

Country Club Estates

Declaration of Restrictions

THIS DECLARATION OF RESTRICTIONS, made this _____ day of _____, _____ by Forrest Westmoreland and Joyce Westmoreland, his wife and Michael L. Hofacket and Vicki D. Hofacket, his wife, hereinafter called "GRANTORS".
(Later to be replaced by "The Country Club Estates", Inc.)

WITNESSETH:

Whereas, Clay-West Development Corp., Forrest Westmoreland and Joyce Westmoreland, his wife, and/or Michael Hofacket are the owners of all certain real property, located in the City of Deming, County of Luna, State of New Mexico, Described as:

Lots 1 through 313 inclusive of Country Club Estates Replat #1, Amendment #1 in the city of Deming, County of Luna, State of New Mexico, according to the plat thereof on file in the Office of the Luna County Clerk, Deming, New Mexico: Filed in office 10/17/97, Book B, Pg 14 of Plats, rec 9704634: As well as any and all other lots that shall or may be generated as a result of further replatting of said/same property as described above.

(This document will serve to replace "Revised Covenants", 3-18-85, Book 149, Pages 376-381 as well as any and all other restrictive covenants previously established to subject the above described "Real Property" to such control, either imposed or implied.)

Which said property is hereinafter for convenience referred to as "Real Property", and: WHEREAS, it is the intention of the Grantors to convey Interest in this property and to impose on the real property mutually beneficial restrictions under a general plan for the benefit of all future owners (Grantees) of the real property, AND;

WHEREAS, the Grantors desire to subject all of said real property to certain Conditions and Restrictions for the protection and benefit of the Grantors and any and all future owners (Grantees) of the real property, or any portion thereof.

NOW THEREFORE, In consideration of the premises, Grantors hereby Certify and Declare that Grantors have established and do hereby establish the following general plan for the protection and benefit of all of said real property, and have fixed and do hereby fix the following conditions and restrictions upon the subject to which each and all of the lots in said real property shall be hereafter held, used, occupied, leased, sold and/or conveyed. All of the limitations, covenants, restrictions and conditions shall run

with real property, or any interest therein, and shall be binding upon all parties having or acquiring any rights title or interest in the described real property, or any part thereof, and shall be for the benefit of each owner of any interest in the real property, and inure to the benefit of and be binding upon each successor in interest of the owners thereof. The integrity, protection, and enforcement of this Declaration of Restrictions is the direct responsibility of the Grantees.

SAID CONDITIONS AND RESTRICTIONS ARE AS FOLLOWS, TO WIT:

1. DEFINITIONS:

The property interest conveyed by deed, to grantee is designated an ownership- the grantee (or the grantees) is designated an owner, the area in which the grantee is given fee title is designated a living unit, and the owner of the other living unit located on the adjoining lot and having a common fence shall be known as the adjoining owner.

2. RESIDENTIAL PURPOSES ONLY:

That said lots shall be used for residential purposes only and that no building or buildings shall be erected, constructed, altered or maintained for any other purpose except for customary out-buildings on any of the said lots.

3. GARBAGE CANS:

Garbage must be kept concealed in an appropriate enclosure until it is placed in a city dumpster for pick-up.

4. RESIDENCE AND AGE REQUIREMENT:

Country Club Estates is intended to be used as housing for older persons. At least 80 percent of all occupied living units must be occupied by at least one person who is 55 years of age or older. No person under the age of 18 years may reside in or occupy a living unit, provided however that temporary stays are permitted up to a total of sixty (60) days in a calendar year. The number of permanent residents shall be no more than three.

Compliance with the requirements of any federal, state or local regulation shall be shared jointly between the Grantors (Country Club, Estates Inc.) and the COUNTRY CLUB ESTATES HOMEOWNER'S ASSOCIATION INC. until, according to the voting entitlement provision as stated in section 7 of this document, the Class A total votes outstanding are equal to the class B total votes outstanding. At that time the compliance responsibility shall become exclusively that of the HOMEOWNER'S ASSOCIATION.

In the event that any of the herein stated restrictions becomes or is found to be contrary to applicable law, said restriction(s) shall be automatically modified, to the

minimum extent necessary, to conform with applicable law.

5. HOMEOWNER'S ASSOCIATION:

A. Association. The Association is or shall be a non-profit New Mexico corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, By-laws, and this Declaration of Restrictions.

