

459-167

RESTRICTIVE COVENANTS FOR
CLOUD COUNTRY WEST SUBDIVISION

UNIT IV

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 IV, 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 _____, 197____, 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 IV, 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 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, 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 collected in any manner prescribed by New Mexico law.

5) All lots in Cloud Country West, Unit IV are hereby designated residential lots. No structure shall be erected, altered, placed or permitted to remain on any residential lot other than one detached single family dwelling and buildings related thereto, such as servant quarters, garages, and carports customarily used in connection therewith. The Developer may dedicate one or more lots, or any portion thereof as a park.

6) All single private family houses, exclusive of garage, carports, patios, terraces and porches, shall be constructed or maintained with a heated living area of not less than 900 square feet.

7) 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 the Board of Directors of Cloud 9, Ltd., or a committee of three (3) persons designated by said Cloud 9.

- a) No dwelling, structure, garage, carport, out building, fence, wall, retaining wall, 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 plans for each floor and basement, color scheme thereof and plat 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) Approval by the Committee of such plans, specifications, and locations 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.
- c) All structures must have a slanting roof with a minimum of two and one-half inches in twelve pitch. Roofing material must be wood shakes or other material approved by the Committee. Variances below the minimum pitch requirement may be granted by the Committee.
- d) No structure shall be more than two (2) stories unless approved by the Committee.

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- e) Solar Heating Restrictive Covenants. Solar heating equipment will be considered for approval based on the merit of its design and the manner in which it is constructed so as not to be obtrusive to other homes in the subdivision. Roof mounted equipment will be difficult to conceal; however, if the color and structure is done in good taste, this type of installation can be considered for approval.
 - f) 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.
 - g) After such plans and specifications and other data submitted have been approved by the Committee, no building, garage, fence, wall carport, or other structure of any kind shall be erected, constructed, place 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 plans theretofore approved by the Committee. If any building, garage, carport, 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 approval of Committee.
 - h) Buildings or sturcture 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.
 - i) 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, clotheslines and similar equipment shall be so placed or screened by shrubbery so as not to be visible from any street, common area or recreational property within the subdivision.
 - j) 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.

8. 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.

9. No single private family dwelling house 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 upon written application to the Committee. If the configurations and topography permit, a variance may be granted from said setbacks.

10. No lot 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 setbacks 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 then forth be treated as a single lot for the purposes of these restrictions.

11. When the construction of a structure 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 months from the date of commencement, delay 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 construction.

12. 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 the commencement of work.

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

14. No old or second-hand building shall be moved on any lot in the 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.

15. 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 fence 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 of or aesthetic feature design concept will contribute to and will be in keeping with the character of the area.

16. Neither barbed wire or chicken wire shall be erected upon any lot in this subdivision.

17. No garbage, refuse, junk, trash, or obnoxious or offensive material shall be accumulated on the lot. The same shall 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 underground 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 arrangement with another garbage removal service.

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

19. There shall be no open fires permitted on any lot, 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 to at all times and thoroughly extinguished upon completion of use.

20. The Developers specifically reserve all oil, gas, mineral, water and timber rights in the subdivision.

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 line, excavations incident to the grading and preparation of building sites, the construction of dwelling and/or swimming pools, and the grading of roads and streets.

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

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

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

22. No lot shall be used for commercial purposes or any purpose other than residential.

23. 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).

24. No animal or livestock, 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 no 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. All permitted pets must be kept on a 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 pet shall be permitted to roam at large or create unreasonable noise or nuisance, as for example, a barking dog.

25. No outside toilet, outhouse, individual sewage or waste system, whether of a permanent or temporary nature, shall be erected or maintained on any lot of the subdivision, except that outdoor portable toilets may be on the premises during the actual period of construction, as may be required by a State or Federal law. All toilets shall be located inside the principal building and shall be connected with a full disposal system that conforms with the State of New Mexico and Otero County health laws and regulations. When 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 system.

26. All single private dwelling houses must provide for parking for two (2) standard size American automobiles (not compact size) on each lot by the property owner. Parking spaces must be used instead of on-street parking. 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 at any time on any lot, except during deliveries or servicing with the exception of trucks or vehicles designed and equipped for recreational camping uses. Such vehicles should be screened to the satisfaction of the Committee so as not to be visible from any street, common area, or recreational property within the Subdivision.

27. No stripped down or partially wrecked or junked 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).

28. In the event that a lotowner constructs, or causes to be constructed, a driveway across side ditches, a minimum 15" culvert with a minimum of 12" cover shall be installed by the lot owner.

29. No signs of any character shall be permitted to be placed or maintained on any single family residential 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 single family residential lot without written approval of the Committee.

30. 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 foot strip of land along the rear lot line and a ten foot strip of land along each side line of each lot, thus reserving in Cloud 9 an easement of twenty feet along the rear lot line and twenty feet along the side lot lines, when two abutting lots are considered. Except, along a rear lot line of an exterior lot, the easement will be fifteen feet.

31. There shall be no obnoxious, offensive, or illegal activities carried on upon any lot or in any home thereon, 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 grounds within the subdivision.

32. There shall be no hunting or shooting of firearms permitted on any lot in the subdivision. There shall be no hunting or shooting on any adjoining property which may be used as a park site.

33. There shall be no vehicles of any type, driven or towed, in a reckless manner, on or along any street or surfaced 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.

34. No carwashing or watering of lawn by lot owner will be allowed at any time.

35. The use of motorcycles, minibikes, motorbikes, motorscooters, drag racers, and motor vehicles which create loud and obnoxious noises shall be prohibited within the development.

36. 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.

37. 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.

38. 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 recution in size of individual lots and prohibit a conveyance of a part of any individual lot.

39. 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 nonpayment 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.

40. 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.

41. 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-third (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.

42. Cloud Country Club, Inc., is the owner lessee or sub-lessee 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 these 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 nonpayment 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 \$90.00 for such membership change. A Regular member may change his or her membership to a Social member 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 for th provided the dues charged do not exceed the dues charged by other comparable country clubs in the region.

43. 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 for the recreational facilities when warranted by weather conditions or other considerations which in the opinion of the Developer requires closure.

44. 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 shall be within the capacity of the subject facilities.

45. 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.

46. 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. A stand-by charge comparable to the water stand-by charge as set out in Section 45 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 42 herein.

