

1 **DECLARATION OF COVENANTS, CONDITIONS and RESTRICTIONS for**
2 **NEW MEXICO SKIES, AN AMATEUR ASTRONOMY ENCLAVE,**
3 **OTERO COUNTY, NEW MEXICO**
4 **Phase 2**

5 THIS DECLARATION, made this 18 day of February, 2009 by NEW MEXICO SOUTHERN
6 SKIES, LLC., ("DEVELOPER").

7

8 **WITNESSETH;**

9 WHEREAS, DEVELOPER is the owner of certain real property described in Clause I
10 (see Appendix B) of this Declaration; and the DEVELOPER and the current owners of other
11 LOTS, tracts or parcels are desirous of subjecting their real property to a common
12 development plan. These covenants, conditions, restrictions, options, reservations,
13 undertakings, agreements and easements hereinafter set forth, each and all of which is and
14 are declared to be equitable servitudes binding upon the LOTS, tracts, parcels and

1 COMMUNITY and each owner thereof and every other party having any interest therein, and
2 shall run with the land and bind all current owners and successors in title or interest, heirs and
3 assigns, and shall inure to the benefit of and pass with said property, and each and every
4 parcel thereof.

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

8 **CLAUSE I.**

9 **COMMUNITY**

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

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

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

6 2. The “**New Mexico Skies**” Subdivision is an Otero County, New Mexico Subdivision,
7 and while located adjacent to New Mexico Skies, INC., are unrelated entities.

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

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

- 1 5. **"COMMUNITY"** is those lots and/or properties which are subject to and benefitting from
2 these COVENANTS.
- 3 6. A **"DWELLING"** is a Modular, Manufactured, or Site-Built single family home or
4 residence and any structure permanently attached thereto (e.g. garage, greenhouse,
5 basement, etc.).
- 6 7. An **"OUT-BUILDING"** is any **"additional structure"** or building as specified herein
7 which is detached from the DWELLING, other than an OBSERVATORY, or GAZEBO.
- 8 8. The **"DESIGNATED USE PLAN"** is a negotiated agreement solely between the
9 Developer and the LOT owner, and no third party beneficiary rights are created or
10 inferred by said document. The DESIGNATED USE PLAN is a drawing which shall
11 show, among other things, the permitted and restricted use areas for a particular lot.
- 12 9. 1 **"LUMEN PER SQUARE FOOT"** (commonly known as a **"LUMEN"**) equals 1
13 **"FOOTCANDLE"**.
- 14 10. **"HOA"** shall mean the Home Owners Association referred to in this document.
- 15 11. The terms **"light"** or **"lights"** shall mean any and all lights, bulbs, fixtures, lamps,
16 luminaires and any other source of infrared, visible and/or ultraviolet light. The term(s)
17 may be applied individually to a single light and/or collectively to any combination of the
18 above items.
- 19 12. The **"SURVEY"** shall be an original document prepared by a Professional Surveyor,
20 licensed by the State of New Mexico, and not altered in any way, and shall show all
21 items required herein.

1 13 Any and all **“written notices”** required herein shall be sent via certified US mail, return
2 receipt requested, or via a nationally recognized, bona-fide courier, return receipt
3 requested, signature required, sent to the last known address of the LOT owner as
4 obtained from the Otero County Real Estate Tax Records or to the last know address
5 as obtained from the HOA records.

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

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

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

17 **CLAUSE II.**

18 **PURPOSE OF THESE COVENANTS**

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

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

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

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

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

18

19 **2. GENERAL PURPOSE.** New Mexico Skies offers extraordinary sky conditions,
20 found no where else in North America. The exceptionally dark skies, the excellent seeing, the
21 phenomenal transparency, the clean dry mountain air, and a micro-climate that is second to
22 none are some of the factors that combine to make New Mexico Skies one of the finest

1 locations for amateur astronomy in the world. The purpose of these COVENANTS is to allow
2 those uses that are compatible with and that will enhance New Mexico Skies distinction as
3 North America's premier location for amateur astronomy, and to prohibit those uses that would
4 be incompatible with astronomy. As such, preservation and protection of our night sky is of
5 utmost importance. **Therefore:**

6
7 The COMMUNITY is dedicated to the preservation and protection of the dark night
8 skies, and we choose to subject ourselves to these COVENANTS in order to promote the
9 proper use, the appropriate development, and suitable improvement of the COMMUNITY and
10 every part thereof; and therefore it is necessary:

