DECLARATION OF COVENANTS, CONDITIONS and RESTRICTIONS for NEW MEXICO SKIES, AN AMATEUR ASTRONOMY ENCLAVE,

OTERO COUNTY, NEW MEXICO

Phase 2

THIS DECLARATION, made this 13th day of January, 2009 by NEW MEXICO SOUTHERN SKIES, LLC., ("DEVELOPER").

WITNESSETH;

WHEREAS, the DEVELOPER and the current owners of LOTs, tracts or parcels described in herein are desirous of subjecting their real property to a common development plan. These covenants, conditions, restrictions, options, reservations, undertakings, agreements and easements hereinafter set forth, each and all of which is and are declared to be equitable servitudes binding upon the LOTs, tracts, parcels and COMMUNITY and each owner thereof and every other party having any interest therein, and shall run with the land

and bind all current owners and successors in title or interest, heirs and assigns, and shall inure to the benefit of and pass with said property, and each and every parcel thereof.

NOW, THEREFORE, the DEVELOPER and the current owners hereby declare that the real property described in and referred to in Clause I hereof, is, and shall be, held, transferred, sold, conveyed, and occupied subject to this document.

CLAUSE I.

COMMUNITY

1. SUBJECT PROPERTY. The property which is subject to and benefitting from this declaration is shown in APPENDIX B. Some of said property may be owned by the DEVELOPER, and some of said property may be owned by others. All of the property desires to be bound by these COVENANTS. The Community also includes the property described in the **DECLARATION OF COVENANTS, CONDITIONS and RESTRICTIONS for NEW MEXICO SKIES, AN AMATEUR ASTRONOMY ENCLAVE, OTERO COUNTY, NEW MEXICO**, as recorded on March 3, 2008, as instrument #200801928 (original "COVENANTS"), any subsequent re-recordings thereof, and other property as authorized therein. All of said property shall be herein known as the COMMUNITY.

1a. DEFINITIONS. The normal and customary usage of all words and/or terms contained herein shall apply, as used in the state of New Mexico. The following special terms and phrases are used in this document and their definition and/or meaning shall be as follows:

1. The "**DEVELOPER**" is NM Southern Skies, LLC, an Indiana Limited Liability Company, their agents and/or their assigns.

2. The "**New Mexico Skies**" Subdivision is an Otero County, New Mexico Subdivision, and while located adjacent to New Mexico Skies, INC., are unrelated entities. New Mexico Skies also refers to the entire COMMUNITY as defined herein.

3. The "**COVENANTS**" consist of this document and any attachments and amendments hereto. The term COVENANTS shall include, but shall not be limited to: covenants; conditions; restrictions; options; reservations; undertakings; mutual benefits, burdens, restrictions, and protections afforded hereunder; agreements; easements; equitable servitudes; each and all of which is and are declared to be binding upon the LOTs, , tracts, parcels and the COMMUNITY; and shall bind each owner thereof and every other party having any interest therein; and shall run with the land and bind all current owners and successors in title or interest, their legal representatives, heirs, successors, grantees, and assigns; and shall inure to the benefit of and pass with said property and each and every parcel thereof. Enforcement of these COVENANTS may include both legal and equitable relief, which includes, but is not limited to damages, costs and injunctive relief and in certain instances reasonable attorneys fees.

4. "**LOT**" or "**LOT(s)**" are any and all of the lots, tracts, parcels, or other real estate (or any portion thereof) in the COMMUNITY which are now, or shall become subject to, burdened by and benefitting from these COVENANTS.

5. "**COMMUNITY**" is those lots and/or properties which are subject to and benefitting from these COVENANTS.

6. A "**DWELLING**" is a Modular, Manufactured, or Site-Built single family home or residence and any structure permanently attached thereto (e.g. garage, greenhouse, basement, etc.).

7. An "**OUT-BUILDING**" is any "**additional structure**" or building as specified herein which is detached from the DWELLING, other than an OBSERVATORY, or GAZEBO.

8. The "**DESIGNATED USE PLAN**" is a negotiated agreement solely between the Developer and the LOT owner, and no third party beneficiary rights are created or inferred by said document. The DESIGNATED USE PLAN is a drawing which shall show, among other things, the permitted and restricted use areas for a particular lot.

9. 1 "**LUMEN PER SQUARE FOOT**" (commonly known as a "**LUMEN**") equals 1 "**FOOTCANDLE**".

10. "**HOA**" shall mean the Home Owners Association referred to in this document.

11. The terms "**light**" or "**lights**" shall mean any and all lights, bulbs, fixtures, lamps, luminaires and any other source of infrared, visible and/or ultraviolet light. The term(s) may be applied individually to a single light and/or collectively to any combination of the above items.

12. The "**SURVEY**" shall be an original document prepared by a Professional Surveyor, licensed by the State of New Mexico, and not altered in any way, and shall show all items required herein.

13 Any and all "**written notices**" required herein shall be sent via certified US mail, return receipt requested, or via a nationally recognized, bona-fide courier, return receipt requested, signature required, sent to the last known address of the LOT owner as

obtained from the Otero County Real Estate Tax Records or to the last know address as obtained from the HOA records.

14. a). A "**ground level observatory**" shall be any observatory (i.e. dome, roll off, clamshell, etc.) whose maximum height does not exceed fifteen (15) feet above the immediately adjacent, existing ground level.

b). An "**elevated observatory**" shall be any observatory whose maximum height is greater than fifteen (15) feet, but less than twenty-five (25) feet above the immediately adjacent, existing ground level.

c). A "**mega-elevated observatory**" shall be any observatory whose maximum height is greater than twenty-five (25) feet, but less than thirty-five (35) feet above the immediately adjacent, existing ground level. The maximum height for any observatory shall be less than thirty-five (35) feet above the adjacent, existing ground level.

CLAUSE II.

PURPOSE OF THESE COVENANTS

1. PREAMBLE It is agreed, acknowledged and accepted by all parties that:

Since the dawn of civilization, man has looked at the stars and dreamt about their meaning. There is a primal need for man to gaze at the night sky, and to wonder about his place in the universe. Dark, night skies have been an essential element in the collective growth of mankind, influencing the very idea of what it means to be human. Without protection of our night skies, it will be difficult, if not impossible for future generations to have, or even to imagine the experience that New Mexico Skies has to offer.

Without conscious actions on our part, future generations will not experience the night sky as we and our ancestors have known it. For the first time in human history, the world's dark, night skies have become a rare and ever vanishing asset. The star filled sky is a precious treasure for all of mankind, and we have a duty to preserve these skies.

Stars remind us of the amazing and wonderful universe that we live in. At New Mexico Skies you can feel the stars and the infinity of the night sky, just by walking outside. Stars are not to be viewed by the eyes alone; they are best experienced through the passion of the body and the soul.

New Mexico Skies is defined by its dark skies, its solitude, its fresh mountain air, the millions of stars in the heavens above, and a sense that the Milky Way is so close that you can almost reach out and touch it.

1 **2. GENERAL PURPOSE**. New Mexico Skies and the COMMUNITY offers
2 extraordinary sky conditions, found no where else in North America. The exceptionally dark
3 skies, the excellent seeing, the phenomenal transparency, the clean dry mountain air, and a
4 micro-climate that is second to none are some of the factors that combine to make New
5 Mexico Skies one of the finest locations for amateur astronomy in the world. The purpose of
6 these COVENANTS is to allow those uses that are compatible with and that will enhance New
7 Mexico Skies distinction as North America's premier location for amateur astronomy, and to
8 prohibit those uses that would be incompatible with astronomy. As such, preservation and
9 protection of our night sky is of upmost importance. **Therefore**:
10
11 The COMMUNITY is dedicated to the preservation and protection of the dark night
12 skies, and we choose to subject ourselves to these COVENANTS in order to promote the
13 proper use, the appropriate development, and suitable improvement of the COMMUNITY and
14 every part thereof; and therefore it is necessary:
15 a. To protect the dark night skies, because they are an essential
16 aspect of our amateur astronomy COMMUNITY; and
17 b. To reduce as much as reasonably possible the adverse effects
18 from indoor and outdoor lighting, such as light pollution, light
19 trespass, glare, sky glow, and energy waste; and
20 c. To reduce as much as reasonably possible air pollution, thermal
21 emissions, and any other such uses which would interfere with,

hinder, obstruct, or would otherwise negatively impact our night skies; and

d. To protect each and every owner in the COMMUNITY against such use as may depreciate the value of each LOT or the property of others; and

e. To guard against the erection there upon of structures built of improper or unsuitable materials; and

f. To promote responsible development within the COMMUNITY; and

g. To promote the peaceful use and the quiet enjoyment within the COMMUNITY; and

h. To encourage the erection of attractive improvements thereon, with appropriate location(s) thereof; and

I. To provide for the type and quality of improvements in the COMMUNITY consistent with these COVENANTS.

The provisions herein contained are part of a common development plan for the mutual benefit and protection of the lot owners, present and future, of any and all of the LOTs or parcels in the COMMUNITY, their respective legal representatives, heirs, successors, grantees, and assigns.

CLAUSE III.

GENERAL COVENANTS

1. LAND USE. Each LOT within the COMMUNITY shall be used, exclusively, as a site for one (1) SINGLE FAMILY RESIDENTIAL HOME (DWELLING), and one (1) OUT-BUILDING, and up to four (4) OBSERVATORY(s) and one (1) GAZEBO. No Duplexes, apartments or any other type of multi-family dwellings shall be permitted.

Without the express written permission of the DEVELOPER, no LOT owner shall provide a license to use; easement(s); access, ingress or egress over or across said LOT to any other LOT, parcel, or other real estate. No LOT may be resubdivided, split, or re-plated such that any LOT or parcel shall be smaller than 2.000 acres in size. This parcel may be resubdivided, split or replat with no additional cost for infrastructure to the then current owner(s).

No business use, no commercial use, no third-party (i.e. non-owner) use, or for-profit astronomy use shall be permitted on any LOT. No sale, license to use, lease or rental of land, parcel(s), plot(s), observatory(s), telescope(s), or renting of "time" on any observatory(s) or telescope(s) (i.e. no "rent-a-scope" or "rent-a-observatory") or other such uses shall be permitted on any LOT. No commercial or for-profit astronomy related use shall be permitted which would, in any way, compete with or conflict with the existing uses as of January 1, 2008 of Mike and Lynn Rice's New Mexico Skies, INC., which include: their overnight and weekly lodging rentals; their guest observatory and telescope rentals; their telescope hosting; dome rental; pod building rental; or the Rent-A-Scope system. Nothing in this document shall, in any

way, create any third party beneficiary rights for New Mexico Skies, INC., nor shall this document alter or adversely affect the existing uses at New Mexico Skies, INC.

