

453-935
RESTRICTIVE COVENANTS FOR
CLOUD COUNTRY WEST SUBDIVISION

UNIT III

The undersigned, Cloud 9, Ltd. a limited partnership (hereinafter referred to as Cloud 9), being the owner of all lots located in Cloud Country West Subdivision, Unit III, a Subdivision located in Otero County, New Mexico, a plat of which was recorded in Book _____, at Pages _____ and _____ of the records of Otero County, New Mexico, on the _____ day of _____, 19____, do hereby consent and agree that the following Restrictive Covenants shall be in full force and effect upon all property within said Cloud Country West Subdivision, Unit III, from the date of recording this instrument, to-wit:

1) 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 twenty-five (25) years from the date these Restrictive Covenants are recorded, after which time said Restrictive Covenants shall be automatically extended for successive periods of twenty-five (25) 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.

2) All of the Restrictive Covenants contained herein are for the benefit of any and all of the owners 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, Ltd., and Cloud Country Club, 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.

The word "person" as used herein, or after, means any individual, partnership, firm, company, trust, association, corporation, or other entity of whatsoever nature.

3) Invalidation of any one of these Covenants shall in nowise affect any of the other provisions hereof, which shall remain in full force and effect.

4) All fees, dues, and charges set forth in these Covenants shall become a lien against the property, as provided therein, if unpaid, and shall be paid in any manner prescribed by New Mexico law.

5) Presently in existence is a reviewing board called the 'Cloud 9 Architectural Control Committee' (hereinafter referred to as the "Committee") composed of Dick Anderson, Juanita Kenslow, and Dan Sorrells. 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, 1990, 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 a committee of three (3) persons designated by Cloud 9, Ltd.

6) The Committee will have the authority, from time to time, to establish regulations pertaining to any permissible structures upon the lots and relating to the common good which in the Committee's sole discretion, conforms with the general development scheme.

7) The Developer reserves the right, in its sole discretion, to establish an Owner's Association for the control and management of the recreational and utility facilities located at the Subdivision. Such Ownership Association if established, will be similar in organization to those established at other recreational subdivisions.

8) The duties of upkeep and maintenance herein provided, may be assigned or delegated by the Developer to its successors in title, or to any other responsible person, firm or corporation including a corporation organized by Developer for the purpose of providing such upkeep and maintenance in which event all of the duties, obligations, and rights, including the right to the collection of the assessments and dues, shall be assumed and discharged by such assignee who shall have all the rights enumerated herein.

9) No lot shall be used except for recreational vehicular purposes. No lot used for a recreational vehicle shall be used by its owner as a permanent residence. The term "recreational vehicle" shall include: manufactured motor homes, pick-up campers, trailers under 40 feet in length, vans and van conversions.

10) There shall be no homemade, converted buses, unsightly homemade or altered camping rigs or similar types of vehicles permitted on any camp site.

11) There shall be no permanent structures constructed on any lot, or combination of lots, with the exception of a preconstructed storage unit not to exceed 6 by 8 feet (48 square feet of floor space), which shall be susceptible to removal from the lot and shall be of good appearance. The exterior materials in said storage unit shall be of wood, or of a wood appearing material, and stained or finished in a manner prescribed by the Committee. Awnings, barbecue pits, and barbecue grills will be permitted if their appearance is properly maintained. All such structures and improvements must

be approved by the Committee. All outdoor clothes poles, clothes lines and similar equipment shall be so placed or screened by shrubbery as not to be visible from any street, common area or recreational property within the Subdivision.

12) In order to preserve the natural quality and aesthetic appearance of the existing geographic area, all property lines shall be kept free and open to one another and no fences shall be permitted on any of the lots or lot lines except where in the opinion of the Committee a fence or other enclosure, as a structure or or aesthetic feature design concept, will contribute to and be in keeping with the character of the area.

13) There shall be no more than one (1) recreational vehicle permitted on any lot, or in the case of one person owning two adjoining lots, then no more than two (2) vehicles are permitted.

14) Every recreational vehicle shall be parked or placed on any lot, or combination of lots, not less than 15 feet from the edge of the adjoining street line or pathway. Every storage unit shall likewise be at least 15 feet from the edge of the road.

15) The following minimum dimensions shall govern for front, side and rear setbacks on all lots with respect to any recreational vehicle thereon, as well as any storage unit thereon; provided however, that where more than one adjoining lot is owned by a single person, the lots shall be considered as one.

Fifteen (15) feet from the front line of each lot abutting the street;

Ten (10) feet from each lot side lines;

Fifteen (15) feet from the rear line of each lot.

16) No change in ground level may be made on any lot in excess of one foot in height over existing grades without the written approval of the Developer obtained prior to commencement of work.

17) The Developer specifically reserves all oil, gas mineral, water and timber rights in the subdivision.

No drilling, digging, quarrying, mining, dredging or excavating of any type or nature shall be done in the Subdivision, except by the Developer as may be necessary to promote the health and welfare of the property owners.

