sufficient size to accommodate a minimum of four (4) houses and the lot owner will be required to pay the cost of the installation of a single-house septic tank and the developer will be responsible for and agrees to pay the balance for the installation of the septic tank to accommodate four or more houses. The Committee may then require that lot owners who by reason of geographical location are within close proximity to such then existing septic tanks to connect to such septic tank and to pay to the developer an amount equal to the cost of the installation of a single-house septic tank.

The purpose of this covenant is to give to the Committee control over the installation of septic tanks in the subdivision so as to make full use of the land in accordance with whatever regulations may be adopted by any governmental agency and the Committee will interpret this covenant in that manner. Maintenance costs will be prorated between lot owners connected to each septic tank.

(h) In the event of any ambiguity in a provision of these restrictions, the interpretation of the Cloud 9 Architectural Control Committee as to the meaning intended shall prevail.

(i) The Committee may withhold its approval for any of the following reasons:

(1) Non-compliance with any of the specific conditions and restrictions contained in these Restrictive Covenants; or

(2) Reasonable dissatisfaction of the Committee with the location of the structure on the building site, or with the appearance of the proposed structure, or with the lot grading plan, having in mind the character of the neighborhood in which it is proposed to be erected, the materials of which it is to be built, the harmony thereof with the surroundings, and the effect of the building or other structure as planned on the outlook from the adjacent or neighboring property or properties. However, the Committee shall act with all due promptness; in the event the Committee shall fail to approve or disapprove any matters submitted to it hereunder within thirty (30) days from such submission, then the submission shall be deemed to have been fully complied with.

4. No lots shall be subdivided into smaller lots or parcels of land. For the purpose of these restrictions, if one owner shall own two or more adjacent lots, such adjacent lots may be considered to be one lot with set backs to be measured from the perimeter thereof. Further, if two or more adjacent lots are under common ownership, the owner thereof may elect by written notice to the Committee to develop them as a single lot. In the event of such election they shall thenceforth be treated as a single lot for the purposes of these restrictions.

5. No structure shall be erected, constructed, placed or maintained on any lot nearer than twenty-five (25) feet to the front lot line, nearer than ten (10) feet to the side lot lines, nor nearer than twenty (20) feet to the back lot lines, except that upon written application to the Committee, if the configurations and topography permit, a variance may be granted from said set backs.

6. No garage, car port, shed, tent, trailer or temporary structure of any kind shall be erected, constructed, permitted or maintained on any lot prior to the commencement of the erection of a principal dwelling house thereon. No garage, car port, shed, tent, trailer, basement, or temporary building shall be used for temporary residence purposes unless written permission is granted by the Committee for use only during construction of the principal dwelling.

7. When the construction of a dwelling is commenced upon any lot, the owner or owners thereof shall prosecute, with all reasonable diligence, the completion thereof and shall complete the construction thereof within twelve (12) months from the date of commencement, delays caused by Act of God excepted, unless the written consent of the Committee is obtained for a longer period of time for construction prior to the commencement of such construction.

8. No exposed concrete block, whether painted or otherwise, shall exist on any lot without the written consent of the Committee.

9. No old or second-hand building shall be moved on any lot in this subdivision; and no second-hand materials shall be used in the construction of any building thereof; except upon the prior written consent of the Committee.

10. No brush, trash, or other materials shall be burned except in compliance with the fire regulations of the appropriate regulatory agency.

11. Live trees having a diameter of eight (8) inches or more measured one (1) foot above the ground, may not be removed without the prior written consent of the Committee.

12. Neither barbed wire or chicken wire shall be used in this subdivision.

13. No windmills or wind chargers shall be erected upon any lot in this subdivision.

14. No obnoxious or offensive activity shall be carried on upon any lot, nor shall anything be done on any lot which may be or become an annoyance or a nuisance to the neighborhood.

15. No television or radio antennas located upon or above any lot shall be permitted to be visible from any adjoining lot or street in this subdivision without the prior written consent of the Committee; and no laundry upon or above any lot shall be permitted to be visible from any adjoining lot or street in the subdivision.