Bona-fide non-profit (e.g. 501c3) astronomy uses may be permitted only with the express written permission of the DEVELOPER. No compensation shall be allowed to exchange hands for such use between the non-profit organization and LOT owner, but the non-profit group may be allowed to pay their pro-rata share of expenses directly attributable to their use. Any and all proposed agreements between the LOT owner and the non-profit group must be submitted to the DEVELOPER for consideration.

Notwithstanding any other provision herein, Home Occupations may be allowed so long as there are NO retail sales from the LOT; and NO customers shall be allowed to come to the LOT; only the LOT owner(s) and their immediate family shall be allowed to work at said Home Occupation; and all Home Occupation activities shall be located solely within the DWELLING, observatory(s), or out-building. Additionally, photographs, prints, drawings and other astronomy related artwork created within the COMMUNITY by the LOT owner(s) and/or their immediate family shall be considered a Home Occupation and said artwork shall NOT be considered commercial or business use.

1 (A). DESIGNATED USE PLAN. Once the DEVELOPER transfers legal title of any LOT to a new LOT owner, or at such time as a non-DEVELOPER owned LOT owner becomes signatory to this document, the DEVELOPER shall cause to be prepared a "DESIGNATED USE PLAN". Said DESIGNATED USE PLAN shall be recorded with the Otero County Clerk, shall run with the land and be binding upon each LOT and owner. Among other things, each LOT shall have a designated "Observatory Only" area, in which only observatory(s),

observatory fences (as may be permitted herein), underground utilities, shared water lines, shared well(s) and/or appurtenances thereto, and driveways can be located.

Each LOT shall have a designated "DWELLING site" area in which a single DWELLING, observatory(s), fenced in area(s), driveway, a single gazebo, patio(s), decks, a single out-building and/or other structures as permitted herein can be located. Each LOT shall have a dedicated "Conservation Area(s)" which must be maintained in its natural condition, except for utilities, water lines and appurtenances, minor recreational facilities such as a garden area not to exceed four-thousand (4,000) square feet, walking trails, a gazebo and up to two (2) picnic tables. Some LOTs will have an "Arroyo Easement" shown on the DESIGNATED USE PLAN, which shall preserve the arroyo(s) from any further development and shall create a pedestrian walkway easement for the COMMUNITY. Some LOTs will have an "Emergency Ingress/Egress" easements shown on the DESIGNATED USE PLAN, which shall permit emergency vehicles and pedestrians to pass, and DEVELOPER or HOA approved maintenance vehicles. Once recorded, the DESIGNATED USE PLAN may only be modified, amended, or changed by the express written permission of the DEVELOPER and the "then current" LOT owner. As the DESIGNATED USE PLAN is a negotiated agreement solely between the Developer and the LOT owner, no third party beneficiary rights are created or inferred by said document.

NOTE: The following section has been amended / revised and/or changed from the original COVENANTS of this HOA. This section shall apply to "phase 2" lots, tracts and parcels.

2. DWELLING SIZE.

(A). The minimum square footage of the DWELLING (i.e. the above ground, finished and heated living area) shall be **two thousand (2,000)** square feet

These minimums shall apply to any replat, split, and/or resubdivision of any LOT specifically described herein. The total area of all structures **attached** to the DWELLING, such as garage(s), work area(s), work shop(s), storage room(s), cellar(s), unfinished areas (which excludes unfinished basements), and/or other non-living area(s) shall not exceed the DWELLING's area.

3. LIGHTING. All parties agree that it is absolutely necessary to protect our COMMUNITY's night skies from the adverse effects of light pollution, light trespass, glare, and sky glow; and

a. Dark skies are an essential part of our amateur astronomy community; and

b. It is pleasing to the senses and to the intellect of mankind to be able to see the dark skies with minimum interference from light pollution; and

c. Many of the residents of the COMMUNITY enjoy amateur astronomy, but light pollution, light trespass, glare and/or sky glow interferes with their enjoyment; and

d. Light pollution, light trespass, glare and/or sky glow interferes with the study of planets, comets, stars, galaxies, nebula and other astronomical wonders; and

e. Dark, night skies are vary rare, and they are a significant asset to our COMMUNITY, and they must be protected; and

f. The fundamental need to gaze at the night skies can only be fulfilled if we keep our skies dark; and

g. The proper design and use of lights, fixtures and/or luminaires, will reduce light pollution, light trespass, glare, sky glow, and save energy; and

h. It is essential for the residents of the COMMUNITY to regulate the use of indoor and outdoor lights, fixtures and luminaires in our COMMUNITY; therefore:

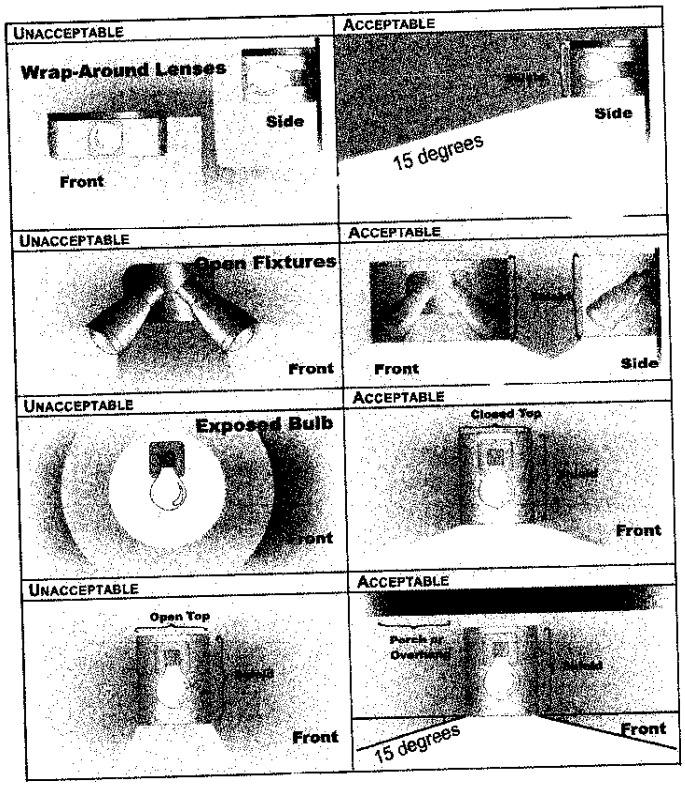
This section creates minimum standards for indoor, outdoor and other lighting such that its use does not unreasonably interfere with the enjoyment of other property owners, with astronomical observations, and to promote energy conservation without jeopardizing safety, utility, security and productivity. The purpose of this section is to minimize light pollution, glare, sky glow and light trespass, which has a detrimental effect on the night sky environment, interferes with the enjoyment of the night sky, and causes unnecessary illumination of adjacent properties and the night sky.

The terms "lights", "bulbs", "fixtures", "lamps", and "luminaires" may all be referred to as a "light" or "lights" within this document and all lights shall comply with the following:

A. All outdoor lights, bulbs, fixtures and/or luminaires which are at least three feet (3') above existing grade shall be:

(1) Mounted on a building or structure at a height not to exceed eleven feet (11') above finished grade, deck or porch, and mounted no higher than the building eves; and

(2) Designed and operated as full cutoff, fully shielded fixtures such that light rays emitted by the fixture are only projected in a downward direction, at an angle no greater than fifteen degrees (15°) below the lights' horizon (see sketch); and



(3) Dusk to dawn lighting shall NOT be permitted and all lights permitted under this section shall remain off between the evening's astronomical

twilight and next morning's sunrise except for those light that shall be equipped with and controlled by either:

a. A manual or electronic timer that turns off said light(s) within 4 minutes of being energized; and/or

b. A motion sensor(s) that turns off said light(s) within 4 minutes of being energized.

(4) The maximum rating of said lights or bulbs shall be: no more than six-hundred (600) lumens for permitted bulb or light; and not more than fifty (50) watts for an incandescent bulb or eleven (11) watts for a fluorescent bulb; and,

(5) Only blue, dark blue, red, dark red, green, or dark green light shall be permitted to be emitted by said lights. Clear, white, yellow, cyan, magenta, light blue, light red, light green, and/or similarly colored exterior light emissions are prohibited.

(6) All permitted lights shall utilize best practices, techniques and/or methods which shall cause all the light emitted to be directed downward to the surface or area to be illuminated, so that the emanating **source** of light is not visible from any angle except those downward angles that exist between the fixture and the area to be illuminated. The emanating light **source** shall not be visible from any adjacent properties or roadways.

B. Above ground, outdoor light poles, post lights, roadway lights, driveway lights, walkway lights and all other light standards, bollards, poles and other such lights,

luminaires or fixtures not attached to a building or structure shall not exceed three feet (3') in height above existing grade, deck or porch. Lights which illuminate walkways, driveways, roadways, patio(s), yard area(s), are permitted provided that said light(s):

(1) Are designed and operated as full cutoff, fully shielded fixtures; and

(2) The maximum rating of said lights or bulbs shall be: not more that one-hundred and fifty (150) lumens for permitted bulb or light; and not more than thirteen (13) watts for an incandescent bulb, nor more than three (3) watts for fluorescent bulb; and

(3) Shall not be located closer than ten feet (10') from any property line.

C. All lighting systems shall be designed, and operated so that the area at the property line of the LOT receives no more than 0.1 (one tenth) of one footcandle (lumens per square foot) of light from the LOT's indoor and outdoor, combined light(s) and/or light systems. The Home Owners Association (HOA) shall maintain, in good working order, a digital light meter, with a National Institute of Standards and Technology (NIST) traceable "Certificate of Calibration" which shall be used to determine conformance with these provisions.

D. As much as reasonably practical, all vehicle lighting shall comply with the light restrictions herein and as regulated by the HOA and shall utilize best practices, techniques and/or methods which shall cause all the light emitted to be directed downward to the surface or area to be illuminated. The emanating source of

vehicles light shall be minimally visible from any angle, except those forward and downward angles that exist between the vehicle lights and the area to be illuminated.

E. All outdoor, above ground level light fixtures shall bear the "Fixture Seal of Approval" from the International Dark Skies Association (IDA Approved Dark Sky Friendly), or equal rating as may be approved by the ARCHITECTURAL CONTROL COMMITTEE or the HOA.

F. Exterior searchlights, spotlights, floodlights, laser lights (except as may be allowed herein) and any other upward or sideward pointing lights, bulbs, fixtures or luminaires are hereby prohibited. High Pressure Sodium, Low Pressure Sodium, Metal Halide, Quartz, Xenon, Halogen, Mercury Vapor, Carbon Arc and other such lights are hereby prohibited. Laser guide stars (artificial guide stars) may be permitted only with the express written permission of the HOA. The HOA shall be required to assess the desire of the party requesting the use of laser guide star and the **needs** of the COMMUNITY as a whole to protect the dark, night skies. The free and un-fettered use of laser guide stars shall not be permitted. Should laser guide stars be permitted, it shall be for a very limited period of time, and for a specific location in the night sky. It shall be the duty of the party requesting the artificial star to: 1) obtain applicable approvals by all appropriate agencies; and 2) provide written notice to the entire COMMUNITY as required herein, at least thirty (30) days prior to the HOA considering the request.

