

DECLARATION

OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
SPUR LANDING HOMEOWNER'S ASSOCIATION

CLOUDCROFT REAL ESTATE & INSURANCE, INC., a New Mexico corporation, hereinafter called "Developer" or "Declarant" being the owner of the property located in the Village of Cloudcroft, County of Otero, State of New Mexico, described as follows, to-wit:

A tract of land as shown by the Replat of Spur Landing on the Plat thereof filed March 27, 1985 in Book No. 32, pages 38-41, records of Otero County, New Mexico.

WITNESSETH:

WHEREAS, Declarant is the owner of the above described property located in the Village of Cloudcroft, County of Otero, State of New Mexico; and,

WHEREAS, the said "Developer" has declared that it has established and does hereby establish a general plan for the improvement, development, ownership, use and sale of said property so owned by it; and

WHEREAS, the purposes of these Covenants are to insure the use of the property for attractive residential purposes; to prevent nuisances; to prevent the impairment of the attractiveness of the property; to maintain the desired tone of the community and thereby to secure for each site owner the full benefit and enjoyment of his property, with no greater restriction on free and undisturbed use of his site than is necessary to ensure the same advantages to the other site owners; and to allow only that use which is consistent with these Covenants, whether or not the same are embodied in the conveyance or other instrument affecting title to the property; and

WHEREAS, these Restrictions are meant to establish the manner, provisions, conditions, restrictions, and covenants upon and subject to which the above described property shall be used, improved, occupied, owned, sold and conveyed; and

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WHEREAS, these restrictive Covenants are intended to and shall apply to all Lots within the above described property, whether currently platted, replated, or not, at the time of the filing hereof, and further, as the above described property is governed by the predecessor of these restrictive Covenants filed for record in Book 484, at Pages 447 and 448 on April 9, 1980 in the Records of Otero County, New Mexico; and

WHEREAS, the provisions contained in these restrictive Covenants are not meant to conflict with those contained in the above declaration, but are meant to supplement or add to same, and in all other circumstances, it is the intent of the "Developer" that the provisions contained in these Restrictive Covenants shall control; and

WHEREAS, the Covenants set forth herein, all of which shall be binding upon and inure to the benefit of the present and future owners of said lots and all thereof, and all of which provisions, conditions, restrictions and covenants are, and each of them is, impressed and imposed upon each and every parcel of the hereinbefore described property as a servitude in favor of each and every other parcel thereof, as the dominant tenements;

NOW, THEREFORE, THE DECLARANT hereby declares that all the properties described above shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, which are strictly for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

Definitions

Section 1. "Association" shall mean and refer to Spur Landing Homeowner's Association, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the property described above, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Property" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all of the real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association is all of that area first described above except the platted plots as shown on the Map and any replat of Spur Landing, as accepted by the Cloudcroft Village Council on March 13, 1985, and as recorded in the office of the County Clerk and Ex-Officio Recorder of Otero County, New Mexico in Book 32, Page 38-41 of the County Clerk's Records of Otero County, New Mexico.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded Subdivision Map of the properties with the exception of the Common Area or Areas.

Section 6. "Declarant" shall mean and refer to Cloudcroft Real Estate & Insurance, Inc., a New Mexico Corporation, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purposes of development.

Section 7. "Town House" or "Town Home" shall mean any house or dwelling within the above described property.

Section 8. "Immediate Family" shall mean all owners, their spouses, and their children and their spouses, whether minors or adults, whether residing in the vicinity or elsewhere. Members of immediate family who do not reside permanently in Spur Landing are not permitted to invite guests.

ARTICLE II

Owner's Property Rights

Section 1. Owner's Easements of Enjoyment. Every owner shall have a right in easement of quiet enjoyment in and to the common area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a). The right of the Association to charge reasonable admission and any other applicable fees to include clean-up fees, for the use of any recreational facility or otherwise situated upon the Common Area;
- (b). The right of the Association in accordance with its Bylaws to suspend the voting rights and right to use of the recreational facilities or otherwise by an Owner for any period during which any assessment against his Lot(s) remains unpaid; and for a period

not to exceed sixty (60) days for any violation or infraction of the Association's published rules and regulations pertaining to the use of such property.