16. No garbage, refuse, junk, trash, or obnoxious or offensive material shall be permitted to accumulate on any lot, and the owner or owners of each lot shall cause the same to be disposed of by and in accordance with accepted sanitary practices. All garbage or trash containers, oil tanks, gas tanks, and other facilities must be placed under ground or in walled-in or fenced-in areas so that they shall not be visible from any adjoining lot, any street, or waterway. Each owner shall furnish and maintain his lot with a garbage can of not less than twenty gallons capacity in underground, fenced-in or walled-in areas. Garbage shall be disposed of in accordance with the regulations of the State of New Mexico and any of its subdivisions. Such garbage shall be removed by the lot owner to a sanitary land fill provided by Otero County or other governmental agency, by arrangement with Cloud 9, if said garbage removal service is made available by the developer, or by arrangement with another garbage removal service.

17. No animal or fowl of any description shall be raised, housed or kept on any lot; except that dogs, cats, or other household pets that are of such a nature as not to interfere with the safety and comfort of adjoining lot owners may be kept on a lot, provided that they are not bred or maintained thereon for any commercial purposes.

18. No outdoor-type toilet shall be erected or maintained in the subdivision, except by prior approval of the Committee as outdoor portable toilets may be on the premises during the actual period of construction as may be required by State or Federal law. All toilets shall be located inside the principal buildings and shall be connected with proper septic tanks or a sewage disposal system that conforms with the State of New Mexico and Otero County health laws and regulations; provided, however, that if a sewer line is laid on any street, easement or public way on which a lot abuts, it shall be incumbent upon the then lot owner to establish connection with said sewer system without delay, and thereafter to make use of the same to the exclusion of any other sewage disposal system.

19. All principal dwelling houses, exclusive of garage, car port, patios, terraces and porches, shall be constructed or maintained with a heated living area of not less than 1200 square feet.

a. Parking for three standard size American automobiles (not compact size) must be provided on each lot by the property owner. Parking spaces must be used instead of on-street parking when requested by Cloud 9, a joint venture, Cloud Country, Inc., their agents or representatives. Upon written application to the Architectural Control Committee prior to construction, a variance may be granted from said parking requirements.

20. No work or exploration for any minerals or drilling for water or any minerals, or mining of any minerals or quarrying of any rock minerals, soil or material of any nature shall be conducted on any lot or portion thereof, nor shall any excavation of any nature be made upon any lot or portion thereof except as may be incident to the installation of utility services, drainage lines, excavations incident to the grading and preparation of building sites, the construction of dwellings and/or swimming pools, and the grading of roads and streets.

21. No signs of any character shall be permitted to be placed or maintained on any lot except a sign not larger than 72 square inches setting forth the name of the owner or occupant of said lot. All other signs are prohibited on any lot without prior written approval of the Committee.

22. In the event the owner or purchaser of any lot shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to Cloud 9, a joint venture, said Cloud 9, through its agents and employees, shall have the right to enter upon such lot and to repair, maintain, rehabilitate, and restore the premises and the exterior of any improvements situated thereon, and the cost thereof shall be charged against the owner of said lot by notice to the lot owner or purchaser by regular mail addressed to his last address as shown on the records of Cloud 9, a joint venture, and if the sum is not paid within thirty (30) days after such notice has been mailed, the amount due shall be and become a lien on the said lot when Cloud 9, a joint venture, has caused

to be filed or recorded in the office of the County Clerk of Otero County an affidavit of non-payment of such sum in the form of a materialman's lien, and posting a copy of same upon said lot within one (1) year from the date of mailing of such notice of amount due. Such lien shall be foreclosed in the manner provided by the laws of the State of New Mexico for the foreclosure of materialmen's liens.

23. Cloud 9 reserves easements over or under the surface, or both, required for the installation and maintenance of electric lines, telephone lines, water lines, sewer lines, both storm and sanitation, gas lines and for all other utilities, both public and private, with the right to assign such easements. The easements herein reserved shall consist of a ten (10) foot strip of land along the rear lot line and a five (5) foot strip of land along each side line of each lot, thus reserving in Cloud 9 an easement of twenty (20) feet along the rear lot line and ten (10) feet along the side lot lines when two abutting lots are considered.