B. Sub-Associations. Nothing in this Master Declaration shall prevent the creation, by provision therefor in Supplemental Declarations, for Sub-Association to assess, regulate, maintain or manage the portions of Country Club Estates subject to such Supplemental Declaration, or to own or control portions thereof for the common use or benefit of the owners of lots in the portion of Country Club Estates subject to such Supplemental Declaration.

Any Sub-Association shall be entitled to exercise such powers and authority and assume such responsibilities as set forth in a Supplemental Declaration and the incorporating documents for the Sub-Association. No Sub-Association shall be established unless the approval of Declarant or the Association is first obtained.

C. Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers as the Board may elect or appoint, in accordance with the Articles and By-laws, as same may be amended from time to time. The composition of the Board shall be defined in the By-laws.

6. MEMBERSHIP:

A. Qualifications. Each owner (including Grantor) of a lot, by virtue of being such an owner and for so long as he is such an owner, shall be deemed a member of the Association. The foregoing is not intended to include persons or entities who hold an interest in a lot merely as security for the performance of an obligation. An owner shall have one membership for each lot owned.

B. Transfer of Membership. The Association membership of each owner (including Grantor) shall be appurtenant to said lot and shall not be transferred, pledged or alienated in any way except upon the transfer of ownership to said lot, and then only to the transferee thereof. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a lot shall operate automatically to transfer said membership to the new owner thereof.

7. VOTING:

A. Number of Votes. The Association shall have two classes of voting membership as follows:

Class A. Class A members shall originally be all owners

with the exception of Grantor, and shall be entitled to one vote for each lot owned. Grantor shall become a Class A member with regard to lots owned by Grantor upon the conversion of Grantor's Class B membership to Class A membership as provided below. The owner of each lot may, by written motion to the Association, designate a person who may act on his behalf to exercise the vote for such owner. Said designation shall be revocable at any time by written notice to the Association by the owner. Such powers of designation and revocation may be exercised by the guardian of an owner's estate or by his conservator, or in the case of a minor having no guardian, by the parent entitled to his custody, or during the administration of an owner's estate, by his executor or administrator where the latter's interest in said property is subject to administration in his estate.

Class B. The Class B member shall be Grantor. Grantor shall be entitled to three (3) votes for each lot as shown on the plat, including any lots located within annexed property.

The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

1. When the total votes in the Class A membership equal the total votes in the Class B membership.
2. Ten (10) years from the date of the first recorded sale to an owner of a detached single-family house in Country Club Estates.

B. Members Entitled to Vote. All members not in arrears in the payment of assessments. One hundred fifty dollars (\$150) per year will be assessed per unit by the Homeowner's Association upon completion of a club house. Additional fees may be assessed by the Homeowner's Association as additional facilities are added. Fees will never exceed \$400.00 per unit per year (see Section #36: Recreational Facilities).

8. ARCHITECTURAL COMMITTEE:

There shall be an Architectural Committee, consisting of three (3) persons. The initial Committee is to be appointed by Grantors, each of said persons so appointed being subject to removal at Grantors' direction. All vacancies on said committee shall be filled by appointment of Grantors, until such time as THE COUNTRY CLUB ESTATES Homeowner's ASSOCIATION, INC., a non profit corporation presently in the process of being established, is empowered by the New Mexico State Corporation Commission. Thereafter, the Architectural Committee will serve at the pleasure of the Homeowner's ASSOCIATION according to the voting entitlement provision of the proposed ARTICLES OF INCORPORATION of said non-profit corporation, attached hereto.

A. EXEMPTION OF DEVELOPER/GRANTORS. Nothing in these Restrictions shall limit the right of Developer to complete excavation, grading, and construction of improvements to any property within the Country Club Estates owned by Grantors, or to alter the foregoing or to construct such additional improvements as Developer deems advisable so long as any lot therein remains unsold, or to use any structure in the Country Club Estates as a model home or real estate sales office.

Non-liability of Architectural Committee Members.
Neither the Architectural Committee nor any member thereof shall be liable to the Association, any Owner or to any other party, for any damage, loss or prejudice suffered or claimed on account of: (1) the approval or disapproval of any plan, drawings, or specifications, whether or not defective- (2) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications- (3) the development of any property within The Country Club Estates (4) the execution and filing of any estoppel certificate, whether or not the facts therein are correct- provided , however, that with respect to the liability of a member of the Architectural Committee, such member has acted in good faith on the basis of such information as may be possessed by him.

9. NEW BUILDINGS ONLY:

That no building of any kind shall be moved from any other place onto any of said lots, or from one lot onto another lot, without the prior written permission of the Architectural Committee.