- (c). The right of the Association to dedicate or transfer in accordance with its Bylaws all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded.
- (d). The right of the Association to dedicate or transfer all or any part of the Common Area or facilities to any corporation for time-share purposes, subject to such conditions as may be agreed to by the members. No such dedication, assignment or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded.
- (e). Easements as granted herein and as granted on the hereindescribed Spur Landing Subdivision Plat. Each homeowner will have an easement as well for egress and ingress across the common areas.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the Bylaws of the Association, his right of enjoyment to the Common Area and facilities to the members of his immediate family, his tenants, or contract purchasers if they reside on the property, and provided the parties comply with the terms and conditions of this Declaration or Rules and Regulations published by the Association pertaining to the use of the property. Furthermore, any common areas denoted herein are not dedicated or restricted in any manner for use by the general public, but are limited and specifically restricted to the sole use and enjoyment of the owners and as herein delegated.

Section 3. Owner-Tenant. Tenants are defined as persons residing in a residence with the Owner other than members of his immediate family, but who are not Owners. The Owner may request in writing of the Board of Directors the privilege of delegating the right of enjoyment of the common area facilities to tenants residing in his home. Any such party is not eligible to use these facilities prior to the Owner informing the Board of Directors in writing of the names of all persons residing in his residence and the birthdates of all persons 18 years of age and under. The Board of Directors must approve or disapprove this request within

fourteen (14) days and shall inform the Owner of its decision in writing. The Board of Directors will not unreasonably withhold approval of any such request. The Board of Directors has the right to withdraw these privileges as provided for in Section 1(b) above. Regardless of the action taken by the Board of Directors, the Owner must pay full assessment fees.

Section 4. Drainage. In order to provide for proper drainage and flowage of water, a perpetual easement will be established by the Owner and is retained in favor of the Owner for the Association, its successors and assigns, to permit the flowing of storm and other excess water without hindrance. The Association shall continuously recognize this easement. The Association shall maintain any drainage system, whether the pipe, storm sewer, or any appurtenance to same. Furthermore, there is reserved an easement across the side and rear of each Lot for drainage purposes, in accordance with the terrain, grade and elevation established by the Developer and no Owner shall construct or install any improvement or facilities thereon, in any manner which will prevent, obstruct, or otherwise impair the flow of drainage as established, run-off or other surface waters across, along or upon said property as contemplated or established by the design, location and character of drainage facilities installed thereon by the Developer.

ARTICLE III

Membership and Voting Rights

Section 1. Every Owner of a Lot which is subject to assessment as set forth herein shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two (2) classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, whether divided or undivided, all such persons shall be members and the vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any one (1) Lot.

Class B. Class B members shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be automatically converted to Class A membership as set forth above, on the

happening of either of the following events, whichever occurs earlier:

- (a). When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- (b). On December 31, 1990.

ARTICLE IV.

Covenants

Section 1. Maintenance Assessments. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the properties, hereby covenants, and each Owner of any Lot by acceptance of a Deed therefor, whether or not it shall be so expressed in such Deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges and (2) special assessments or charges for capital improvements, assessments or charges, such assessments to be established and collected as hereinafter provided. Any such assessments, whether annual or special, together with interest, costs and reasonable attorney's fees shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person(s) who was the Owner of such property at the time when the assessment fell due. The personal obligation for any delinquent assessment shall not pass to any Owner's successor in title, unless expressly assumed by them.

Section 2. Purpose of Assessments. Any assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the properties and for the improvement and maintenance of the Common Area, including street, drainage and other capital improvements located thereon, and of the exterior of the homes, not including structures, situated upon the property.

