

Paid 264007
\$45.00

State of Colorado,
County of San Miguel.)

Filed for record: March 8, 1990. Time: 9:10 A.M. and duly
recorded in Book 463 Pages 599-597.
Gay Cappis-Recorder by *[Signature]* Deputy

D.S. 398518305 (205)
10/24/83

EXHIBIT TC-10 (\$19)

NON COMPETITION COVENANT

THIS COVENANT is entered into between THE TELLURIDE COMPANY ("Telco"), a Colorado corporation, and DORAL TELLURIDE RESORT & SPA ASSOCIATES JOINT VENTURE ("Doral"), a New York general partnership.

1. Background. This Covenant is being entered into against the following background:

- a. Telco and Doral are the "Seller" and "Purchaser", respectively, under an Agreement made as of the 24th day of October, 1988, pursuant to which Seller has concurrently herewith sold and Purchaser has concurrently herewith purchased the parcels of property identified in Exhibits TC-1 and TC-2 hereto (such agreement, the "Agreement", and such property, the "Property").
- b. Under the Agreement, the Seller acknowledged that the Purchaser intended to develop and market all or portions of the Property under an interval ownership or fractional/timesharing program, plan or arrangement, whereby purchasers will obtain the right to use and occupy a particular unit (whether a condominium unit, cooperative apartment, or other fee or leasehold interest) for a particular period or interval (any such program, plan, or arrangement promulgated by the Purchaser being hereinafter referred to as the "Interval Ownership Program").
- c. Under the Agreement, the Seller further acknowledged that the efforts of the Purchaser successfully to market and implement the Interval Ownership Program could be materially adversely affected, and the success of the Purchaser's contemplated development of the Property jeopardized, if competing fractional/timeshare or Interval Ownership Programs or similar plans are permitted to be offered.
- d. Accordingly, in accordance with their agreement to do so under the Agreement, Telco and Doral are entering into this Covenant.

2. Term. The prohibitions imposed by this Covenant shall be in effect only during the period (the "Term") commencing

with the date hereof and terminating on that date (the "Termination Date") which is 15 years from the date of issuance of the permanent Certificate of Occupancy for the first phase of the hotel contemplated to be developed by Doral on a portion of the Property (the "Hotel"), which first phase is currently anticipated to encompass approximately 50 suites. The provisions of this Covenant shall automatically terminate on the Termination Date, without prejudice, however, to Doral's rights to institute any actions or proceedings in respect of any breaches of this Covenant or to prosecute any claims thereunder arising or accrued prior to such date.

3. Restricted Property.

3.1 During the Term only, this Covenant shall be a burden upon, shall encumber, and shall run with the title to (i) all or any portion of that certain real property described hereinbelow as the "Restricted Area", located in San Miguel County, Colorado, and (ii) at the time of combination described hereinafter in this clause (ii), to any site, lot, or parcel of real property outside of the Restricted Area which in combination with any site's), lot(s), or parcel(s) of real property included in the Restricted Area is, or in the future is, zoned to permit the development thereon, whether "as of right" or otherwise, the density equivalent of 50 or more "Lodge Units" or "Hotel Units" or 25 or more "Condominium Units", as such terms in quotations are defined on Sheet 2 of 11 of the final plat for Telluride Mountain Village, Filing 1, recorded in the office of the San Miguel County Clerk and Recorder in Plat Book 1 at Page 476 (the "Filing 1 Plat"). Any site, lot, or parcel of real property outside of the Restricted Area which may by reason of the preceding become subject to this Covenant is hereinafter referred to as an "Ancillary Lot".

Restricted Area

The Restricted Area comprises the geographic or physical area encompassed by the following Lots, as currently designated and configured, regardless of how such Lots may subsequently be redesignated, replatted, rezoned, resubdivided, merged or combined, or otherwise changed:

Lots 51, 61A, 61B, 61C, 61D, 62, 63, 70, 75, 81, 81, 82, 83, 84, 85, 86, 87 and 88 - Telluride Mountain Village, Filing 1.

Lots 65, 77, 105, 106 and 107 - Replat No. 3, Telluride Mountain Village, Filing 1.

Lots 64A, 64B, 64RI and 64R2 - Telluride Mountain Village.

4. Prohibited Activity. Subject to the limitations set forth in paragraph 5, during the Term only, there shall be an absolute prohibition against any sales, promotions, advertising, marketing or offers for sale of, or solicitations of offers to buy (collectively "Prohibited Activities"): any fractional ownership, interval ownership, or timesharing units or interests of any nature whatsoever in the Restricted Area or any Ancillary Lot, and any rights, interests, memberships, or participations in any similar programs, plans or arrangements in respect of or relating to all or any portion of the Restricted Area or any Ancillary Lot.

5. Limitations on Prohibitions. Nothing to the contrary withstanding, the prohibitions set forth in paragraph 4 shall not apply to the following and, therefore, Telco its successors and assigns, shall be permitted to do the following without violating the terms of this Covenant:

5.1 Tenancies. Sales of Hotel Units, Lodge Units, "Hotel Efficiency Units", "Efficiency Hotel Units", or "Condominium Units" (as such terms are defined in the Filing 1 Plat) to any bona fide, pre-existing group of purchasers; i.e., a group of two or more purchasers joining on their own independently to purchase a residential unit as tenants in common or as joint tenants, who have not directly or indirectly been brought together or encouraged to act in concert by Telco or anyone acting on Telco's behalf or direction.