- 11 a. To protect the dark night skies, because they are an essential
12 aspect of our amateur astronomy COMMUNITY; and
- 13 b. To reduce as much as reasonably possible the adverse effects
14 from indoor and outdoor lighting, such as light pollution, light
15 trespass, glare, sky glow, and energy waste; and
- 16 c. To reduce as much as reasonably possible air pollution, thermal
17 emissions, and any other such uses which would interfere with,
18 hinder, obstruct, or would otherwise negatively impact our night
19 skies; and
- 20 d. To protect each and every owner in the COMMUNITY against such use as
21 may depreciate the value of each LOT or the property of others; and

- 1 e. To guard against the erection there upon of structures built of
- 2 improper or unsuitable materials; and
- 3 f. To promote responsible development within the COMMUNITY; and
- 4 g. To promote the peaceful use and the quiet enjoyment within the
- 5 COMMUNITY; and
- 6 h. To encourage the erection of attractive improvements thereon, with
- 7 appropriate location(s) thereof; and
- 8 i. To provide for the type and quality of improvements in the
- 9 COMMUNITY consistent with these COVENANTS.

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

14 **CLAUSE III.**

15 **GENERAL COVENANTS**

16 **1. LAND USE.** Each LOT within the COMMUNITY shall be used, exclusively, as a site
 17 for one (1) SINGLE FAMILY RESIDENTIAL HOME (DWELLING), and one (1) OUT-
 18 BUILDING, and up to three (3) OBSERVATORY(s) and one (1) GAZEBO. No Duplexes,
 19 apartments or any other type of multi-family dwellings shall be permitted.

1 Without the express written permission of the DEVELOPER, no LOT owner shall
2 provide a license to use; easement(s); access, ingress or egress over or across said LOT to
3 any other LOT, parcel, or other real estate. No LOT may be resubdivided, split, or re-plated
4 such that any LOT or parcel shall be smaller than 2.000 acres in size. There shall be NO
5 replat, split and/or resubdivision of the real estate described herein without the express written
6 permission of the developer and the payment of additional fees for water, utilities and other
7 such development costs to the developer.

8 No business use, no commercial use, no third-party (i.e. non-owner) use, or for-profit
9 astronomy use shall be permitted on any LOT. No sale, license to use, lease or rental of land,
10 parcel(s), plot(s), observatory(s), telescope(s), or renting of "time" on any observatory(s) or
11 telescope(s) (i.e. no "rent-a-scope" or "rent-a-observatory") or other such uses shall be
12 permitted on any LOT. No commercial or for-profit astronomy related use shall be permitted
13 which would, in any way, compete with or conflict with the existing uses as of January 1, 2008
14 of Mike and Lynn Rice's New Mexico Skies, INC., which include: their overnight and weekly
15 lodging rentals; their guest observatory and telescope rentals; their telescope hosting; dome
16 rental; pod building rental; or the Rent-A-Scope system. Nothing in this document shall, in any
17 way, create any third party beneficiary rights for New Mexico Skies, INC., nor shall this
18 document alter or adversely affect the existing uses at New Mexico Skies, INC.

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

1 their use. Any and all proposed agreements between the LOT owner and the non-profit group
2 must be submitted to the DEVELOPER for consideration.

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

11 **1 (A). DESIGNATED USE PLAN.** Once the DEVELOPER transfers legal title of any
12 LOT to a new LOT owner, or at such time as a non-DEVELOPER owned LOT owner becomes
13 signatory to this document, the DEVELOPER shall cause to be prepared a "DESIGNATED
14 USE PLAN". Said DESIGNATED USE PLAN shall be recorded with the Otero County Clerk,
15 shall run with the land and be binding upon each LOT and owner. Among other things, each
16 LOT shall have a designated "Observatory Only" area, in which only observatory(s),
17 observatory fences (as may be permitted herein), underground utilities, shared water lines,
18 shared well(s) and/or appurtenances thereto, and driveways can be located.