Section 3. Amount of Assessment. The Board of Directors of Spur Landing Homeowner's Association shall fix the annual assessments at the annual meeting to be held of the Association each year, or more often, as the need shall be determined by the Board of Directors. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be FOUR HUNDRED EIGHTY & 00/100ths DOLLARS (\$480.00) per Lot.

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- (a). From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.
 - (b). From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above the 5% by a vote of two-thirds of the members who are voting in person or by proxy, at a meeting duly called for the purpose.
 - (c). From and after January 1, 1990, the maximum annual assessment may be increased each year no more than 10% above the maximum assessment for the previous year subject to the unanimous approval of the Board of Directors.
 - (d). From and after January 1, 1990, the maximum annual assessment may be increased above 10% by a vote of two-thirds of the votes of the members who are voting in person or by proxy, at a meeting duly called for the purpose and at which a quorum is present.
 - (e). The Board of Directors may fix the annual assessment at an amount not in excess of the maximum herein provided.

Section 4. Special Assessments for Capital Improvements.

Any special assessment applicable to that year only for the purpose of deferring, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, may be authorized and collected, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of a meeting called for the purpose of taking any action authorized pursuant to this Section, shall be sent to all members not less than ten (10) days nor more than fifty (50) days in advance of the meeting. At such meeting called, the presence of members or of proxies entitled to cast sixty per cent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called, subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required

quorum at the preceding meeting, or thirty per cent (30%) of all votes of each class of membership.

Section 5. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly or annual basis, as the Board of Directors of the Association shall decide.

Section 6. Date of Commencement of Annual Assessments - Due Date. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted to the number of months remaining in the calendar year. The Association Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due date shall be established by the Board of Directors.

Section 7. Effect of Non-Payment of Assessments - Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten per cent (10%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose any applicable lien provided for herein against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an Officer of the Association setting forth whether the assessments on any specified Lot have been paid.

Section 8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not effect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve the Owner of such Lot from liability for any assessments thereafter becoming due or from the lien thereof, and any such assessment shall remain the personal obligation of the Owner against whom assessed.

ARTICLE V.

Exterior Maintenance

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each privately

owned Lot, and improvements thereon, which is subject to assessment hereunder as follows:

- (a). Replacement and care of trees, shrubs, grass and sprinkler systems, if installed shall be the responsibility of the Association. The Association shall have the right to install and maintain an underground water sprinkler system and any other similar devices for maintenance of the landscaping and the Association shall have an easement to enter upon the property of any Owner for the purpose of maintaining the landscaping or the water sprinkler system at all times necessary and/or convenient.
- (b). In the event that the need for maintenance or repair of a Lot or the improvements thereon is caused through the willful or negligent acts of its Owner, or through the willful or negligent acts of the family, guest or invitee of the Owner of the Lot needing such maintenance or repair, the costs of such exterior maintenance shall be added to and become a part of the assessment in which such Lot is subject.
- (c). The Association shall have the responsibility of and shall handle all snow removal, from the Common Areas and all sidewalks.
- (d). The landscaping and maintenance obligations set forth herein, shall be maintained through a common maintenance agreement to be established in accordance with the Bylaws of the Association, which Bylaws may provide for allocation of the cost of such maintenance.
- (e). The Association assumes responsibility for repair or replacement of the common fencing surrounding the perimeter of the subject property.
- (f). Each party wall, including deck walls which are constructed as part of the original construction of the town house concept, and any part of which is placed on the dividing line between separate town house units, shall constitute a party wall. With respect to any such wall, each of the adjoining Owners shall assume any burdens and be entitled to the benefits of these Restrictive Covenants, and, to the extent not inconsistent herewith, the general rules of law regarding party walls shall be applied thereto. In the event any such party wall is damaged or destroyed