G. All reasonable methods shall be used to keep interior lights from causing light pollution, light trespass, glare and/or sky glow, including, but not limited to: turning off unnecessary lights, reducing the wattage of bulbs, and the proper use of windows blinds, shades or curtains.

H. These COVENANTS provide the minimum standards for reducing light pollution, light trespass, glare and sky glow which must be met by all LOT owners. The HOA may establish bylaws, conditions, rules, procedures and other provisions which further limit light pollution, light trespass, glare and/or sky glow. The HOA may establish rules on new and innovated techniques in lighting, and they may establish additional restrictions on the placement, location, size, type, quantity, style, wattage, lumens, light output and color of lights, bulbs, fixtures, luminaires, hand held lights, vehicle lights and/or other light sources.

J. Court yards, atriums, skylights, solar tubes, sun tunnels and other such potential sources of upwardly directed light shall only be permitted under the following conditions and restrictions:

1. The light emitted shall not exceed 0.1 (one tenth) of one footcandle at the property line; and
2. Not more than 1 (one) footcandle shall be emitted in an upward direction, as measured four (4) feet above the light source's point of emission or the structure's roof; and

3. Upon 48 hours notice written notice, the LOT owner shall allow the HOA access to said light source(s) for measuring emitted light and determining compliance with these rules.

4. ARCHITECTURAL CONTROLS. Architectural controls shall be in effect to govern the SURVEY, the design and style of the DWELLING, observatory(s), out-building, and/or associated structures, final grading of the LOT, water conserving plumbing fixtures, Dark Sky Friendly lighting, and other items as described herein (see also Appendix A "Check List of Requirements for Construction"). The ARCHITECTURAL CONTROL COMMITTEE shall consist of the DEVELOPER, or its designated agent(s), or assignee(s). After all LOTs have been built upon, or at such earlier time as the DEVELOPER deems appropriate, the architectural control of the COMMUNITY shall be vested with and continued by the HOA, thereby turning over architectural control to the LOT owners themselves, and the DEVELOPER shall thereupon be relieved and discharged from all said duties.

The LOT owner is the person who has the authority, ability and the responsibility to control their LOT, their employees, their guests, their invitees, and to hire and fire their contractors, their subcontractors, and their materials suppliers. Therefore, neither the other LOT owners, nor the DEVELOPER, nor the ARCHITECTURAL CONTROL COMMITTEE, nor the HOA, nor any agent(s) thereof, shall be responsible in any way for any defects in plans, specifications, survey, materials, workmanship, or other such items, nor for any other defects thereto. By purchasing a LOT within the COMMUNITY and/or by building upon said LOT, the "then current" LOT owner accepts full responsibility (financial and otherwise) for their own actions, their guest's actions, their invitee's actions, their contractor's actions, their

subcontractor's actions, their material supplier's actions, and their respective employee's actions, and said LOT owner shall pay for and reimburse the DEVELOPER, the HOA and/or other LOT owners who have incurred or sustained losses, damage, costs, and reasonable attorney fees as a result of said actions. This paragraph shall include all intentional or unintentional: acts, errors, omissions, damage, or other actions, to one's own property and/or the property of others, and/or damage to the roads within the community.

In all cases where construction is ongoing, the LOT owner shall: 1) maintain adequate sanitary facilities for the workers; 2) maintain a valid, general liability insurance policy in the amount of five-hundred thousand dollars ($500,000.00) or more, naming the DEVELOPER and the HOA as an "additional insured"; and 3) maintain construction / safety fencing as required in paragraph 13 herein. Proof of insurance shall be submitted to the ARCHITECTURAL CONTROL COMMITTEE (in duplicate) at the time of plan submission, documenting said insurance.

Written approval of all plans, specifications, SURVEY(s), the "Check List" (see APPENDIX A), and other required items, by the ARCHITECTURAL CONTROL COMMITTEE shall be required prior to the start of construction of any DWELLING, and/or observatory, and/or out-building, and/or other permitted improvement(s). It is highly recommended that the LOT owner begin informal, non-binding, communications with the ARCHITECTURAL CONTROL COMMITTEE at their earliest convenience regarding plan approval(s). Informal, "rough-draft" site plans, building plans, and specifications can be prepared with a minimal amount of effort by the LOT owner. The approval process goes much smoother, quicker and easier for all parties if adequate time is spent properly planning the improvements.

An **original** SURVEY, prepared by a Professional Surveyor, licensed by the State of New Mexico (SURVEYOR), and not altered in any way, shall be submitted to the ARCHITECTURAL CONTROL COMMITTEE (in duplicate) showing dimensions to, and the location of: property lines, driveway, utilities, side yard setback lines, front setback line, rear setback line, all information contained on the DESIGNATED USE PLAN, construction/safety fence, easements, all existing and proposed structures (DWELLING, out-building, gazebo and/or observatory(s)), existing and proposed grades, well(s), water lines, septic field, landscaping area, permanent fences, clear areas, utilities, garden area, outdoor light fixtures, patio(s) and all other proposed improvements or alterations to the LOT. It is highly recommended that the LOT owner's SURVEYOR contact the ARCHITECTURAL CONTROL COMMITTEE to discuss the COMMUNITY's requirements prior to starting work on any SURVEY. A properly prepared SURVEY can save the LOT owner substantial time and money.

DWELLING styles shall be compatible with the existing area and the contour of the land. Walkout basements, lower level garages, and "daylight" basements may be permitted where the DESIGNATED USE PLAN allows. Minimal grade changes are permitted (less than one foot (1') from existing grade). Minor grade changes may be permitted (between one foot (1') and three feet (3') from existing grade) with the express written permission of the DEVELOPER or the ARCHITECTURAL CONTROL COMMITTEE, but grade changes greater than three feet (3') are hereby prohibited, unless approved with the express written permission of the ARCHITECTURAL CONTROL COMMITTEE, or are shown on the DESIGNATED USE PLAN. Only DWELLING styles compatible with the architecture of the southwest United States shall be permitted. Diversity in DWELLING styles, roof lines and appearance shall be

encouraged (identical DWELLING styles will be discouraged). Except for "Santa Fe" style homes (adobe with flat roofs), observation decks, and other roof styles permitted with the express written permission of the DEVELOPER or the ARCHITECTURAL CONTROL COMMITTEE, the minimum allowable roof slope shall be three feet (3') of rise in twelve feet (12') of run.

Only new Modular, Manufactured, and Site-Built single family homes (DWELLING) shall be erected within the COMMUNITY. No temporary DWELLING(s) shall be allowed. No used, or previously occupied DWELLING shall be allowed to be built or place on any LOT. All materials shall be new, professionally finished, and/or first quality. Fire resistant building materials (such as fiber cement siding and metal roofs) are strongly encouraged and a perimeter "clear area" for fire protection may be maintained. All Manufactured Homes shall have permanent skirting around the entire DWELLING made from masonry or cement products such as brick, block, concrete, EIFS (e.g. Dryvit or Synergy), stucco and/or other masonry or cement products as may be approved by the ARCHITECTURAL CONTROL COMMITTEE.

All plumbing fixtures and appliances shall be designated by the manufacturer as "WATER SAVING", "LOW FLOW" and/or "WATER CONSERVING". The location of all lights, fixtures and/or luminaires shall be shown on the SURVEY(s) or on the plan(s), and shall comply with all requirements herein.

4 (A). FORMAL PLAN REVIEW PROCESS. Two (2) complete sets of: professionally prepared, legibly drawn to an appropriate scale (e.g. 1/4" = 1'), written copies of all plans, specifications, SURVEY(s), the CHECK LIST completed and signed by the owner,

proof of insurance, and one (1) plan review fees (if required) shall be submitted **by the LOT OWNER** (submissions by architects, engineers, contractors and/or other parties, will not be accepted) to the ARCHITECTURAL CONTROL COMMITTEE for their formal review. No "reversed" or "mirror image" plans shall be accepted (all text and dimensions shall be clearly and properly readable). Said submissions are subject to the ARCHITECTURAL CONTROL COMMITTEE's review and determination of conformance with these COVENANTS. Plan review will begin ONLY after the ARCHITECTURAL CONTROL COMMITTEE **RECEIVES TWO (2) COMPLETE SETS OF: PLANS, SPECIFICATIONS, SURVEY(s), COMPLETED CHECK LIST SIGNED BY THE OWNER, PROOF OF GENERAL LIABILITY INSURANCE, and ONE (1) PLAN REVIEW FEE (if required)** for the proposed improvements (a Complete Submission). Incomplete submissions shall NOT be reviewed until such time as all the necessary documents (a Complete Submission) have been received. Approval or disapproval shall be given by the ARCHITECTURAL CONTROL COMMITTEE, in writing, within thirty (30) days after a Complete Submission has been received by the ARCHITECTURAL CONTROL COMMITTEE. Should the ARCHITECTURAL CONTROL COMMITTEE find any required item(s) to be deficient, defective, or does not comply with these COVENANTS, they shall notify the LOT owner in writing of the disapproval and they shall list all deficiencies. Should deficiencies be found, the LOT owner shall start the review process over with a revised, amended and/or corrected submission as outlined in the disapproval letter. Once the LOT owner corrects said deficiencies, the PLAN APPROVAL PROCESS shall begin with a subsequent submission that starts the 30 day review period anew. The first, formal PLAN REVIEW by the ARCHITECTURAL CONTROL COMMITTEE under this section is at no

charge to the LOT owner. Subsequent PLAN REVIEW(s), regardless of the reason, for the same LOT(s) shall be charged a two-hundred dollar ($200.00) PLAN REVIEW FEE for each and every subsequent submission, payable directly to the ARCHITECTURAL CONTROL COMMITTEE's designated plan reviewer. Payment in full shall accompany subsequent submission(s) to cover the costs of the subsequent PLAN REVIEW PROCESS.

Partial plan approval(s) shall not be permitted, although a Complete Submission may be submitted separately for the DWELLING, the observatory(s), the out-building and/or any other permitted improvements. Separate plan reviews shall be treated as a subsequent submission and a PLAN REVIEW FEE shall be due and payable at the time of subsequent submission(s). Construction may commence only when written approval is granted by the ARCHITECTURAL CONTROL COMMITTEE or as permitted herein. In the event neither written approval, nor disapproval is granted by the ARCHITECTURAL CONTROL COMMITTEE, construction may commence after forty (40) days (allowing thirty (30) days for plan review and ten (10) days for return mail or courier) from the time the ARCHITECTURAL CONTROL COMMITTEE received a Complete Submission. Whether construction commenced by written approval of the ARCHITECTURAL CONTROL COMMITTEE or by the ARCHITECTURAL CONTROL COMMITTEE's failure to act in a timely fashion, all improvements shall conform to these COVENANTS. Failure of the ARCHITECTURAL CONTROL COMMITTEE to act in a timely fashion is NOT a waiver by the DEVELOPER, the ARCHITECTURAL CONTROL COMMITTEE, or the HOA, nor does it imply any type of an approval.