5.2 Cooperatives/Corporations/Partnerships. Sales of either individual or blocks of Hotel Units, Lodge Units, Hotel Efficiency Units, Efficiency Hotel Units or Condominium Units to bona fide, independently formed cooperatives, corporations, general partnerships or limited partnerships (i.e., cooperatives, corporations, or partnerships not directly or indirectly promoted or sponsored by, and whose owners or participants or members were not directly or indirectly brought together or encouraged to act in concert or solicited by, Telco or anyone acting on Telco's behalf or direction).

5.3 Individual Condominium. The sale of a Condominium Unit to an individual, or to such individual and his spouse, in which fee simple absolute to the entire interest in such unit is conveyed, undivided or otherwise fractionated.

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5.4 Sites for Less Than 10. Any Restricted Lot or combination of Restricted Lots which, at the time of the otherwise Prohibited Activity, is zoned for less than the density equivalent of 50 Hotel Units or Lodge Units or 25 Condominium Units, shall be exempted from the prohibition of Paragraph 4 and an otherwise Prohibited Activity in respect thereof shall be permitted, provided any such Restricted Lot or combination is not under (direct or indirect) common ownership, control, or management, or promoted, sold, advertised, offered for sale, or marketed (or in respect of which offers to buy are solicited), or operated, under any (direct or indirect) common arrangement with any other Restricted Lot or Ancillary Lot which, when taken together with such Restricted Lot or combination, would result in a combination of Restricted Lots with or without Ancillary Lots zoned for the density equivalent of 50 or more Hotel Units or Lodge Units or 25 or more Condominium Units.

6. Negative Covenant Only. The parties acknowledge and agree that this Covenant is intended to establish only the restrictions and limitations set forth herein and not any others.

7. Benefits and Burdens; Recording.

7.1 The rights and benefits of Doral under this Covenant and the burdens imposed on Telco hereunder shall run with the land, shall inure to the benefit of (and be enforceable by) Doral, its successors, and any direct or indirect assigns of Doral acquiring or holding all or substantially all of the Property or holding any unsold fractional interests or units created pursuant to the Interval Ownership Program, but not the ultimate residential end purchasers of such interests or units. This Covenant shall be binding upon Telco and its successors and assigns.

7.2 The parties shall cause this Covenant to be recorded against the Restricted Area as the property burdened thereby and against the Property as the property benefited thereby.

7.3 This Covenant shall terminate ipso facto if the Property shall be reconveyed to Telco pursuant to Sections 4.4 or 5.4 of the Purchase Agreement.

8. Enforcement.

8.1 Telco shall not be obligated to take any affirmative action to enforce the prohibitions imposed by this Covenant, but at Doral's request shall render such reasonable cooperation, testimony, and assistance as Doral

may reasonably request in any enforcement action undertaken by Doral including, but not limited to, allowing Doral to bring any such action in the name of Telco if Telco shall be a necessary party thereto but at Doral's cost and expense.

8.2 Each party confirms that damages at law may be an inadequate remedy for a breach or threatened breach of this Covenant and agrees that in the event of a breach or threatened breach of any provision hereof, this Covenant shall be enforceable by specific performance, injunction or other equitable remedy, without any requirement for the party seeking such relief to post any bond or other security as a condition to applying therefor or obtaining the same, each party hereby waiving any such requirement, except for any appellate bond required to be posted by a party appealing an adverse initial judicial determination, but nothing herein contained is intended to, nor shall it, limit or affect any right or rights at law or by statute or otherwise of an aggrieved party for a breach or threatened breach of any provision hereof, it being the intention of this paragraph 8.2 to make clear that this Covenant shall be enforceable in equity as well as at law or otherwise.

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EFFECTIVE DATE: March 1, 1989, 1989.

ATTEST:

A. J. Wells
A. J. Wells, Secretary

THE TELLURIDE COMPANY, a
Colorado corporation

By: Ronald D. Allred
Ronald D. Allred, Chairman
of the Board of Directors

Address for Notice:

The Telluride Company
P.O. Box 307
Telluride, Colorado 81425

Attn: Ronald D. Allred

ATTEST:

DORAL TELLURIDE RESORT & SPA
ASSOCIATES JOINT VENTURE, a New
York general partnership

By: Bruce Blum

Address for Notice:

Doral Telluride Resort & Spa
Associates Joint Venture
c/o Doral Hotels & Resorts
Management Corporation
600 Madison Avenue
New York, New York 10022

Attn: Bruce Blum

EXHIBITS

Description of Doral Property

(Telco)

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EXHIBIT TC-1

DESCRIPTION OF HOTEL SITE (25.1)

Lot 123, Telluride Mountain Village, a subdivision located in the SW/4SE/4 of Section 34, Township 43 North, Range 9 West, N.M.P.M., according to the plat recorded in the office of the Clerk and Recorder in Plat Book 1 at page 1011.

(Telco)

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EXHIBIT TC-2

DESCRIPTION OF CONDO SITE (S1.1)

Future Lot 165, as designated on the Telluride Mountain
Village Revised Preliminary Plat (2-2-88).