10. HEIGHT LIMIT OF BUILDINGS:

That no dwelling without the written approval of the Architectural Committee shall be more than one story in height.

11. PLANS AND SPECIFICATIONS:

That no building or other structure or improvement shall be commenced upon any of said lots until the location and the complete plans and specifications, including the color scheme, of each building, fence and/or wall to be erected upon the lot have been approved in writing by the Architectural Committee and no building shall be located on any lot in front of the setback line as shown on the recorded plat.

12. EXTERIOR ALTERATIONS:

That no such alteration shall be made in the exterior design or color of any structure unless such alteration, including any additions, shall have first been approved In writing by

the Architectural Committee.

13. NO TENTS, SHACKS, ETC.:

That no tents, shack, trailer or manufactured home, basement, garage or out-building shall at any time be used on any lot as a residence either temporarily or permanently; nor shall any residence of a temporary character be constructed, placed or erected on any lot.

14. NO NUISANCES:

Except In the course of construction and improvement of lots and housing by Grantors or their authorized representatives, no rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any property within The Country Club Estates.

A. Nor shall any other unsightly articles be permitted to remain so as to be visible from adjoining property or from the streets or public way.

B. No inoperable vehicle will be permitted to remain on any lot except it be kept within an enclosed garage with door remaining shut.

C. Temporary vehicular parking shall comply with The City of Deming and County of Luna regulations with regard to on-street parking. All other on-lot vehicle parking shall be restricted to concreted space (driveways) provided by initial construction.

No RV parking or boat parking will be allowed on individual residential lots.

A chainlink fenced area adjacent to the east boundary of the subdivision will be prepared for R.V. parking at some future date, but not later than upon completion and occupation of all 40 of the first lots on line and available for developing at this time. Said facility will be well lit for security purposes and provided to residents for the parking of recreational vehicles. Initially, said parking there will be a \$20 per month per vehicle charge. Should conditions mandate, said \$20 fee may be increased to cover additional costs of facility operation, but only with a two thirds majority vote by the Homeowner's Association. If RV parking with additional amenities shall be desired by property owners, the Grantor may add such to the facility and increase the charge appropriately only to those who require the expanded facility.

15. NO SIGNS:

That no signs of any kind or for any use or purposes whatsoever other than signs of customary and reasonable dimensions advertising the property for sale, shall be

erected, posted, pasted, painted, or displayed upon any said lots or upon any building or other structure thereon, without the written permission of the Architectural Committee.

16. NO WELLS:

That no well for the production of, or from which there is produced water, oil or gas, shall be operated upon any lot- nor shall any machinery, appliance or structure be placed, operated, or maintained thereon for use in connection with any trading, manufacturing or repairing business.

17. NO LIVESTOCK OR POULTRY:

No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, limit of two per living unit, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purposes.

A. PETS:

only house pets (i.e., dogs, cats, birds, etc.) will be housed on any lot or inside any living unit. All dogs and cats outside of that owner's property shall be on a leash. Owners are expected to clean up their pet's waste.

18. NO COMMERCIAL BUSINESSES:

That no commercial business shall be conducted on any of said lots, and nothing shall be done upon any lot which may become an annoyance or nuisance to the neighborhood.

19. LANDSCAPING:

All front yards and side yards visible from streets shall be satisfactorily landscaped within 90 days from the Close of Escrow.

20. ANTENNAS:

No radio or television pole or antenna shall be erected, constructed or placed upon any of said building or lots, except that an antenna of not more than 12 inches in total height above the roof line may be installed.

21. NOTICE OF CLAIM OF BREACH:

The Architectural Committee may at any time that the Architectural Committee deems a breach of these conditions and restrictions has occurred, execute, acknowledge and record in the Recorder's Office of Luna County, a Notice of Claim of Breach setting forth the facts of such Breach, describing the lot or lots upon which such breach has occurred and setting forth the names of the owner or owners

thereof. Such notice upon being recorded, shall be notice to all persons of such breach, provided an action has been commenced within sixty (60) days after the recording of such notice to establish such breach, and if no such action has been commenced within such sixty (60) day period, then and in that event such notice shall be of no force and affect whatsoever and the breach set forth in said notice shall be presumed to have been remedied. Should legal action be instituted as a result of any claim of breach of any covenant of condition contained herein, the owner or owners against whom such action is taken shall pay all costs and attorneys fees incurred by the Architectural Committee or a Grantee. If a Grantee deems a Breach of these conditions and restrictions has occurred, he may at any time file in writing a full and detailed report with the Architectural Committee or he may proceed directly on his own behalf to file a Notice of Claim of Breach as per the terms of this paragraph.