The DWELLING, observatory(s) and/or out-building on said LOT shall be built by a licensed and bonded general contractor, or an owner who has successfully passed the general contractor's licensing examination given by the appropriate governmental authority, or by an

owner who can provide written documentation of actual experience and/or formal training which demonstrates to the ARCHITECTURAL CONTROL COMMITTEE a level of competency required to professionally complete said improvements in a timely and workmanlike manner. All construction shall be completed within nine (9) months from the date of issuance of the building permit. No improvement which has been partially or totally destroyed by fire or otherwise, shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

4 (B). CERTIFICATE OF OCCUPANCY. The LOT owner shall provide written notice to the DEVELOPER, the ARCHITECTURAL CONTROL COMMITTEE **AND** the HOA, as required herein, of the issuance of the Certificate of Occupancy for the DWELLING, observatory(s), out-building and/or any other permitted structure. The ARCHITECTURAL CONTROL COMMITTEE, the DEVELOPER, and/or the HOA may inspect the improvements within 120 days after receipt of the LOT owner's written notice of Certificate of Occupancy for compliance with these COVENANTS. If deficiencies or non-compliance with these covenants are found, the ARCHITECTURAL CONTROL COMMITTEE, the DEVELOPER and/or the HOA shall notify the LOT owner in writing of said deficiencies consistent with the NOTICE & REMEDIES provision herein. If no suit has been filed prior to expiration of the applicable New Mexico Statute of Limitations, with all parties agreeing that the date of commencement for said Statute of Limitations begins on the date of said inspection by the ARCHITECTURAL CONTROL COMMITTEE, the DEVELOPER and/or the HOA, said improvement shall be deemed to comply with the appropriate COVENANTS by the ARCHITECTURAL CONTROL COMMITTEE and the HOA.

NOTE: The following section has been amended / revised and/or changed from the original COVENANTS of this HOA. This section shall apply to "Phase 2" lots, tracts and parcels.

4 (C). OBSERVATORY(S) AND HEIGHT LIMITS. No more than **THREE (3)** observatories (or roll offs), for either visual and/or robotic (remote control) amateur astronomy **AND** one (1) additional observatory (or roll off) exclusively for visual use astronomy shall be permitted on any LOT. No more than two (2) of the observatories may be elevated. The total ground level footprint area of all observatories, including any "warm rooms" shall not exceed **one thousand (1,000) square feet** (e.g. a 15' diameter observatory = 177± sq. ft.).

The maximum height of any and all improvements, including, but not limited to: DWELLING, observatory(s), antenna(s), wind generators, solar collectors, tower(s), out-building, additional structure(s), and/or any appurtenance thereto shall be twenty-five feet (25') above existing ground level to the highest point, except as provided for herein. For all height measurements in this document, the maximum height shall be measured from highest existing ground level, immediately adjacent to said DWELLING, out-building, observatory, roof, dome, clamshell, roll off, parapet wall, structure, security camera, air terminal (lightning rod), antenna, tower, or any other system, mounted thereto.

Notwithstanding any other provision herein, robotically controlled air terminals (lightning rods) which can be raised and lowered may be permitted with the express written permission of the DEVELOPER or the HOA provided that:

1. The default, normal, failsafe location for the robotic air terminals shall be retracted to the maximum permitted height of the structure they are attached to; and

2. The maximum, temporary height of the robotic air terminals at the elevated height shall not exceed ten (10) feet above the maximum permitted height of the structure they are attached to; and

3. The robotic air terminals shall only be elevated during periods of bona-fide lightning events and shall be controlled by advanced lightning detection equipment acceptable to the HOA and/or the DEVELOPER.

The LOT owner shall provide sufficient information on his plans and/or his SURVEY which documents the maximum height of all improvements, and they shall provide working drawings of the electrical and mechanical details pertaining to the robotically controlled air terminals.

Notwithstanding the previous paragraphs, the maximum height of a **single**, **"mega"-elevated observatory** shall not exceed thirty-five feet (35') above the existing ground level, provided that **ALL** the following conditions are met and maintained:

a. That only one (1) mega-elevated observatory be allowed on a LOT or parcel; and

b. There are no other **existing**, elevated observatories or a mega-elevated observatory located on LOTs owned by others, whose line of sight would be impacted by the mega-elevated observatory's increased height as described herein. For the purposes of this paragraph, the maximum height of the proposed mega-elevated observatory shall be reduced as necessary to maintain any existing, elevated telescope's observing line of sight located on a surrounding LOT(s) to no more than fifteen Degrees (15°) above the horizon of said line of

sight. If a mega-elevated observatory is proposed under this section, a separate "Line of Sight" SURVEY (drawing) shall be prepared by the LOT owner's SURVEYOR which demonstrates compliance with this section. Said Line of Sight SURVEY shall be submitted to the ARCHITECTURAL CONTROL COMMITTEE at the same time the plans, specifications, etc., are submitted for said mega-elevated observatory; and

c. The proposed mega-elevated observatory shall be located completely within the Observatory Only Area, and within fifty feet (50') of the center of the Observatory Only Area as shown on the DESIGNATED USE PLAN.

Number of permitted observatories per LOT.

	Ground Level - Visual Only	Ground Level - Robotic / Visual	Elevated - Robotic / Visual	Mega-Elevated - Robotic / Visual
All Ground Level	1	3	0	0
Ground Level & Elevated	1	2	1	0
Ground Level & Elevated	1	1	2	0
Ground Level & Elevated	1	2	0	1
Mega - Elevated	1	1	1	1

5. ADDITIONAL STRUCTURES. No garage, barn, storage shed, green house, gazebo, outbuilding, or any other additional structure (out-building) shall be used either temporarily or permanently as a DWELLING or residence. Prior to construction of the DWELLING, a single recreational vehicle, travel trailer, or other mobile housing unit may be used by the LOT owner as an observatory warm room or living quarters for up to two (2) months during any calendar year. During the construction of the DWELLING, observatory(s), and/or out-building, a single recreational vehicle, travel trailer or other mobile housing unit may be used as temporary living quarters for the owner. Additionally, during said construction, a fully enclosed storage trailer or container may be kept on site for material storage only. Once the Certificate of Occupancy has been granted by the appropriate authority, said temporary living quarters and/or storage unit shall be removed within two (2) months.

Notwithstanding anything contained herein to the contrary, no more than **ONE** (1) of the following detached structures shall be allowed: garage, barn, storage shed, green house, warm room, or any other structure (out-building), shall be permitted on each LOT, **AND** one (1) gazebo (not to exceed one hundred and forty-four (144) sq. ft. in ground level footprint area). The total square footage of said additional structure (not counting the gazebo) shall not exceed fifteen-hundred (1,500) square feet in ground level footprint area, and the materials used on the exterior of said structure shall be new, first quality, and professionally finished. The appearance of the additional structure shall match the design, color, character and style of the DWELLING, or the observatory.

No trailers, boats, recreational vehicles, all terrain vehicles, machinery, equipment, or other similar items are permitted to be stored on any LOT for a period of time in excess of two (2) months in any twelve (12) month period, unless said property is stored in a fully enclosed building. No licensed or unlicensed motor vehicles with a rated capacity of more than one (1)

ton are permitted to be stored on any LOT for a period of time in excess of two (2) weeks in any twelve (12) month period, unless said vehicle is stored in a fully enclosed building. Damaged and/or wrecked and/or non-roadworthy motor vehicles (licensed or unlicensed) shall not be permitted on any LOT for a period of time to exceed two (2) weeks. ONLY properly licensed, roadworthy motor vehicles, one (1) ton or less rated capacity, which are in good working order and proper repair, and/or those OFF ROAD AND/OR UNLICENSED VEHICLES which have valid, written permission from the HOA to use the COMMUNITY's roadways pursuant to the paragraph titled "OFF ROAD AND/OR UNLICENSED VEHICLES" herein, are exempt from this paragraph.

6. BUILDING LOCATION. No DWELLING, garage, out-building, observatory or other structure shall be located closer than: twenty feet (20') from a side property line; forty feet (40') from the front property line; or fifteen feet (15') from the rear property line, or other such distance as shown on the DESIGNATED USE PLAN.

7. WOODLANDS PRESERVATION. No tree over 4" in diameter, measured 1 foot above grade, shall be removed without good cause. Good cause shall be limited to those trees which are necessary to build one's DWELLING, driveway, septic, out-building, observatory(s), or other permitted improvement(s), or those trees which have been found to be dead, dying, diseased, or pose a hazard to life, limb or property, as attested to by a qualified tree surgeon. No trees over 4" in diameter, measured 1 foot above grade, shall be removed within the first forty feet (40') along or adjacent to any roadway, except for the driveway. Additionally, a fire protection "clear area" of up to thirty feet (30') may be maintained between any permitted structure and surrounding trees on one's LOT. All LOTs shall comply with the

then current, local fire department's "clear area" requirements for fire protection. Conservation Areas shall preserve all trees, wherever reasonably practical.

8. FENCES. All permanent fences shall be constructed of such materials and in a manner which does not detract from the natural quality and aesthetic appearance of the existing geographic areas within the COMMUNITY. The materials, height and location of said fence shall be consistent with the DESIGNATED USE PLAN. Except as expressly permitted herein or as shown on the DESIGNATED USE PLAN, no fence of any kind shall be erected, placed or maintained in the area between the front, exterior wall of the DWELLING and the front property line. All fences shall be kept in good repair by the owner. Fences are only to be constructed within the area(s) shown on the DESIGNATED USE PLAN, the "DWELLING site" area and/or immediately surrounding a ground level observatory. The maximum square footage of the combined fenced-in area shall not exceed five-thousand (5,000) square feet. No permanent fence shall be located closer than twenty feet (20') from any side property line, or fifteen feet (15') from the rear property line. The HOA may establish bylaws, conditions, rules, procedures and other provisions which further limit fences.

9. MAINTENANCE OF LOTS AND IMPROVEMENTS. The owner of any LOT in the COMMUNITY shall, at all times, maintain the LOT and any improvements situated thereon in such a manner as to prevent the LOT or improvements from becoming unsightly; and, specifically, such owner shall:

(I) Remove all trash, debris or rubbish; and

(ii) Prevent the existence of any item(s) that reasonably tend(s) to detract from or diminish the aesthetic appearance of the LOT; and

(iii) Keep the exterior of all improvements in such state of repair or maintenance as to avoid their becoming unsightly or unsafe; and

(iv) Keep all building materials, tools, equipment, machinery, and any other such items out of plain sight or stored within a building; and

(v) The HOA may establish bylaws, conditions, rules, procedures and other provisions which further specify maintenance duties.