through the act of one such adjoining Owners, or any of his guests, tenants, licensees, agents or members of his family, whether or not such act is negligent or otherwise culpable, so as to deprive the other adjoining Owner of the full use and enjoyment of such wall, then the first of such Owners shall forthwith proceed to rebuild and repair the same to as good condition as formerly without cost to the adjoining Owner. In the event any such wall is damaged or destroyed by some other cause, then in such event, both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title. Any Owner proposing to modify, make additions to or rebuild his town house in any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of the adjoining Owner and the Association. In the event of any dispute between Owners with respect to the repair or rebuilding or use of any party wall or with respect to the sharing of the cost thereof, then upon the written request of one of such Owners addressed to the Association Board of Directors, the matter shall be submitted to arbitration under such Rules as may from time to time be adopted by the Board of Directors of the Association. A determination of the matter signed by the duly appointed representative of the Board of Directors shall be binding upon the Owners.

- (g). The exterior painting (only) of all town homes shall be the responsibility of the Association, which shall have total discretion to determine the need, color, type, and order of painting for any of such improvements or maintenance undertaken by the Association. It is expressly understood that, the individual town home owners shall have full responsibility for any roof and skylight maintenance or repairs, and the Association shall be free from any responsibility to otherwise repair, maintain, inspect, or replace any roof, skylights, or roofing system on any of the individually owned town homes. The Association shall, however, maintain, repair, and provide any improvements necessary on any common area improvements owned by the Association itself.

ARTICLE VI.

Architectural Control

No structure shall be commenced, erected or maintained upon the properties nor shall any exterior addition to or change or alteration thereon be made until the plans and specifications showing the nature, kind, shape, color, height, materials and location of the same shall have been submitted to and approved, in writing, as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association. The Board of Directors or any duly appointed committee, upon delegation by the Board of Directors, may adopt resolutions or policies, or both, not inconsistent with the laws of New Mexico, any of its subdivisions, or these restrictive Covenants for the purposes of:

- (a). Providing for the clarification, interpretation, supplementation and construction of these restrictive Covenants.
- (b). Enforcing obedience to these restrictive Covenants and such resolutions and policies by imposing assessments or by directing the occurrence or termination of any acts required or prohibited by such restrictive Covenants and resolutions and policies, and by taking such other action as may be necessary to enforce such obedience.
- (c). Controlling and otherwise managing the Association's administrative procedures for air pollution control, building requirements, fire prevention, sanitation control, traffic control and such other procedures as may be necessary, all with minimum requirements at least equal to and not in conflict with the requirements of the State of New Mexico on the same subject.
- (d). Such other purposes as may hereafter become apparent for the continued assurance of the welfare and benefit of the residents of Spur Landing.
- (e). To correct any violation of these restrictive Covenants, the Board of Directors is granted, in addition to the rights herein granted, the authority to take any action that an Owner of property in the Association could take. Each Owner of land effected by any such action or against whom an assessment has been imposed under provisions of these Covenants hereby grants to the Board of Directors or its

assigns a lien against his property and all improvements thereon for the payment of all expenses thereby incurred by the Board of Directors in any such assessment. The lien may be foreclosed in accordance with the statutory provisions of the State of New Mexico.

- (f). The Committee is hereby authorized to grant variances from the provisions of these restrict Covenants when, in the discretion of the Committee, such variances are justified from the standpoint of esthetics, architectural design, variety, harmony, value enhancement, or other reasons deemed by the Committee to justify a variance. Any variance from the protective Covenants to be granted by the Committee must be done so in writing and must be on file with the official records of the Spur Landing Homeowner's Association. The absence of a specific written variance from the Committee requires that the Covenants remain in force and be followed.

ARTICLE VII.