22. FAILURE TO COMPLY WITH ORDER OF ARCHITECTURAL COMMITTEE:

In the event of the failure of any owner to comply with a written directive or order from the Architectural Committee, then in such event the Architectural Committee shall have the right and authority to enforce or perform the subject matter of such directive or order and all costs and attorney fees incurred as a result of such enforcements or performance shall be charged to the owner in question and may be recovered by the Architectural Committee in an action at law against such individual owner.

23. NOTICES:

Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered twenty-four (24) hours after a copy of same has been deposited in the United States Mail, postage prepaid, certified mail, addressed to each such person at the resident address of such person.

24. PAINTING, MAINTENANCE, AND REPAIRS:

In the event that the Architectural Committee, in its sole discretion, determines that painting, maintenance or repair, hereinafter referred to as "work", of a unit or yard is reasonable or necessary to preserve the appearance and value of such unit, the Architectural Committee shall give written notice of the necessity of such work to the owner of such unit or yard in which event said owner shall be obligated, at his sole cost and expense, to perform said work.

If the owner of said unit shall have failed or refused to perform said work within a reasonable time after the aforesaid written notice, the Architectural Committee shall execute and cause to be recorded, a Certificate of Assessment stating that the painting, maintenance or repair which it has

determined to be necessary as aforesaid shall not have been so performed within a reasonable time after such written notice. Said obligation shall not apply to Grantors during the developmental stage of the project.

25. COMMON AREA:

A. The common area is defined as the common fence/wall between the two lots.

B. Nothing shall be altered or constructed on or removed from the common fence, except upon the written consent, of both unit owners. The care and maintenance of said fence shall be shared equally.

C. The care and maintenance of all other walls within the boundaries of a unit shall be the responsibility of the homeowner.

26. UTILITY EASEMENTS:

There is hereby created a blanket utility easement upon, across, over and under the property for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including, but not limited to, water, sewers gas, telephones, electricity, television cable or communication lines and systems, etc.

A. It shall also be the responsibility of the Grantee to care for and maintain all underground utility lines, electricity, cable T.V. etc. within the boundaries of his lot.

27. CLOTHES LINES:

No clothes lines will be permitted nor may any resident of any unit use their fence or common area as a clothes line.

28. DAMAGE AND DESTRUCTION:

If an individual "Living Unit" is damaged by fire or other casualty, the insurance proceeds, if any, shall be paid jointly to "owner" and any mortgagee with a first lien on the security. Said insurance proceeds are to be used for the purpose of repairing and/or reconstructing the "Living Unit." "Owner" expressly covenants and agrees to have repaired any damage and to pay any costs of repair not covered by said insurance proceeds.

29. ARBITRATION:

In the event a dispute occurs between an owner and an adjoining owner, or between an owner and any other interested party or entity, over the application of these restrictions, operation, maintenance, repair, insurance or any other matter in connection with said premises, the same shall be submitted

to the ARCHITECTURAL COMMITTEE which Committee shall act as an arbitrating tribunal.

The arbitrating tribunal shall have complete control of the arbitration and may specify any rules or regulations with reference thereto not to conflict herewith. The decision of a majority shall be the decision of the arbitrating tribunal, and shall be final. The technical rules of evidence shall be waived in the discretion of the tribunal. The parties are entitled to be represented by counsel and to be heard, provided, however, that nothing herein contained shall limit the power of the arbitrating tribunal to control the manner, method, and conduct of the proceedings and the presentation of the evidence, subject always to requirement that the parties be given a fair and impartial hearing. Where not inconsistent herewith the rules of the American Arbitration Association apply.

In any arbitration, the arbitrators shall have the broadest possible power permitted by law to frame their award of decision as to do substantial justice between or among the parties. The grantees herein agree that they will faithfully observe the contents of this document and the rules and that they will abide by the decision rendered pursuant to this agreement, and judgement of the court having jurisdiction may be entered upon the award.

Should a dispute occur between any homeowner and the Architectural Committee, it is advised that a mutually agreed upon arbitrator be decided upon for binding arbitration.

30. INTERPRETATION:

The provisions of this declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the real property and improvement thereon. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision of any other provision hereof.