10. NUISANCES. No noxious or offensive activity shall be carried on or upon any LOT, nor shall anything be done thereon which is, or may become an annoyance or nuisance to the COMMUNITY. No waste, trash or garbage of any sort shall be allowed on any LOT. The HOA may establish bylaws, conditions, rules, procedures and other provisions which further limit nuisances.

11. ANIMALS. No livestock, poultry or any other farm animal(s) shall be kept on any LOT. Only domesticated house pets shall be excepted from this provision. The HOA may establish bylaws, conditions, rules, procedures and other provisions which further limit animals.

12. WEAPONS. The use of firearms or weapons within the COMMUNITY is strictly prohibited. No hunting, no target practice, nor any other use of firearms, nor any other weapons are allowed to be used or discharged within the COMMUNITY. The HOA may establish bylaws, conditions, rules, procedures and other provisions which further limit weapons.

13. CONSTRUCTION OF DRIVEWAYS AND SAFETY FENCING. All driveways and entrances to any LOT shall be covered with at least four inches of stone base course. It is recommended that the stone base course be in place prior to tree clearing, and it is required that the stone base be in place prior to any foundation excavation and said stone driveway shall be maintained in good condition at all times. Prior to the ARCHITECTURAL CONTROL COMMITTEE granting approval of any improvements, the LOT owner shall install a temporary, high visibility, 4' high (minimum) construction/safety fence entirely surrounding all of the proposed improvements, with only one opening not to exceed 25' wide located at the driveway. Said safety fence shall be kept in good repair and maintained in a professional, workmanlike manner during the entire construction period and shall be removed within two (2) weeks after the Certificate of Occupancy has been granted. Adequate silt fencing, and other erosion control measures are the sole responsibility of the LOT owner. No silt, sediment, erosion or soil shall be permitted on the roadways of the COMMUNITY, nor shall same be permitted to leave one's property.

14. ON-ROADWAY PARKING. No on-roadway parking is permitted without the express written permission of the DEVELOPER or the HOA. The HOA may establish bylaws, conditions, rules, procedures and other provisions which further limit and/or allow on-roadway parking for one-time social events and other such gatherings.

15. LANDSCAPING. All landscaping shown on the survey, plans and specifications as approved by the ARCHITECTURAL CONTROL COMMITTEE and such other landscaping as is necessary for the integrity of the COMMUNITY shall be completed by the LOT owner within one hundred and eighty (180) days of occupancy. ONLY native, locally grown landscaping

shall be permitted. No invasive species shall be permitted. The HOA may establish bylaws, conditions, rules, procedures and other provisions which further limit plants, species and landscaping.

16. RIGHT OF FIRST REFUSAL (ROFR) FOR RESALE. Until such time as a DWELLING is built upon a LOT, and a Certificate of Occupancy for said DWELLING upon said LOT is issued, and the DWELLING upon said LOT is actually occupied in compliance with these COVENANTS, each LOT (and/or each portion of a LOT and all other real estate) within the COMMUNITY may not be sold or transferred until after there is compliance with the following procedures:

A. A contract and/or agreement is entered into and signed by the parties that expressly describes each LOT (or portion thereof) to be sold and/or transferred (hereinafter "Sale Parcel") and all of the terms and conditions of the proposed sale and/or conveyance, which terms must include language that expressly makes such proposed sale and/or conveyance contingent upon compliance with the Right Of First Refusal (ROFR) provisions of this section and the failure of any of the ROFR Parties (as defined below) to timely exercise their rights to purchase the Sale Parcel in accordance with the provisions herein; and

B. A written notice shall be served upon the DEVELOPER, the owner(s) of record of the LOTs within the COMMUNITY that are on the left and the right side of the Sale Parcel (all of said persons and entities are referred to herein as "ROFR Parties" and each of which is referred to as an "ROFR Party"), written notice which must expressly describe all of the terms and conditions of the proposed sale and/or conveyance, must include a true and complete

1 copy of all contracts, agreements, and other documents that relate to the proposed sale
2 and/or conveyance (said documents are referred to herein as the "Sale Documents"), must
3 state that the ROFR Parties have the right to purchase the Sale Parcel upon the same terms
4 and conditions by giving written notice within fourteen (14) days after service of this written
5 notice to the ROFR Parties, and must state the name and address of the person and/or entity
6 to whom said written notice by the ROFR Parties may be given; and

7 **C.** Time is of the essence. Within fourteen (14) days after said written notice is
8 served, any of the ROFR Parties may serve written notice upon the seller/owner(s) of record
9 for the Sale Parcel that they elect to purchase the Sale Parcel upon the same terms and
10 conditions as set forth in the Sale Documents [except the time for closing shall be the later of:
11 (1) the date specified in the Sale Documents, or (2) the date that is forty-five (45) calendar
12 days after the written notice under the immediately preceding subsection **B** is served upon
13 said person or entity]; and

14 **D.** If one or more of the ROFR Parties timely serve such a written notice in
15 accordance with the provisions set forth in the immediately preceding subsection **C**, then the
16 Sale Parcel shall be sold to the ROFR Party giving said notice upon the same terms and
17 conditions as set forth in the Sale Documents and consistent with the requirements herein
18 [NOTE: If more than one of the ROFR Parties timely serves such a notice in accordance with
19 the provisions set forth in the immediately preceding subsection **C**, then the ROFR Party to
20 whom the Sale Parcel shall be sold shall be selected in the following order of priority: (1) to the
21 ROFR Party who owns the LOT to the left of the Sale Parcel (as shown on the DESIGNATED
22 USE PLAN, or if not shown it shall be determined when standing in the center of the Sale

Parcel's designated "DWELLING area" and facing the LOT's largest street frontage or roadway frontage of the Sale Parcel), but only if said ROFR Party timely served a notice in accordance with the provisions set forth in the immediately preceding subsection **C** (should two or more ROFR parties on the left serve timely notice, the date and time of mailing shall determine the first priority); (2) next, to the ROFR Party who owns the LOT to the right of the Sale Parcel (determined when standing in the center of the Sale Parcel's designated "DWELLING site" and facing the street, roadway or front of the Sale Parcel), but only if said ROFR Party timely served a notice in accordance with the provisions set forth in the immediately preceding subsection **C** (should two or more ROFR parties on the right serve timely notice, the date and time of mailing shall determine the first priority); and (3) next, to the DEVELOPER, but only if the DEVELOPER timely served a notice in accordance with the provisions set forth in the immediately preceding subsection **C**]; and

E. If none of the ROFR Parties timely serve such a written notice in accordance with the provisions set forth in the preceding subsection **C**, then the Sale Parcel shall be sold to the person or entity named in the Sale Documents, but only if: (1) said person or entity named in the Sale Documents is permitted to be an owner of LOTS and/or real estate within the COMMUNITY by the provisions of these COVENANTS, (2) such sale is in strict accordance with the terms and provisions set forth in the Sale Documents and terms herein, and (3) such sale occurs within ninety (90) days after the written notice is served pursuant to the preceding subsection **B**.

If more than one of the ROFR Parties timely serves a written notice in accordance with the provisions set forth in the immediately preceding subsection **C** and the first priority ROFR

Party who gave such written notice fails to timely perform its obligations to purchase the Sale Parcel, then written notice of such default shall be given to the next priority ROFR Party who gave such written notice and such ROFR Party shall purchase the Sale Parcel upon the same terms and conditions within thirty (30) days after service of such written notice of default. The same procedure [i.e., service of written notice and thirty (30) days to purchase] shall be followed with respect to any other defaults by any other ROFR Party who gave such written notice.

If there are any material changes in any of the terms and/or conditions of the Sale Documents, then the foregoing procedures must be complied with again before any sale can occur upon the revised terms and/or conditions. Such material changes include, but are not limited to, any changes in price, any changes in the Sale Parcel, any changes in the proposed purchaser, and any delay in the closing that causes the closing to occur later than ninety (90) days after the written notice is served pursuant to subsection **B** above. The failure of any of the ROFR Parties to exercise their right of first refusal with respect to any proposed sale and/or transfer shall not constitute a waiver of any rights of any of the ROFR Parties to exercise their right of first refusal with respect to any other proposed sale and/or transfer and/or to exercise their right of first refusal with respect to any proposed sale or transfer upon any revised terms and/or conditions.

If there is full compliance with the procedures set forth in subsections **A** and **B** above and none of the ROFR Parties timely serve such a written notice in accordance with the provisions set forth in subsection **C** above and the sale does not occur pursuant to subsection **E** above, then the foregoing procedures must be complied with again before any sale can occur.

All notices given pursuant to this section shall be in writing and shall be given in full compliance with the notice provisions set forth in these COVENANTS. Notwithstanding any other provisions of these COVENANTS, the provisions of this section do not apply to: (1) the sale of any LOT within the COMMUNITY **BY** the DEVELOPER, OR (2) the sale any of LOT within the COMMUNITY **TO** the DEVELOPER, OR (3) the sale of any LOT within the COMMUNITY after a DWELLING is built upon said LOT, a Certificate of Occupancy for said DWELLING upon said LOT is issued, and the DWELLING upon said LOT is actually occupied in compliance with these COVENANTS.

17. FIREPLACES and THERMAL EMISSIONS. Only UL listed, high efficiency (90%+) gas furnaces, gas boilers, and gas water heaters shall be permitted to vent outside the DWELLING, OUT-BUILDING or other permitted structure. Wherever possible, side venting of the permitted gas appliances shall be encouraged. Other vented appliances or heaters, such as fireplaces, kilns, ovens, heaters, or stoves, either gas, wood or oil burning or any other heat source(s) are prohibited. Unvented fireplaces, kilns, ovens, heaters, or stoves (those which do not vent to the outside) shall be allowed. No fireworks, nor any type of smoke generating or emitting device shall be permitted within the COMMUNITY. The HOA may establish bylaws, conditions, rules, procedures and other provisions which further limits such uses, or emissions. Propane storage tanks shall be located in an area which is minimally visible from the roadway.

18. OUTDOOR FIRES. Notwithstanding the previous section, commercially purchased, UL listed, gas fire pits and/or gas barbeques may be used where there is a minimum 10' radius of fireproof material surrounding the gas fire. Use of said fire pits and barbeques shall be limited to those hours between sun rise and that evening's astronomical

twilight. Additionally, "full-moon" gatherings shall be allowed where the UL listed, gas fire pit or barbeque is permitted to be used between sun rise and 11:00 P.M., only on the 4 nights prior to full moon, the night of the full moon, and the 2 nights after the full moon. The maximum rated BTU input of any gas fire pit or barbeque shall be 200,000 BTUs per hour. All other outdoor fires, charcoal or wood burning barbeques, and/or other burning is strictly prohibited. No bon-fires, trash burning, construction material burning, or other outdoor fires are permitted. The HOA may establish bylaws, conditions, rules, procedures and other provisions which further limit such uses.