Damage or Destruction of Property

In the event any common area is damaged or destroyed by an Owner or any of his guests, tenants, lessees, licensees, agents, or members of his family, such Owner does hereby irrevocably authorize the Association to repair said damaged areas and the Association shall so repair said damaged common areas in a good and workmenlike manner in substantial conformance with the original plans and specifications. The Owner shall then repay the Association in the amount actually expended for such repairs. In the event any town house is damaged or destroyed by an Owner or any of his guests, tenants, lessees, licensees, agents or members of his family, such Owner shall, within sixty (60) days from the date of the occurrence of the damage or destruction, enter into a binding bona fide contract for the repair and rebuilding of the exterior of said town house and any damage to adjacent town houses or property in a good and workmenlike manner in conformance with the original plans and specifications used in construction of said town houses. In the event such Owner refuses or fails to so repair and rebuild any and all such damage to the exterior of the town house and adjacent property within a reasonable time, not to exceed six (6) months from the date of the occurrence of the damage or destruction, the Association by and through its Board of Directors, is hereby irrevocably authorized by such Owner to repair and rebuild any such town house and/or adjacent property in a good and workmenlike manner in conformance with the original plans

and specifications of the town house. The Owner shall then repay the Association in the amount actually expended for such repairs.

Each Owner further agrees that these charges for repairs, if not paid within ten (10) days after completion of the work, shall be delinquent and shall become a lien upon said Owner's Lot and town house and shall continue to be such a lien until fully paid. Said lien shall be subordinate to any first mortgage or encumbrance on the subject property. Said charges shall bear interest from the date of delinquency at the maximum rate allowed by law. The amount of principal and interest allowed by said Owner to the Association shall be a debt, and shall also be collectible by any lawful procedure allowed by the laws of the State of New Mexico. Each such Owner by his acceptance of a Deed to a Lot and town house hereby expressly vest in the Association or its agent the right and power to bring all actions against the Owner for the collection of such charges and to enforce the aforesaid lien by all methods available for the enforcement of such liens and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. Nothing contained in this Article shall be construed in any way so as to relieve any insurance company from the payment of any and all amounts which would be payable under any policy or policies had not this Article been inserted.

ARTICLE VIII-

Use Restrictions

The use of each and every unit or Lot is hereby restricted as follows:

- (a). Each unit shall be used only as a single-family dwelling to be occupied by its Owner and his immediate family and guests or by tenants or sub-tenants of the Owner and the guests of such tenants or sub-tenants. All such use shall be subject to the provisions of this Declaration and Articles and Bylaws or any regulations lawfully adopted from time to time.
- (b). No fence or wall except original construction by the developer or necessary retaining walls of minimum height shall be erected or permitted to remain on any Lot, or the common area.
- (c). Any porches, eaves, and all other parts of the building shall be considered part of the structure, and shall be wholly on the privately owned property

except that, the Declarant herein provides for a ten (10) foot extension over the common areas for porch coverings, window sills, siding or eaves whether from the front, rear, or side of said structures.

- (d). No clotheslines, dogruns, or any other structure whatsoever shall be erected or allowed to remain on any building site other than as approved for herein.
- (e). Non-operable, derelict, or abandoned vehicles, and such conveyances shall be deemed unsightly nuisances and shall not be permitted to remain within the property. All two or three wheeled motorized vehicles, dune buggies, motorcycles or snow mobiles, shall not be permitted to be operated within the property or upon any streets within the above described properties. If any such vehicles are parked within the properties, all such vehicles shall be parked in an area designated by the Board of Directors of the Association. Recreational vehicles, to include campers, travel trailers, or any structure of a temporary character, trailer, mobile home, shed, shack, tent, or otherwise shall not remain on the properties, temporarily or permanently, without the written approval of the Board of Directors as herein determined.
- (f). No animals, livestock, or poultry of any kind shall be raised, bred or kept upon or within any dwelling, except that dogs, cats and other household pets may be kept subject to the rules therefor established from time to time by the Association. Furthermore, any of such household pets, shall be strictly kept and maintained in accordance with the applicable City or Municipality Leash Laws. Excessive barking by any such animal will be considered a nuisance, and the immediate policing of pet feces for proper depositing and controlling of obnoxious animal odors is required. Violation of the Village of Cloudcroft Leash Laws shall constitute a violation of these Covenants and be enforceable as otherwise provided for herein.
- (g). No advertising signs, billboards, or unsightly appearances or nuisances shall be erected, placed or permitted to remain on any Lot. The Board of Directors may elect, for a period not to exceed 12 months, to permit a "for sale" sign of not more than 5 square feet to be erected on a lot. Permission to allow "for sale" signs will expire upon the expira-