24. Cloud 9 expressly reserves the right to make any reasonable and necessary changes in these restrictions to benefit the lot owners until no less than ninety per cent (90%) of all lots in the subdivision have been sold, after which time there shall be no changes in any of these restrictions without the formal approval by written vote of no less than two-thirds (2/3) of the lot owners, such vote to be taken no sooner than five (5) days after one hundred per cent (100%) of the lot owners have been fully informed in writing of any such proposed changes. Proposed changes in these restrictions requiring approval as aforesaid must be submitted in writing to the Architectural Control Committee, which Committee shall have the duty and responsibility to prepare and send complete copies of such proposed changes to all lot owners by mail addressed to their address as shown on the records of Cloud 9. Such copies shall be sent within fifteen (15) days of receipt by the Committee and deposit in the U.S. mail shall be considered as meeting this requirement. Voting on any proposed change may be by mail.

25. Cloud 9, a joint venture, is the owner or lessee of certain recreational facilities, including the Lodge Hotel and Country Club including the golf course now on said premises, the ski area known as Ski Cloudcroft, and is in the process of developing for the use of the lot owners, recreational facilities including a stable, tennis courts, a swimming pool and trout ponds. Each buyer of a lot shall be entitled to the use of these facilities, and shall be considered a member of the Cloud Country Club. Such membership shall extend not only to the lot owner but to his or her spouse and their unmarried children under 21 years of age. There shall be two types of memberships:

(a) Regular Members: A regular membership in the Cloud Country Club shall entitle each lot buyer, subject to membership payments as hereinafter stated, to the use of all facilities made available to the lot buyer by Cloud 9. This includes the use of the golf course now in place, and any future additions to said course, without charge for green fees, and the use of the lift facilities at Ski Cloudcroft without charge for lift tickets.

(b) Social Members: A social member shall be entitled to the use of all the facilities made available to the lot buyer by Cloud 9, subject to membership payments as hereinafter stated. A social member will be required to pay green fees at the golf course and will be required to purchase lift tickets for use at Ski Cloudcroft.

The monthly charge to each Regular Member for such services shall be \$15.00, and to each Social Member the charge shall be \$10.00. Said monthly charges shall be due and payable at the same time and in addition to the regular monthly installments on the purchase of each lot. After the purchase price of each lot has been paid in full, the monthly dues shall be paid on or before the 10th day of each month. The payments to be made by either a Regular or Social member may be made on an annual basis in advance, and if paid in full by January 10th of such calendar year, the annual charge for a Regular member shall be reduced to \$150.00, and for a Social Member shall be reduced to \$100.00. Failure to pay monthly dues shall constitute a default under the terms of the contract of purchase executed by the lot buyer, and after the purchase price has been paid in full, payment of the dues shall be secured by a lien against the property owned by the member, and after said lien has been filed in the manner provided in paragraph 22 above, said lien may be foreclosed in the manner provided by the laws of the State of New Mexico.

A Social Member may change his membership from Social to Regular by notifying the management of Cloud 9, a joint venture, or Cloud Country, Inc., management company for Cloud 9, and by further paying the increased monthly charge, and by paying to Cloud 9 a fee of \$50.00 for such membership change. A Regular Member may change his membership to a Social Member by notifying the management of Cloud 9, as set forth in the preceding sentence, and by paying to Cloud 9 a fee of \$50.00 for such membership change.