19. OFF ROAD AND/OR UNLICENSED VEHICLES. The use of off road and/or unlicensed vehicles is restricted to operation by persons at least 21 years of age, and for non-recreational purposes only (i.e. no joy riding). Permitted uses of said vehicles are: land clearing; property maintenance; construction of DWELLING, out-building or observatory(s); and/or other uses which may be permitted by the HOA. Said vehicles' exhaust shall be fully muffled, fully baffled, spark arrested and shall comply with reasonable sound emission limits as may be set by the HOA. The use of these vehicles on the roadways within the COMMUNITY is a privilege, not a right. These vehicles may only be used on the roadways within the COMMUNITY with the express written permission of the Developer or the HOA. These vehicles and their operators shall obey all traffic rules, traffic control signs, speed limit signs, and shall be driven in a professional, courteous manner, and they shall yield Right-of-Way to all licensed vehicles. The HOA may establish bylaws, conditions, rules, procedures and other provisions which further limit or restrict the use of said vehicles within the COMMUNITY. Failure to follow these rules may result in the suspension of the vehicle's use and/or owner's privilege to use said vehicles within the roadways of the COMMUNITY.

20. AIRCRAFT. The use of piloted, remote control, guided, or unguided airplanes, air ships, helicopters, rockets, projectiles, fireworks, and other such uses are prohibited within the COMMUNITY. The HOA may establish bylaws, conditions, rules, procedures and other provisions which further limit such aircraft use.

21. RENTAL OF DWELLING. As this COMMUNITY desires to be a predominantly owner occupied, amateur astronomy enclave, the rental of one's DWELLING is a privilege, not a right. It is essential the COMMUNITY knows who our neighbors are. Therefore, the HOA shall establish formal written procedures which may permit limited DWELLING rentals consistent with this section. These COVENANTS shall establish a minimum and maximum amount of rental time(s) that may be permitted. Rentals shall be permitted only with the express written permission of the HOA, a minimum rental period of 30 consecutive days shall be allowed for the DWELLING rental, and a maximum of 4 rental periods, for a total of 120 days, may be permitted in any 12 months. No rental of the LOT, observatory(s), and/or out-building shall be permitted. Incidental use of the observatory(s) and LOT by the renter will be permitted only during the DWELLING's approved rental period(s). All rentals shall be at fair market value, "arms-length" transactions.

The HOA shall establish a written policy for approving and/or disapproving prospective renters, which may include the minimum criteria for screening prospective renters. The HOA may establish bylaws, conditions, rules, procedures and other provisions which further limit or restrict rentals. Notwithstanding the previous paragraphs, the DEVELOPER may keep a single rental DWELLING for use by existing LOT owners prior to the time their DWELLING is completed, and for use by prospective LOT purchasers.

23. ROAD MAINTENANCE and SHARED WATER USE. Outdoor use of the shared water is hereby prohibited. Car washing, irrigation, watering of trees, lawn, landscaping, gardens and/or such use(s) shall be prohibited with the shared water. Only domestic, indoor use, and bona-fide fire protection use of the shared water shall be allowed.

Ownership, maintenance, operation, upkeep and all other day to day functions pertaining to the roadway maintenance, the shared water system and other such purposes as the HOA may establish shall be vested solely with the HOA. The HOA may establish additional bylaws, conditions, rules, dues, fees, assessments, or other procedures to efficiently operate such obligations.

All LOTs shall be equipped with HOA approved: 1). back flow prevention devices; 2). on-site hydro-pneumatic storage tanks; and 3). water meter installed to monitor the consumption of water from the shared water system, and the installation of same shall be acceptable to the HOA. All LOT owners shall allow a representative(s) from the HOA access to their LOT at reasonable times, for meter reading, inspection of improvements, and compliance with the rules of the HOA and/or the shared water system. Consistent with requirements herein and/or with the requirements of New Mexico Office of the State Engineer (NM OSE) 72-12-1 water well permit(s):

a. Each LOT shall be permitted to use not more than eighty-one thousand and four hundred (81,400) gallons (approximately one quarter (1/4) acre-foot) of shared water during any twelve (12) month period, measured quarterly. The amount and uses of water permitted are subject to such limitations as may be imposed by these COVENANTS, the HOA, the NM OSE, the courts, and/or by lawful municipal and county ordinances; and

b. Should, for any reason, the shared water consumption of any LOT exceed the "then current" water allotment in any twelve (12) month period, the maximum amount of water that said LOT may use in the following twelve (12) months shall be reduced by an amount equal to twice the amount of the over consumption, and the HOA may impose penalties or fees for excess water use; and

c. All LOT owners shall utilize the highest and best technology(s) available to ensure conservation of the shared water to the maximum extent practical; and

d. Failure to pay the "then current" shared water availability, usage, connection, and/or maintenance fees, violation of any water rules, or other shared water use rules as may be established by the HOA, or doing anything that could result in contamination of the shared water system may result in immediate shut-off from the water system by the HOA. Turn-on of the water shall be permitted only after the contamination, payment of all fees, or other water issue has been corrected to the satisfaction of the HOA. Use of the shared water is a privilege, and not a right. The HOA shall establish written procedures to monitor water use, notify users of any alleged violations, and to suspend water service for cause. The HOA may establish bylaws, conditions, rules, procedures and other provisions which further limit shared water use, and said rules and fees shall apply to all LOT owners equally, regardless of whether the LOT contains a DWELLING or not.

e. As no one can guarantee water quality or quantity from the water wells, neither the Developer, the ARCHITECTURAL CONTROL COMMITTEE, the HOA, nor any other person or entity shall be held liable for the water quantity, quality, or

any changes thereto by any LOT owner(s), their families, their guests or invitees.

23. ONSITE FIRE PROTECTION WATER STORAGE. Each LOT shall have an onsite water storage tank (above or below ground) for fire protection use installed prior to the Certificate of Occupancy being issued for the DWELLING. Minimum onsite fire protection water storage shall be 2,000 gallons and the tank(s) must, at all times, be filled with chlorinated water. If the tank is filled via the shared water system, an HOA approved back-flow prevention device(s) and an approved air gap device shall be installed and properly maintained by the owner at all times. Access to the fire protection water tank(s) shall be clearly marked so that it is visible from the road, and the water may be used by any bona-fide fire fighting organization. The fire protection water shall be totally isolated from the shared water system. Cross connection and/or cross contamination shall be prohibited. The storage system shall be installed consistent with best practices and all applicable codes. Prior to backfilling of the fire protection water storage system and from time to time thereafter the HOA and/or the ARCHITECTURAL CONTROL COMMITTEE shall be permitted to inspect said system for compliance, and to insure no cross connection(s) with the shared water system exists. The HOA may establish bylaws, conditions, rules, procedures and other provisions regarding the onsite, fire protection storage.

24. RAIN WATER STORAGE SYSTEMS. Rain water and/or grey water storage systems may be installed for irrigation purposes and other outdoor use. Said water storage system shall be installed consistent with best practices, disinfected as necessary, and comply with all applicable codes. Prior to backfilling of said water storage system and from time to time thereafter the HOA and/or the ARCHITECTURAL CONTROL COMMITTEE shall be

1 permitted to inspect said system for compliance, and to insure no cross connection(s) with the
2 shared water system exists. The HOA may establish bylaws, conditions, rules, procedures
3 and other provisions which further limit or restricts said water system use.

4 **25. OTHER COVENANTS.** Some of the LOTs and/or other real estate within the
5 COMMUNITY may be subject to other covenants and restrictions. Such other covenants and
6 restrictions includes, but are not limited to the Mt. Joy Home Owners Association, Declaration
7 of Restrictions, recorded in the Otero County Clerks Office in Book 867 & Book 481, and the
8 Mt. Joy Estates Property Owners' Association documents, recorded in Book 922.
9 Said other covenants and restrictions are referred to in these COVENANTS solely to
10 note that such other covenants and restrictions may be in effect and may apply to some of the
11 LOTS and/or other real estate within the COMMUNITY. It is the intent of these COVENANTS
12 that the other covenants and restrictions referred to above and any other covenants and
13 restrictions that may be in effect and/or may apply to some of the LOTS and/or other real
14 estate within the COMMUNITY are NOT incorporated into these COVENANTS, are NOT
15 made a part of these COVENANTS, and shall NOT be expanded (to other real estate or in
16 scope) beyond whatever legal effect such other covenants and restrictions may otherwise
17 have.

18 **CLAUSE IV.**

19 **GENERAL PROVISIONS**

20 **IV - 1. SEVERABILITY.** In the event that any part(s) of the COVENANTS is construed
21 or declared unenforceable by a Court of competent jurisdiction, the remainder shall so

1 continue in full force and effect as though the unenforceable portion or portions were not
2 included herein.

3 **IV - 2. INITIAL TERMS AND EXTENSIONS**. These COVENANTS shall run with the
4 land and shall be binding on all parties, persons, or entities claiming under them or onto the
5 land for a period of twenty (20) years from the date of recording of this document. After which
6 time said COVENANTS shall automatically extend for successive periods of 10 years, unless
7 a written agreement, signed by seventy-five percent (75%) or more of the "then current" LOT
8 owners has been properly recorded, modifying these COVENANTS in whole or in part.
9 It is contemplated and anticipated that land owner(s) not mentioned in this original
10 document may wish to become signatory to these COVENANTS and/or the HOA. Therefore,
11 during the initial twenty (20) year period (after the date of recording this document), those
12 parcels, LOTs, land owners, real estate owners and/or other parties who wish to become
13 signatory to this document or the HOA, must have the express written permission of the
14 DEVELOPER prior to becoming signatory to this document and/or the HOA. During said
15 initial twenty (20) year time period, the DEVELOPER shall have the exclusive authority to
16 permit other parcels, LOTs, land owners, real estate owners and/or other parties to become
17 signatory to this document and to become a member of the HOA. After the initial twenty (20)
18 year time period, the HOA shall have the exclusive authority to allow additional parcels, LOTs,
19 land owners, real estate owners and/or other parties to become signatory to this document
20 and to become a member of the HOA.

21 **IV - 3. NOTICE & REMEDIES**. Each and every LOT owner found or alleged to be in
22 violation of these COVENANTS shall be given a written notice to cure as required herein.