tion of the permit provided by the Board of Directors as herein provided. No business activities of any kind, except any duly approved time-sharing purposes, shall be conducted in or on any lot; provided, however, that the covenants contained in this paragraph shall not apply to the business activities, construction, advertising, signs or billboards of the Declarant or its agents or employees during the construction and sale period of Lots or to the Association in the furtherance of its powers and purposes as set forth in this Declaration or by the Articles or Bylaws.

- (h). No boats, campers, one ton or over rated trucks, trailers or snowmobiles shall be stored or parked on any portion of a Lot which is visible or parked on any portion of the Common Area for a period longer than 72 hours without the prior written consent of and in the location specified by the Directors of the Association.
- (i). Dedicated easements and rights of way including those shown on the recorded plat of the subdivision are hereby reserved for the benefit of all of the above described Lots. Entities supplying gas, electricity, telephone, water, sewer, solid waste disposal, television cable, and other similar services to the property are hereby granted and given such rights of way, over, across and through all of the common property, for the installation, maintenance, repair and replacement of any and all facilities necessary to the furnishing of the services. However any specific entity, having once installed in, on, across, over or through any of the project area, those initial facilities necessary to provide the project property or any part thereof with the service or services furnished by it, shall be responsible for the reasonable restoration to the condition thereof immediately theretofore existing of those areas and/or improvements damaged or destroyed in the maintenance, repair or replacement of those facilities; provided, however, that trees, shrubs and other growing plants, where the continuing growth thereof interferes with the operation, maintenance, repair and replacement of such facilities, may, from time to time, be trimmed back without the entities or facilities effected thereby assuming any liability for such actions. Likewise, easement and right of way is granted in and to the entire area

and properties needed by any government or unit or other entity or person who may need to come upon any property delineated by the property perimeter for preservation or maintenance of health, safety and the prevention of destruction of structures. It being specifically intended that any such right of way and easement shall be and is hereby granted for law enforcement officials, whether local, state or national, fire department officials, health officials and other similar officials, together with any vehicles normally used by such officials.

- (j). No exploration, drilling, development operations, refining or quarrying of any kind shall be permitted upon the property. No derrick or other structure designed for use in drilling for oil, natural gas, water or any other substance shall be erected or permitted to remain upon any Lot.
- (k). Live trees, owned by the Association may not be removed without the prior written consent of the Board of Directors. Any landscaping done by any Lot Owner on any of the common area, must be approved by the Board of Directors.
- (l). No individual water system or individual sewage disposal system shall be constructed or permitted to remain on any Lot, except as may be approved by the Board of Directors.
- (m). No garbage, refuse, junk, trash, rubbish, or other waste or obnoxious or offensive material shall be permitted to accumulate upon any Lot. All such material shall be kept in sanitary containers and shall be disposed of in accordance with the accepted sanitary practices as interpreted by the appropriate governmental agency and the Board of Directors. The Board of Directors may, where it deems such to be architecturally desirable, require that a suitable alcove, walled-in container, or other structure to serve as a garbage container, be constructed. No incinerator shall be kept or operated upon the property. All garbage, trash and other refuse shall be placed in sealed, plastic containers and deposited in designated areas for pick-up on designated days.
- (n). The Association shall provide for the common storage of firewood, which shall be stockpiled only in designated areas as shall be determined by the Board of Directors.