No tree, of any diameter, or other plant material, (except weeds) are to be cut or removed from any lot without the prior written approval of the Developer. This includes trees and plant life within the designated parking and driveway areas within any lot.

The Developer shall have the right to enter upon any lot for the purpose of removing diseased or stricken trees.

18) The Developer reserves the right to determine and construct (rough grade) the most suitable location within any site for "pads" for recreational vehicles and/or automobiles. Such location of "pads" may require that an access drive be constructed (rough grade) for ease of ingress and egress across the boundary of an adjoining lot. In all such instances, it is agreed by all owners that such rights-of-way for adjoining owners shall be honored.

19) All sites shall be subject to such easements for installation and service of water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, television antenna cables, other utilities, and foot paths as shall be established by the Developer, it being understood that such easements will be located so as not unreasonably to interfere with the use or enjoyment of sites by owners.

20) The Developer reserves the right to permit reasonable variances and adjustments of these restrictions in order to overcome practical difficulties and prevent unnecessary hardships in the application of the provisions contained herein; provided, however, that such is done in conformity with the intent and purposes of the general development scheme and provided, also, that in every instance such variance or adjustment will not be materially detrimental or injurious to other property or improvements in the subdivision.

21) The Developer reserves the right to make and prescribe such rules, regulations, and limitations for the use of the common recreational facilities as may be necessary for the orderly and proper use and enjoyment thereof and to prescribe the opening and closing hours for the recreational facilities when warranted by weather conditions or other considerations which in the opinion of the Developer requires closure.

22) The Developer reserves the right to permit other persons, firms, or corporations who own or acquire title to property from the Developer outside the Subdivision to use and enjoy the recreational and common facilities available to lot owners within the subdivision, provided, however, that if such use is permitted on a permanent basis there shall be provision made for proportionate upkeep and maintenance and such additional use is permitted on a permanent basis there shall be provision made for proportionate upkeep and maintenance and such additional use shall be within the capacity of the subject facilities.

23) All lots, whether occupied or unoccupied, and any permitted improvements placed thereon, shall at all times be maintained in such a manner as to prevent the same from becoming unsightly, whether by reason of unattractive growth on such lot or the objectionable and unsightly accumulation of rubbish or debris thereon.

24) There shall be no trash, ashes, garbage or other refuse dumped, stored, or accumulated on any lot. The lot owner 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-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.

25) There shall be no burning of wood, leaves, trash, garbage, or other refuse, and every owner of a lot shall comply with the law of New Mexico relating to open fires.

26) There shall be no open fires permitted on any campsite except within the confines of a fireplace of approved design, or a barbecue pit of approved design, or metal cooking device of approved design. All such fires must be attended at all times and thoroughly extinguished upon completion of use.

27) No outside toilet, outhouse, individual sewage or waste system, whether of a permanent or temporary nature, except self-contained sewage systems in a recreational vehicle, shall be permitted on any camp site.

28) No animals or livestock of any description, except the usual household pets, shall be kept or harbored on any lot in any recreational vehicle in the subdivision. All permitted pets must be kept on leash. All household pets which are permitted to enter or to remain within the subdivision must be constantly under the effective control of their owners, and no household pets shall be permitted to roam at large or create unreasonable noise or nuisance, as for example, a barking dog.

29) No stripped down or partially wrecked or junk vehicles, or sizeable parts thereof, and no discarded or abandoned materials of any kind shall be permitted to be parked, or kept, or stored upon any lot or along any driveway, street, recreational area or common area within the subdivision. All vehicles on the premises must be mechanically operative and carry a current state motor vehicle inspection sticker. (If applicable).

30) No vehicle shall be parked on or along any street, service driveway, recreational or common property within the Subdivision except in designated parking areas or upon lots. No commercial trucks shall be parked for storage any time on any lot, except during deliveries or servicing with the exception of trucks or vehicles designed and equipped for recreational camping uses.

31) Every tank for the storage of fuel on any lot shall be either buried below the surface of the ground or screened to the satisfaction of the Developer, by fencing or shrubbery.

32) The drainage of sink water into an open receptacle is prohibited.

33) No lot shall be used for commercial purposes or any purposes other than residential. No owner of any lot shall build or permit the building thereon of any structure or the parking of any vehicle thereon or receptacles thereon that is to be used as an exhibit unless prior written permission has been obtained from the Developer.

34) There shall be no obnoxious, offensive, or illegal activities carried on upon any lot or in any recreational vehicle, nor shall anything be permitted upon any lot that shall be or become an unreasonable annoyance or nuisance to the neighborhood nor shall there be any grease, cooking oils, animal fats or other similar liquids or solids poured or spilled on the ground within the subdivision.

35) In the event that any recreational vehicle, or material on any lot in the Subdivision would be destroyed, all or in part by fire, windstorm or other cause or act of God, the same must forthwith be rebuilt, replaced or all debris removed and the campsite restored to a slightly condition with reasonable promptness; provided, however, that in no event shall the debris remain upon the campsite or lot for a period of more than fifteen days following such event.

36) There shall be no camping permitted in an easement area, or within the setback areas or in any common or recreational areas, streets, or service driveways.