Should the violation directly involve or affect the shared water system, and the HOA determines that the alleged violation creates a hazard to life, limb, property, or could adversely affect the heath, safety or welfare of any part of the COMMUNITY or the shared water system, the HOA may immediately shut off the shared water system to the offending LOT and the written notice to cure shall be seven (7) days. For all other violations, the time to cure shall be specified in the notice, provided that minimum notice period shall ten (10) days. If the violation is NOT cured within the notice period, legal action may then be initiated.

Notwithstanding the previous paragraph, if during any thirty-six (36) month period the LOT owner is found to be in breach of the same or similar section or provision herein by the HOA at least two 2 times, subsequent notice will not be required and the HOA may proceed to initiate immediate legal action against said LOT owner.

Notwithstanding the previous two (2) paragraphs, if during any forth-eight (48) month period the LOT owner is found to be in breach of any four (4) provisions or sections herein (either same and/or different) by the HOA, subsequent notice will not be required and the HOA may proceed to initiate immediate legal action against said LOT owner.

The DEVELOPER, the ARCHITECTURAL CONTROL COMMITTEE, the HOA, the "then current" owner, present or future, of any land or LOT included in the COMMUNITY shall be entitled to all legal and equitable relief, including, but not limited to injunctive relief and/or damages and in certain instances reasonable attorneys fees against any violation, or attempted violation of the provisions hereof, and for damages and/or for injuries resulting from any violation; but there shall be no right of reversion, nor forfeiture of title resulting from such violation. Should the DEVELOPER, his agents, and/or his assignee(s) initiate legal action and the DEVELOPER prevails in court, the DEVELOPER shall be entitled to recover attorney fees, costs and expenses incurred in the enforcement of the provisions of this agreement from any

LOT owner in violation of the same. The DEVELOPER may assign his rights and duties herein, including said right to recover attorney fees, costs and expenses to the HOA.

IV - 4. ASSIGNMENT. DEVELOPER reserves the right to assign (either temporarily or permanently) all or any of the rights, privileges, easements, interests in real or personal property, powers and/or duties herein retained, vested, controlled, owned or reserved by the DEVELOPER. An assignment shall be effective when a duly executed written instrument is recorded in the Office of the County Clerk of Otero County, New Mexico, and the DEVELOPER shall be immediately relieved and discharged from all such duties and rights so assigned. Should the DEVELOPER's assignment be to the HOA, the HOA is obligated to accept such assignment, with no further acts or formal acceptance required by the HOA.

IV - 5. FAILURE TO ENFORCE. Enforcement of these COVENANTS is a right that's available to all "then current" LOT owner(s), the DEVELOPER, the ARCHITECTURAL CONTROL COMMITTEE, and/or the HOA. While the right to enforce is an option, there is no duty or obligation to enforce placed upon any party hereto. The failure to enforce any of these COVENANTS by any LOT owner, the DEVELOPER, the ARCHITECTURAL CONTROL COMMITTEE, and/or the HOA, shall not constitute a waiver or a continuing waiver, nor shall it create a waiver of any subsequent breach of the same, similar, or different term, condition or COVENANT(S). No such failure to enforce shall entitle any LOT owner to claim, sue for, or receive any damages or other payment from any other LOT owner, the DEVELOPER, the HOA, the ARCHITECTURAL CONTROL COMMITTEE and/or other entity. In addition, if any other LOT owner(s), the DEVELOPER, the HOA, the ARCHITECTURAL CONTROL COMMITTEE and/or any other entity(s) is named by any LOT owner in any legal action for

failure to enforce, the other LOT owner(s), the DEVELOPER, the HOA, the ARCHITECTURAL CONTROL COMMITTEE and/or any other entity(s) shall be entitled to recover from said LOT owner the reasonable attorney fees, costs and expenses incurred in defending said action.

IV - 6. INTERPRETATION. The DEVELOPER and the HOA (jointly) may interpret or clarify the meaning of any of these COVENANTS or any portion thereof. For instance, should the LOT owner desire to use new or innovative building materials, new types of construction, or other items not specifically addressed herein, the DEVELOPER and the HOA may consider those items on a case by case basis. If such interpretation is by a written document, duly executed by the DEVELOPER and the HOA, and recorded with the Otero County Clerk, the same shall interpret or clarify the meaning of the COVENANTS for the mutual benefit and protection of the COMMUNITY and shall hence forth be binding upon the COMMUNITY's LOT owners and their respective legal representatives, heirs, successors, grantees, and assigns.

IV-7. LOT OWNERSHIP AND OCCUPANCY. In order to better maintain this COMMUNITY as a predominantly owner-occupied COMMUNITY, the ownership of LOTS and any other real estate within the COMMUNITY shall be limited by these COVENANTS. Unless otherwise permitted by the express written permission of the DEVELOPER, ownership of and record title to any LOTS and any other real estate within the COMMUNITY shall only be vested in a PERMITTED OWNER, which is defined as either: (a) an individual, or (b) a married couple.

With the express written permission of the DEVELOPER, the ownership of LOT(s) and any other real estate within the COMMUNITY may be vested in:

(1) Two PERMITTED OWNERS (i.e., two individuals, an individual and a legally married couple, or two legally married couples);

(2) Any combination of individuals comprising a single-family unit that consists of legally married parents and their children (and/or their stepchildren);

(3) A self-directed Individual Retirement Account held by a financial institution;

(4) A living trust or other estate planning entity, but only if:

(a) The sole beneficiary and/or owner of said trust and/or entity is a PERMITTED OWNER, or

(b) All of the beneficiaries and owners of said trust and/or entities meet the requirements of items (1) or (2) above.

The ownership of any LOT or other real estate within the COMMUNITY shall not, under any circumstances be vested in:

(A) More than two PERMITTED OWNERS, except as permitted in items (1) through (4) above with the express written permission of the DEVELOPER; or

(B) A corporation, limited liability company, partnership, limited liability partnership, condominium association, cooperative, time share entity, or similar types of entities, except as permitted in item (4) above with the express written permission of the DEVELOPER.

The foregoing provisions of this section that relate to ownership of LOTS and other real estate within the COMMUNITY shall apply to the initial transfer of ownership from the DEVELOPER to the initial purchasers and to all subsequent purchases and/or transfers of any LOTS and/or other real estate within the COMMUNITY.

Notwithstanding any other provisions of these COVENANTS, the foregoing provisions of this section that relate to ownership do not apply to any LOT or other real estate within the COMMUNITY that is now owned by the DEVELOPER, or which may be owned by the DEVELOPER in the future.

Other sections of these COVENANTS contain provisions that limit the use and occupancy of the LOTS within the COMMUNITY. All of the LOT owners within the COMMUNITY who are permitted to be owners pursuant to the foregoing provisions of this section are entitled to use and occupy their LOT(s), except as prohibited by these COVENANTS and/or applicable law. Any use and/or occupancy of any of the LOTS and/or other real estate within the COMMUNITY by any persons or entities who are not the owners of said LOTS and/or other real estate within the COMMUNITY (e.g., rentals) is expressly prohibited, except to the extent that such use and occupancy is expressly authorized and permitted by other provisions of these COVENANTS (see "**21. RENTAL OF DWELLING.**" above for permitted use). The maximum permitted occupancy of any DWELLING shall not exceed 2 persons per bedroom.

IV - 8. EXPRESS WRITTEN PERMISSION. Wherever the phrase "express written permission" is used, it shall be interpreted to mean the permission may be granted at the party's sole and separate discretion, but there shall be no burden, duty or obligation to grant said permission. As each LOT is unique, each set of circumstances associated with the request for express written permission is also unique. The granting of one LOT owner's request for said permission, does not create or set a precedent, nor does it create an obligation to grant a similar, but never-the-less unique request.

1 **IV - 9. MISCELLANEOUS.** The underlined titles preceding the various paragraphs and
2 subparagraphs of the COVENANTS are for convenience of reference only, and none of them
3 shall be used as an aid to the construction of any provision of the COVENANTS. Whenever
4 capital letters, bold letters or underlined letters are shown herein they are for the convenience
5 of the reader and they serve to make the document more readable. Wherever and whenever
6 applicable, the singular form of any word shall be taken to mean or apply to the plural, and the
7 masculine form shall be taken to mean or apply to the feminine or to the neuter and vice-
8 versa. This document shall be interpreted to be gender neutral, numerically neutral, and
9 subject to laws and jurisdiction of the State of New Mexico. The word "owner" or "Owner" shall
10 be defined for purposes of this document as a bona-fide PERMITTED ENTITY which holds
11 title to a LOT(s) in this COMMUNITY, and any executors, heirs, legatees, successors, and
12 assigns thereof, who shall comply with paragraph "IV-7. LOT OWNERSHIP AND
13 OCCUPANCY."
14 Once these COVENANTS are signed by a LOT owner, parcel owner, land owner, or the
15 DEVELOPER, all owner(s) shall be thereafter subject to the mutual benefits, burdens,
16 restrictions, and protections afforded hereunder, and shall be hence forth bound by these
17 COVENANTS. It is contemplated and anticipated that land owner(s) not mentioned in this
18 original document may wish to become signatory to these COVENANTS. It is only via the
19 method established above, pursuant to paragraph: "IV - 2. INITIAL TERMS AND
20 EXTENSIONS" herein, that other parcels, Tracts, LOTs, land owners, real estate owners
21 and/or other parties can become signatory to these COVENANTS and become a member of
22 the HOA.
23 Any non-conforming improvement(s) that exist(s) as of the day the LOT owner becomes
24 signatory to these COVENANTS shall be "GRAND-FATHERED" and shall be exempt from

those individual, non-conforming provisions until such time as the improvement(s) becomes at least 60% destroyed or damaged. At such time, the improvement(s) shall be made to conform to these COVENANTS or removed from the LOT.

IV-10. HOME OWNERS ASSOCIATION. A homeowners association for the COMMUNITY (hereinafter "HOA") has been or will be formed as an entity under New Mexico law. Although the purpose, powers, rights, procedures, rules, and other matters are or will be set forth in the documents that create and govern the HOA, said documents shall contain the following provisions.

A. MEMBERSHIP – The Owner(s) of record of each LOT within the COMMUNITY shall be a member of the HOA and consistent with the HOA Articles of Incorporation and the By-Laws, each LOT Owner shall have one (1) vote per LOT owned with respect to all matters that members are entitled to vote on so long as said LOT owner is current on any and all HOA dues, fees assessments and other charges. Membership in the HOA is mandatory for all LOT owners in the COMMUNITY, and no one may become a member in the HOA unless they are a LOT Owner in the COMMUNITY.

B. BOARD OF DIRECTORS – The initial Board of Directors (Board) shall consist of such persons as the DEVELOPER appoints and shall serve at the pleasure of the DEVELOPER for a term of no more than six (6) years after the date of said appointment or reappointment. For a period of six (6) years after the date of this declaration, the DEVELOPER shall appoint, reappoint, or relieve any and all such Board members. It is anticipated that

some of the Board members may live out of state, as such the Board members may attend meetings in person or via electronic teleconferencing means.

