

**RESTRICTIVE COVENANTS
SKYWATER SUBDIVISION
TO THE VILLAGE OF CLOUDCROFT
OTERO COUNTY, NEW MEXICO**

November 1, 2011

INSTRUMENT # 20138738

The above described Subdivision, as evidenced by that Plat filed on the 9th day of OCTOBER in Book ____, at Page ____, of the Plat records of Otero County is hereby made, subject to the following described restrictive covenants, declarations, limitations and required use of lots within the Subdivision.

1. All lots shall be subject to the Village of Cloudcroft Ordinances.
2. In addition to all Village of Cloudcroft Ordinances, the following Restrictive Covenants, hereinafter referred to as "Covenants", shall apply:
 - A. There shall be no mobile homes, manufactured homes or pre-fabricated buildings, or other factory built buildings placed on any lot.
 - B. All building requiring a permit by the Village of Cloudcroft or the State of New Mexico shall be site built.
 - C. There shall be no exposed plumbing on any lot. Any roof penetrating vent pipe is exempt.
 - D. The following water conservation requirements shall apply to each lot:
 - i) 50% of the total square feet of the roof area or 1,000 square feet, whichever is greater, including all overhangs, porches, garages and accessory buildings shall be designed and constructed so as to capture or "Harvest" the majority of any snow melt or rainfall available to that area. Such areas will be identified on all plans as "The Water Harvest Area".
 - ii) All buildings on any lot shall have an on-site storage cistern or cisterns of adequate size to store 4 gallons of water for each square foot of "Water Harvest Area" identified in their construction plans. All such cisterns to be contained within the building design. There shall be no exposed cisterns.
 - iii) All identified "Water Harvest Areas" shall be connected to the storage cisterns with a design that will accommodate a 2.5" rain in 1 hour; an overflow design shall accommodate a flow rate 50% greater.

- iv) All roof areas not identified in "The Water Harvest Area" shall be substantially directed toward an absorption terrace area, so as to minimize the roof water run-off from leaving the property.
- v) Water absorption terrace areas shall be designed and constructed with the suitable rubble from each building excavations. Their location and size shall be designed and constructed so as to enhance the ground water re-charge of the roof run-off water. This absorption terrace area is to have a 4" minimum cover of mulched forest or wood material. These areas shall be designated as "Absorption Terrace Area" on all plans and cannot be used as parking areas. Their main function is to enhance ground water re-charge and minimize surface water run-off.
- vi) All toilets built in any building constructed on any lot shall be plumbed in a manner so as gray water re-use will be their primary water source and on-site stored water as the secondary source.
- vii) All buildings built on any lot shall have a plumbing design layout to readily adapt to the on-site stored water as a whole house primary supply. All on-site water used as whole house supply shall be treated and filtered to meet the minimum potable water standards at the time of connection.
- viii) Gray water re-use requirements: Gray water is defined by NMED for these restrictive covenants as "untreated household wastewater that has not come in contact with toilet waste and includes wastewater from bathtubs, showers, washbasins, clothes washing machines and laundry tubs, but does not include wastewater from kitchen sinks or dishwashers or laundry water from the washing of material soiled with human excreta, such as diapers". The minimum gray water re-use will be calculated to provide the water requirements of all toilets and urinals designed and installed in any building, on any lot.
- ix) Any building, on any lot whose occupancy load shall exceed 6 people will have a minimum of 1 waterless urinal designed and installed. R-1 and R-2 areas will use 3 bedrooms or more to have 1 waterless urinal designed and installed.

E. Solar power requirements shall apply to each lot and all property designs shall include as a minimum requirement the following items:

- i) One dedicated 200-watt solar panel for the recirculation of on-site stored water.
- ii) One solar hot water device with a minimum capacity of 20 gallons.
- iii) Wiring to the most beneficial solar locations for future use of additional solar panels.

F. Existing Buildings. The developer recognizes that there are three (3) existing buildings located on lots within the subdivision. One each on Lots 1, 4 and 8 of Block 7. This is a commercially zoned block. As these buildings are altered, remodeled or added on to, they shall be brought into substantial compliance with these Covenants and Building Guidelines. Any work requiring a Village of Cloudcroft and or a State of New Mexico building permit would trigger this compliance.

- G. **Developer Approval and Control.** It is the intent of the developer that it will sell package deals, combining the sale of a lot with a contract for construction of Improvements and Buildings on the lot. The developer may allow a related or approved contractor perform the construction. There shall be no warranty deed conveyed by the developer to the purchaser until the purchaser has entered into a construction agreement complying with these Covenants and Building Guidelines.
- H. All construction being performed on any lot shall be subject to the supervision of the developer, and its assigns. The purpose of such supervision is to ensure compliance with these Covenants and Building Guidelines.
- I. The term "construction", as used herein, shall include all site modifications, grading and other site preparations, as well as building construction.
- J. All designs shall be subject to the review and approval by the developer and its assigns, and shall require the developer's approval signature on all plans and designs.
- K. **Modification of Covenants.** These Covenants may be amended by the developer, and its assigns, so long as it owns 25% or more of the platted lots. When the developer no longer owns 25% of the platted lots, then these covenants may be amended by an affirmative vote of 2/3 of the lot owners, including the developer, with each lot owner having one vote per lot.
- L. **Mortgagee.** Should any mortgage or deed of trust be foreclosed on any lot to which this instrument refers, then the title acquired by such foreclosure, and the person or persons who then and later become the owner or owners of a lot, shall be subject to and bound by all the restrictions, conditions, and covenants set forth in this instrument.
- M. **Enforcement.** These Covenants may be enforced by the developer, and its assigns, or any lot owner subject to these Covenants. The prevailing party in any such action and/or arbitration shall be entitled to recover its attorney fees incurred therein.
- N. **Arbitration.** Except as hereinafter provided, all disputes arising directly or indirectly out of these covenants shall be resolved by arbitration. The arbitration shall occur pursuant to the rules of the American Arbitration Association (AAA).

The agreement to arbitrate, however, shall not prevent anyone seeking to enforce the Covenants from bringing an action in the District Court of Otero County, New Mexico, to obtain a temporary restraining order, preliminary injunction, or to otherwise prevent any unauthorized action on any lot within the subdivision, pending an arbitration award.

Any purchaser of any lot in the subdivision shall agree that any attempt or actual violation of these Covenants and Building Guidelines will result in immediate and irreparable injury, loss or damage to the developer and other lot owners, and that a temporary restraining order and injunction shall be issued pending arbitration.

O. Term of Covenants. These Covenants are to run with the land, and shall be binding upon all parties and all persons claiming under them for a period of ten (10) years from the date these Covenants are recorded, after which the Covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by all the owners of lots has been recorded, terminating these Covenants.

3. In addition to these Covenants, each lot shall be subject to the Building Guidelines, which Building Guidelines shall be attached to and made a part of all Contracts for Construction entered into for any and all lots.

4. In general, purchasers of the lots affected by these Covenants and their successors in interest will have no recourse against All Family Partners, LLC, its agents and representatives or their successors in interest as a result of any failure to force compliance with these Covenants.

IN WITNESS WHEREOF, the undersigned, acting as the Managing Member of All Family Partners, LLC, has caused this Restrictive Covenants to be executed at Cloudcroft, New Mexico on the date indicated below.

ALL FAMILY PARTNERS, LLC

By *James R. Maynard*
James R. Maynard
Its Managing Member
Dated: 10-09-2013