37) There shall be no vehicles of any type driven or towed in a reckless manner on or along any street or service driveway within the subdivision. All vehicles must observe such speed restrictions or noise limitations throughout the subdivision as established or changed from time to time by the Developer, its successors or assigns. The Developer shall likewise have the right to prescribe one-way streets and to otherwise impose reasonable restrictions on the movement and way of movement of all vehicles on the streets in the subdivision.

38) There shall be no hunting or shooting of firearms permitted on any lot or campsite in the subdivision. There shall be no hunting or shooting permitted on any adjoining property removed.

39) The Developer, its successors and assigns, reserves the right to enter upon any vacant or unattended lot for the purpose of improving its general appearance without being classified as a trespasser, or being liable for the damage for property removed.

40) The purchaser of any lot, his heirs, devisees or assigns, shall not subdivide any lot and convey a part thereof to any other person, firm or corporation, it being understood that this covenant shall prevent any further reduction in size of individual lots and prohibit a conveyance of a part of any individual lot.

41) 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.

42) No car washing or watering of lawn by lot owner at any time.

43) The use of motorcycles, minibikes, motor bikes, motor scooters, drag racers and motor vehicles which create loud and obnoxious noises shall be prohibited within the development.

44) 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, Ltd., 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, Ltd., 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, Ltd., has caused to be filed or recorded in the office of the County Clerk of Otero County, New Mexico, 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 materialman's liens.

45) 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 percent (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 percent (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.

46) Cloud Country Club, Inc., is the owner, lessee or sub-lease of certain recreational facilities, including the Cloud Country Lodge and golf course, the ski area known as Ski Cloud Country, and recreational facilities including a stable, tennis-courts, a swimming pool and trout ponds. Each buyer of a lot shall be entitled to the reasonable use of those facilities, and shall extend not only to the lot owner but to his or her spouse and with certain restrictions, 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 herein stated, to the use of all facilities made available to the lot buyer by Cloud Country Club, Inc. 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 Cloud Country without charge for lift tickets for so long as the ski area is under the exclusive control of Cloud Country Club, Inc.
- b. Social Member: A social member shall be entitled to the use of all the facilities made available to the lot buyer by Cloud Country Club, Inc., 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 Cloud Country.

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. In the event any of such dues become delinquent for thirty (30) days, the Cloud Country Club, Inc., or its agent may send a written notice of such delinquency to the lot owner by regular mail addressed to his or her last address as shown on the records of the Club; and if the delinquent dues are not paid within thirty (30) days after such notice has been mailed, the amount of such delinquent dues shall be and become a lien on the above described lot when the Club or its agent has caused to be filed in the Office of the County Clerk of Otero County, New Mexico, an affidavit of the non-payment of such dues or assessments 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 delinquent dues. Such lien may be foreclosed in the manner provided by New Mexico law for the foreclosure of materialman's liens.

A Social Member may change his or her membership from Social to Regular by notifying the management of Cloud Country Club, Inc. and by further paying the increased monthly charge, and by paying to Cloud Country Club, Inc. a fee of \$50.00 for such membership change. A Regular Member may change his or her membership to a Social Member by notifying the management of Cloud Country Club, Inc., as set forth in the preceding sentence, and by paying to Cloud Country Club, Inc. 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 Country Club, Inc. The sale of any lot shall automatically terminate the membership of a previous lot owner, and vest such membership in the new lot owner. A fee of \$25.00 will be charged by Cloud Country Club, Inc. to show transfer of the membership on the records of Cloud Country Club, Inc. The Board of Directors of Cloud Country Club, Inc., may increase the dues set out herein by an amount comparable to the increases in the cost of living as compared to December, 1977. The index to be used for this purpose is the "All Items in Commodity Groups" published by the U.S. Bureau of Labor Statistics. If such index is discontinued, comparable statistics shall constitute the index. The Board of Directors of Cloud Country Club, Inc. may increase or decrease the dues above set forth provided the dues charged do not exceed the dues charged by other comparable country clubs in the region.

47) At such time as Cloud 9 has water lines installed, Cloud 9, Ltd., or its designee, may charge a stand-by water fee, to each lot with water service available to it regardless of whether the water service is actually hooked up, and regardless of whether any water is actually used on the lot. Cloud 9, Ltd. may install a water meter at its discretion, and the cost of such meter and installation will be the responsibility of the lot owner. Water use and stand-by charges must be approved by an appropriate governmental agency prior to implementing same. Water may be used for normal household and business purposes and not for irrigation. Water charges will be due and payable within ten days after bill for same is tendered and said charges shall constitute a materialman's lien which may be foreclosed in the manner provided by New Mexico law for the foreclosure of materialman's liens.

48) At such time as Cloud 9, Ltd. has installed a sanitary sewer system, each lot owner will be required to connect to said system into his or her lot prior to street surfacing. A stand-by charge comparable to the water stand-by charge as set out in Section 47 herein may be charged by Cloud 9, Ltd., or its designee and said charge may be increased and foreclosed in the same manner as country club dues as set out in Section 46 herein.