C. ASSESSMENTS, DUES, FEES, AND OTHER CHARGES – The HOA shall have the right to impose assessments, dues, fees, and other charges for, among other things: 1). water use and/or availability; 2). a general assessment fee for road maintenance, maintenance of any property owned, controlled, and/or to be maintained by the HOA, reserves for replacements, legal, accounting, administrative, and other matters for the benefit of the COMMUNITY, regardless of whether or not the HOA holds title and/or ownership to the property to which such assessments, fees, and other charges relate; 3). recreational facility fees (if any); and 4). special assessments or charges as approved by the HOA Board (if any). All such assessments, dues, fees, and other charges shall be allocated **in equal shares** among and against the **Owner(s)** of LOT(s) within the COMMUNITY as described herein. The assessments, dues, fees and other charges shall be allocated against the Owner and the LOT, regardless of any improvements (DWELLING, Out Building, Observatory, etc.) thereto.

Where an Owner owns multiple LOTs in the COMMUNITY, one general assessment fee shall be charged **PER LOT**, and ONLY one (1) water use/availability fee **per Owner**, ONLY one (1) recreational facility fee (if any) **per Owner,** and ONLY one (1) special assessment **per Owner** shall be due and payable until such time as a DWELLING is approved by the ARCHITECTURAL CONTROL COMMITTEE for construction on the additional LOT(s), or until such time as a multiple LOT Owner utilizes the water allocated to two (2) or more LOTs. Thus, upon approval of a DWELLING by the ARCHITECTURAL CONTROL COMMITTEE as provided in these COVENANTS said additional LOT(s) shall thereafter be included for purposes of allocating all such assessments, dues, fees, and other charges.

Additionally, when an Owner of multiple LOTs connects to the water tap on the additional LOT(s), regardless of whether a DWELLING has been built or approved, they shall be charged an additional water usage/availability fee. For example: **(A).** If an Owner owns two (2) LOTs and no DWELLING on either LOT, they shall be charged two (2) general assessment fees, one water availability/use fee, one recreational facilities fee (if any), and one special assessment fees (if any); **(B).** If an Owner owns two (2) LOTs and one DWELLING, they shall be charge two (2) general assessment fees, one (1) water use/availability fee, one (1) recreational fee (if any), and one special assessment fee (if any); **(C).** If an Owner owns two LOTs and two DWELLINGs (either built or approved by the ARCHITECTURAL CONTROL COMMITTEE), they shall be charged two (2) of each assessment, dues, fees and/or other charges.

D. LIEN FOR UNPAID ASSESSMENTS, FEES, AND OTHER CHARGES – The HOA shall have a lien against any LOT for: (1) all unpaid assessments, fees, and other charges allocated against said LOT, (2) interest at the rate of eighteen percent (18%) per annum on said unpaid amounts, and (3) all costs of collecting said unpaid amounts, including, but not limited to, all attorney fees, court costs, and other costs incurred by the HOA in collecting said unpaid amounts.

E. COVENANTS CONTROL — In the event of any conflict between the provisions of such documents that create and govern the HOA and these COVENANTS, the provisions of these COVENANTS shall control and take precedence.

F. HOA's ACCEPTANCE — The DEVELOPER reserves the right to transfer title and ownership of the shared water wells and facilities, shared and common private roads, and any other property for the common use of the COMMUNITY to the HOA and the HOA shall accept title and ownership of same upon request of the DEVELOPER. Prior to the transfer of title and ownership of any such shared water wells and facilities, shared and common private roads, and other shared property within the COMMUNITY, the DEVELOPER reserves the right to transfer any and all maintenance obligations for same to the HOA and the HOA shall accept such maintenance obligations upon request of the DEVELOPER.

The documents that create and govern the HOA shall be subject to the provisions set forth in this section, and may contain any other provisions permitted by applicable law that are not in conflict with and/or inconsistent with any of the provisions of these COVENANTS.

W:\W\N.M. Southern Skies\COVENANTS - N M SKIES-FINAL-Phase 2- JTC-FINAL.wpd

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APPENDIX A - NEW MEXICO SKIES

CHECK LIST OF REQUIREMENTS FOR CONSTRUCTION (FILL IN ALL BLANKS)

OWNER'S NAME _____
CURRENT ADDRESS _____
CITY _____ STATE _____ ZIP _____
PHONE (DAY) _____ (EVE.) _____
FAX NUMBER _____
OWNER'S E-MAIL ADDRESS _____
LOT ADDRESS _____
LOT # _____ LOT PHONE OR OWNER'S CELL _____
CONTRACTOR & PHONE _____
BRIEFLY DESCRIBE PROPOSED IMPROVEMENTS _____
_____
_____

SURVEY, DRAWN TO SCALE - SHOWING (ALL THAT APPLY):

- PROPERTY LINES & LOCATION OF DWELLING & THE LOCATION OF OTHER STRUCTURES
- BUILDING SETBACK LINES, EASEMENTS & UTILITIES
- EXISTING GRADES & PROPOSED GRADES
- WELL(S) AND/OR WATER SERVICE TAP & SEPTIC FIELD AND TANK
- WATER STORAGE STRUCTURES FOR FIRE AND RAIN WATER
- DESIGNATED USE PLAN & LANDSCAPING
- DRIVEWAY, WALKWAY(S), DECKS, PATIOS & PORCHES
- OBSERVATORY(S) & LINE OF SITE SURVEY (IF APPLICABLE)
- PERMANENT FENCES & TEMPORARY SAFETY FENCE
- DIMENSIONS NECESSARY TO PROPERLY LOCATE THE ABOVE
- SCALE, NORTH ARROW & SURVEYOR'S STAMP AND CERTIFICATION

STYLE OF HOUSE _____ Total _____ sq. ft. LIVING AREA of the above grade, finished and heated DWELLING (excluding NON-LIVING AREAS)

What is the minimum roof slope of the DWELLING or structure? _____' rise in _____' run

I do hereby certify, represent, and warrant that I have and will comply with all the COVENANTS for the COMMUNITY, and that my LOT shall be developed as shown on the plans submitted and as shown on this checklist, and when completed the improvements shall meet all the COVENANTS.

_____
OWNERS SIGNATURE DATE PRINTED NAME

_____
OWNERS SIGNATURE DATE PRINTED NAME

No approval for construction shall be granted unless this check list is completed, signed by the owner(s), and properly submitted to the ARCHITECTURAL CONTROL COMMITTEE along with the required plans, specifications, survey(s), proof of insurance and Review Fees (if applicable).

A COMPLETE SET OF PLANS AND SPECIFICATIONS WOULD ALLOW A PROFESSIONAL, LICENSED CONTRACTOR TO ACCURATELY CONSTRUCT THE PROPOSED STRUCTURE(S). THE DRAWINGS MUST CLEARLY SHOW THE SIZE, LOCATION, AND SPECIFICATIONS OF EACH PORTION OF THE STRUCTURE.

APPENDIX B — Signature page 1

As Owner(s), I/we hereby declare that the real property described herein, is, and shall be, held, transferred, sold, conveyed, and occupied subject to the COVENANTS contained in this document.

LEGAL DESCRIPTION:

A tract of land in the South Half of the Northwest Quarter of Section 21, Township 16 South, Range 14 East, NMPM, Otero County, New Mexico, described by metes and bounds as follows:

BEGINNING AT THE SOUTHEAST CORNER OF SAID S ½ OF THE NW 1/4 AND GOING N 89° 50' 33" W, ALONG THE SOUTH LINE OF SAID S 1/2 NW 1/4 A DISTANCE OF 366.14 FEET;
THENCE N 14° 24' 24" W A DISTANCE OF 574.03 FEET;
THENCE S 76° 13' 07" E A DISTANCE OF 526.21 FEET;
THENCE S 00° 16' 47" W A DISTANCE OF 431.64 FEET TO SAID PLACE OF BEGINNING.
CONTAINING 4.8 ACRES, MORE OR LESS

OWNER:
Thomas N Simstad, as his sole & separate property.
P.O. BOX 22, CROWN POINT, IN, 46308

STATE OF New Mexico)
) SS
COUNTY OF OTERO)

The foregoing instrument was acknowledged before me this day by:

Signature _____ 1-13-09
Thomas N. Simstad

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared the above mentioned party(s), and acknowledged the execution of the foregoing instrument as their voluntary act. IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal this day.

My commission expires 11-1-09

Notary Public _____
Signed

LARA JOHNSTON NOTARY PUBLIC STATE OF NEW MEXICO

DECLARATION OF COVENANTS, CONDITIONS and RESTRICTIONS for NEW MEXICO SKIES, AN AMATEUR ASTRONOMY ENCLAVE, OTERO COUNTY, NEW MEXICO

The original COVENANTS for said community were recorded on 3/3/08, as instrument #200801928 in the office of the Otero County Clerk. This document is being recorded as PHASE 2 COVENANTS, pursuant to paragraph: "IV - 2. INITIAL TERMS AND EXTENSIONS", et. al., that describes the process by which other parcels, Tracts, LOTs, land owners, real estate owners and/or other parties can become duly authorized signatory(s) to these or the original COVENANTS and members of the New Mexico Skies Home Owner's Association. The LOTs, tracts, and/or parcels described herein have become duly authorized signatory(s) to said document and their respective duly authorized signature pages are attached hereto.

STATE OF NEW MEXICO)
) SS
COUNTY OF OTERO)

The foregoing instrument was acknowledged before me this day by:

Signature 1-13-09

Thomas N. Simstad, as Manager / Member of NM Southern Skies, LLC.
and as the duly authorized DEVELOPER'S REPRESENTATIVE

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared the above mentioned party(s), and acknowledged the execution of the foregoing instrument as their voluntary act. IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal this day.

My Commission expires 11-1-09

Notary Public Tara Johnston
Signed

TARA JOHNSTON NOTARY PUBLIC STATE OF NEW MEXICO

Acknowledgment of Easements, Designated Use Plan & Covenants, Conditions & Restrictions.

I, Marla K. Simstad, Trustee under the Joshua Thomas Carrasco Trust, hereby acknowledge and agree to the attached Easements, Designated Uses Plan and the Covenants, Condition & Restrictions of the New Mexico Skies Astronomy Enclave.

STATE OF New Mexico)
)ss.
COUNTY OF Otero)

Marla K. Simstad, T Rustee

MARLA K. SIMSTAD, TRUSTEE UNDER THE
JOSHUA THOMAS CARRASCO TRUST AGREEMENT

On this 13th day of January, 2009, before me personally appeared **MARLA K. SIMSTAD**, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

OFFICIAL SEAL
Suzi Palomino
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 9-5-11

My Commission Expires: 9/5/11

NOTARY PUBLIC Suzi Palomino

OTERO COUNTY