The Social or Regular membership held by any owner or purchaser of a lot in said subdivision, shall not be transferred, pledged, hypothecated, or alienated in any way except upon the sale of such lot, and then only to the new purchaser of such lot. Any attempt to make a prohibited transfer shall be void and shall not entitle the transferee to any use of the facilities provided by Cloud 9. The sale of any lot shall automatically terminate the membership of a previous lot owner, and vest such ownership in the new lot owner. A fee of \$25.00 will be charged by Cloud 9 to show transfer of the membership on the records of Cloud 9. Cloud 9, and/or Cloud Country, Inc., operating member of Cloud 9, reserves the right to increase or decrease the charges above set forth, and under no circumstances will said charges be more than are being charged by comparable country clubs in this area. Cloud 9 guarantees that there will be no increase in the charges above stated for a period of three (3) years from the date of the filing of these covenants. In the event any of the recreational facilities owned by Cloud 9 are destroyed or rendered useless by fire, act of God, or any other calamity, where the use of such facilities is removed or revoked by any governmental agency, then Cloud 9 is under no obligation to rebuild, purchase or install new facilities.

26. Cloud 9 reserves the right, in its sole discretion, to establish an Owner's Association for the control and management of the recreational facilities located at the subdivision. Such Ownership Association, if established, will be similar in organization to those established at other recreational subdivisions.

27. At such time as Cloud 9 has water lines installed so as to make water available to each lot, Cloud 9 or its agents will charge a stand-by water fee of \$5.00 per month. Cloud 9 may install a water meter at its discretion, and the cost of such meter and installation will be the responsibility of the lot owner. If such meter is installed, a minimum monthly rate will be established and water rate based on consumption will be established. Water may be used for normal household purposes and not for irrigation. The charge for water will be made whether or not any water is actually used by the lot

buyer or lot owner. Said monthly charges shall be due and payable at the same time and in addition to the regular monthly installments on the purchase of each such lot. After the purchase price of each lot has been paid in full, the monthly dues shall be paid on or before the 10th day of each month. Failure to pay the monthly water fee shall constitute a default under the terms of the contract of purchase executed by the lot buyer, and after the purchase price has been paid in full, payment of the water fees shall be secured by a lien against the property owned by the member, and after said lien has been filed in the manner provided in paragraph 22 above, said lien may be foreclosed in the manner provided by the laws of the State of New Mexico.

28. If, at some future date, Cloud 9 should install a sanitary sewer system, each lot owner will be required to connect to said system. A reasonable stand-by charge may be made by Cloud 9 for this service.

29. Ownership of all streets remains vested in Cloud 9. Cloud 9, solely at its discretion, may at some future date dedicate said streets to public use and for maintenance by a governmental unit. Cloud 9 may, at its discretion and upon reasonable notice to the lot owners and lot buyers, make assessments against each such lot for the maintenance and repair of such streets. Such assessments, if unpaid, shall be considered as a lien against such lots, and after said lien has been filed in the manner provided in paragraph 22 above, said lien may be foreclosed in the manner provided by the laws of the State of New Mexico.

30. Cloud 9 reserves the right to control the number and type of vehicles in the subdivision so as to promote the best interests of the lot owners. The owners of any motorized vehicle which causes or emits excessive pollutants, including but not limited to noise and particulate matter, may be required by Cloud 9 to modify or repair such vehicle to meet the standards required by Cloud 9. Failure of the owner to do so shall be considered a breach of these covenants and in addition to the other remedies provided herein, Cloud 9 may suspend the right of the violator to use the recreational facilities provided by Cloud 9.

31. These covenants are to run with the land and shall be binding upon the undersigned and all persons claiming under them, their heirs, successors, and assigns, for a period of ten (10) years from the date these Restrictive Covenants are recorded, after which time said Restrictive 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 in the subdivision has been recorded agreeing to change said restrictions in whole or in part or releasing any portion of the property in said subdivision from any one or more, or all, of said Restrictive Covenants.

32. All of the Restrictive Covenants contained herein are for the benefit of any and all of the owners of the lots within the boundaries of the subdivision, and if the undersigned owner or any of its assigns or successors in interest shall violate or attempt to violate any of such Restrictive Covenants, then it shall be lawful for any other person or persons owning land within said boundaries and for the Architectural Control Committee and/or Cloud 9, a joint venture, and Cloud Country, Inc., to prosecute any proceeding at law or in equity to recover damages or to enjoin such act and to have any and all further legal and equitable relief.