- (o). 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 the Board of Directors of the Association, the Board, through its agents and employees, shall have the right to enter upon such Lot and 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 shown on the records of the Board of Directors, 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 as provided for other liens and assessments herein. Such lien shall be foreclosed in the manner provided by the laws of the State of New Mexico.
- (p). All of the preceding prohibitive use paragraphs shall be adjudicated, determined and any disputes resolved as to the applicability by the Directors of the Spur Landing Homeowner's Association, the Board of Directors or their designees as provided for. Any penalties, assessments or violations shall be set forth in the Bylaws of the Spur Landing Homeowner's Association. Any such penalty, assessment or violation which has been properly adjudicated, shall be a cost to the property Owner and shall be charged against the Owner of said Lot by notice to the said Lot Owner or purchaser by regular mail, addressed to his last address shown on the records of the Spur Landing Homeowner's Association, 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 said Lot as provided for other liens or assessments herein, and shall be foreclosed in the manner provided by the laws of the State of New Mexico.
- (q). No obnoxious or offensive activities shall be carried on upon any Lot nor shall anything be done on any Lot which may become an annoyance or a nuisance to the neighborhood.
- (r). No Deed, conveyance, agreement or other document shall be executed wherein there is attempted to be made a separation into different owners of the surface and sub-surface rights of any Lot or Lots.

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ARTICLE IX.

Miscellaneous Provisions

Section 1. Enforcement. The Association, or any Owner shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In addition, the Architectural Review Committee, as provided for herein, shall have the right to enforce these provisions.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendments. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date of this Declaration as recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended or terminated by the owners of 75% or more of the above described Lots by written instrument duly recorded and executed. Additionally, any amendment must be recorded.

Section 4. Annexation. Additional land within the area may be annexed by the Declarant without the consent of the members within five (5) years of the date of this instrument.

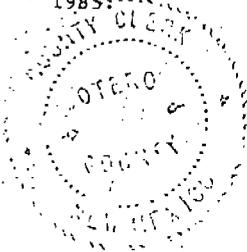
Section 5. No delay or omission on the part of the Owner or Owners of any of the described Lots in exercising any right, power or remedy herein provided for in the event of any breach of the provisions, restrictions or covenants herein contained shall be construed as a waiver thereof or acquiescence therein; and no right of action shall accrue nor shall any action be brought or maintained by anyone against the undersigned for or on account of the failure or neglect of the undersigned to exercise any right, power or remedy herein provided for in the event of any such breach of any of said provisions, conditions, restrictions, or covenants or the imposing therein of same which may be unenforceable.

Section 6. Association of Homeowners. The Owners of Lots within the above described property are authorized to form an Association of Homeowners with such powers and duties as may be desired by seventy-five per cent (75%) of the Lot Owners. The Association shall be begin existence upon the adoption of Bylaws

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by seventy-five per cent (75%) of the Lot Owners within the above described property and shall be operated in accordance with such Bylaws. The Association, if so activated, shall assume all rights and liabilities under any existing common maintenance agreements among the unit Owners, without changing or reducing the obligations contained therein. In the event of conflict between the provisions of the any Bylaws of such Association and these Restrictive Covenants, these Restrictive Covenants shall control.

IN WITNESS WHEREOF, the undersigned, being the Declarant have hereunto set its hands and seals this 21st day of May, 1985:



CLOUDCROFT REAL ESTATE & INSURANCE INC.

By: [Signature]
Its: PRESIDENT

STATE OF NEW MEXICO)
COUNTY OF OTERO)

The foregoing instrument was acknowledged before me this 21st day of MAY, 1985 by CHARLIE HERRIN as PRESIDENT of CLOUDCROFT REAL ESTATE & INSURANCE, INC., a New Mexico Corporation, for and on behalf of said corporation.

My Commission Expires: 10-10-1985

[Signature]
Notary Public in and for the State of New Mexico

STATE OF NEW MEXICO
OTERO COUNTY
FILED FOR REC'D
This day of June 1985
At 100 o'clock PM recorded
in Book No. 579 page 94-112
the records of Otero County, New Mexico
Andrew C. Winkler
County Clerk, Otero County, New Mexico
Mary L. Calderon

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