31. PROTECTION FOR MORTGAGEES AND TITLE INSURANCE COMPANIES.

That the owner of any encumbrance made for value on any said lot or lots and any corporation Insuring the lien of such encumbrance may conclusively presume that no breach exists under these conditions and restrictions provided such encumbrance is recorded in the Office of the County Recorder of Luna County prior to the commencement of any action to establish any such breach and not within sixty (60) days after the recording of any Notice of Claim of Breach, anything contained herein to the contrary notwithstanding.

PROVIDED, that a breach of any of the foregoing conditions and restrictions, shall not affect, impair, defeat or render invalid the lien charge or encumbrance of any mortgage or deed of trust made for value which may then exist upon said

land, which said mortgage of deed of trust shall be and is hereby declared to be a prior and superior lien to the rights in favor of any person or persons under and by virtue of these conditions and restrictions; provided, however, that in the event of a foreclosure of any such trust deed of mortgage, or if the owner of the note secured by such trust deed or mortgage acquires title to said land in any manner, whatsoever in satisfaction of indebtedness, then any purchaser at the foreclosure of Trustee's sale, or any said note owner acquiring title as aforesaid agrees that said property so acquired by them shall immediately upon said acquisition become subject to each and all of the conditions and restrictions and right herein contained, but free from the effects of any breach occurring prior thereto.

FURTHER PROVIDED: Savings Clause and Exemption of Grantors. Notwithstanding anything herein to the contrary, Grantors shall have the full and complete authority to perform such acts which it deems necessary for the development and sale of lots within The Country Club Estates. Although Grantors may contribute to the maintenance of the recreational and common areas, it is understood that Grantors are not and shall not be held liable for the payment of any assessment provided for in the Master Declaration by virtue of its ownership of lots within The Country Club Estates and that Grantors failure to pay said assessments shall not give rise to any right of imposing any lien or encumbrance upon lots owned by Grantors as security for the payment of said assessment.

FURTHER PROVIDED: Enforcement of the provisions of this document shall be the right of either the Grantors or the Grantees, individually or collectively, but in no case shall be the legal obligation or either 32. AMENDMENT

Subject to the provisions of paragraph 7, the provisions of these restrictions, other than this paragraph may be amended by an instrument in writing, signed and acknowledged by record owners of at least seventy-five per cent (75%) of the combined total number of Class A and Class B votes outstanding. Said AMENDMENT shall be effective upon recordation in the office Of the Recorder of Luna County, New Mexico, properly signed, notarized and executed affidavits reflecting the required majority affirmative voting.

33. SEVERABILITY:

The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision hereof.

34. BINDING EFFECT:

The provisions herein contained shall bind, inure to the benefit of, and be enforceable at law and in equity by Grantors, their successors and assigns, or by the grantee of

any lot described above. Failure by Grantors, their successors, assigns or any grantee to enforce any of the restrictions, conditions and covenants herein contained shall in no event be deemed a waiver of the right to do so thereafter, and shall not subject Grantors their successors or assigns to any liability for failure to enforce.

35. TERM:

These restrictions are to run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty years from the date these restrictions are recorded, after which time said restrictions shall be automatically extended for successive periods of ten years.

36. RECREATIONAL FACILITIES:

A club house of no less than 1,000 square feet will be constructed on the property by the Grantor no later than when twenty (20) individual units are occupied. At that time, a \$150.00 per unit dues assessment will be assessed by the Homeowner's Association.

The Homeowner's Association may request Grantor build a swimming pool, spa, or other recreational facilities when occupation of Country Club Estates exceeds 20 individual units. Membership dues at that time, and with the approval of no less than a two thirds majority of the voting entitlement, may increase an appropriate amount to accommodate the cost of said additional improvements, but in no case shall the dues per, unit exceed \$400.00 per unit per year. In no event shall the cost of said additional improvements exceed the total contribution of dues from the Homeowner's Association.

IN WITNESS WHEREOF, The undersigned has executed this instrument this _____ day of _____, _____

Forrest Westmoreland

Joyce Westmoreland

Michael L.Hofacket

Vicki D. Hofacket

STATE OF NEW MEXICO }
COUNTY OF _____ } Ss.

This instrument was acknowledged before me on

_____, 19__, by _____

My commission expires: _____
Notary Public

DISCLAIMER

It is mutually understood and agreed that Michael Hofacket and Vickie Hofacket, his wife, are hereby subjecting that portion of the above described real property which they own to the provisions of this document. They are assuming no financial obligation with regard to the implementation of any and/or all of the planned improvements upon said property either expressed or implied. Forrest and Joyce Westmoreland, their successors or assigns, shall bear Grantor's responsibilities under paragraph 36.