19 Each LOT shall have a designated "DWELLING site" area in which a single
20 DWELLING, observatory(s), fenced in area(s), driveway, a single gazebo, patio(s), decks, a
21 single out-building and/or other structures as permitted herein can be located. Each LOT shall
22 have a dedicated "Conservation Area(s)" which must be maintained in its natural condition,

1 except for utilities, water lines and appurtenances, minor recreational facilities such as a
2 garden area not to exceed four-thousand (4,000) square feet, walking trails, a gazebo and up
3 to two (2) picnic tables. Some LOTs will have an "Arroyo Easement" shown on the
4 DESIGNATED USE PLAN, which shall preserve the arroyo(s) from any further development
5 and shall create a pedestrian walkway easement for the COMMUNITY. Some LOTs will have
6 an "Emergency Ingress/Egress" easements shown on the DESIGNATED USE PLAN, which
7 shall permit emergency vehicles and pedestrians to pass, and DEVELOPER or HOA approved
8 maintenance vehicles. Once recorded, the DESIGNATED USE PLAN may only be modified,
9 amended, or changed by the express written permission of the DEVELOPER and the "then
10 current" LOT owner. As the DESIGNATED USE PLAN is a negotiated agreement solely
11 between the Developer and the LOT owner, no third party beneficiary rights are created or
12 inferred by said document.

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

16 **2. DWELLING SIZE.**

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

19 These minimums shall apply to any replat, split, and/or resubdivision of any LOT
20 specifically described herein. There shall be NO replat, split and/or resubdivision of the real

1 estate described herein without the express written permission of the developer and the
2 payment of additional fees for water, utilities and other such development costs to the
3 developer. The total area of all structures **attached** to the DWELLING, such as garage(s),
4 work area(s), work shop(s), storage room(s), cellar(s), unfinished areas (which excludes
5 unfinished basements), and/or other non-living area(s) shall not exceed the DWELLING's
6 area.

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

- 10 a. Dark skies are an essential part of our amateur astronomy community; and
- 11 b. It is pleasing to the senses and to the intellect of mankind to be able to see the
12 dark skies with minimum interference from light pollution; and
- 13 c. Many of the residents of the COMMUNITY enjoy amateur astronomy, but light
14 pollution, light trespass, glare and/or sky glow interferes with their enjoyment;
15 and
- 16 d. Light pollution, light trespass, glare and/or sky glow interferes with the study of
17 planets, comets, stars, galaxies, nebula and other astronomical wonders; and
- 18 e. Dark, night skies are vary rare, and they are a significant asset to our
19 COMMUNITY, and they must be protected; and
- 20 f. The fundamental need to gaze at the night skies can only be fulfilled if we keep
21 our skies dark; and

- 1 g. The proper design and use of lights, fixtures and/or luminaires, will reduce light
2 pollution, light trespass, glare, sky glow, and save energy; and
3 h. It is essential for the residents of the COMMUNITY to regulate the use of indoor
4 and outdoor lights, fixtures and luminaires in our COMMUNITY; therefore:

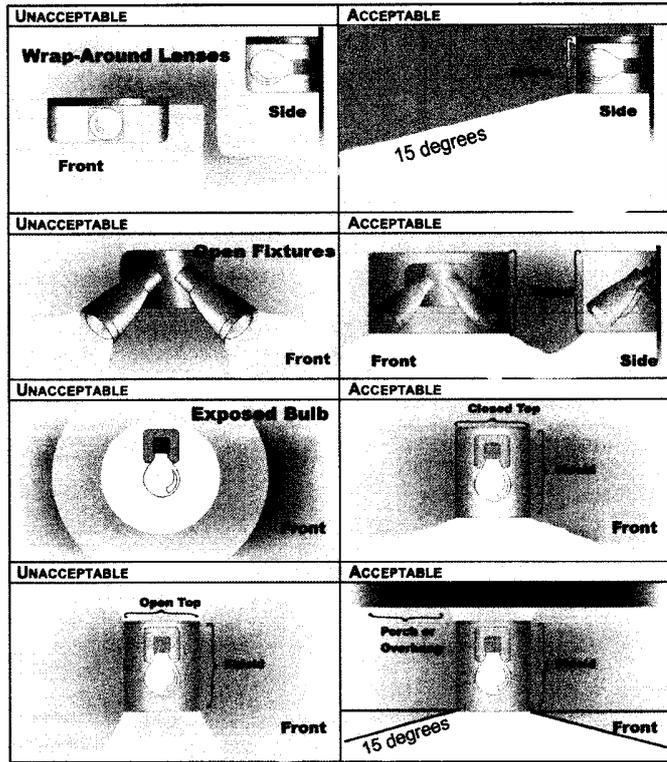
5 This section creates minimum standards for indoor, outdoor and other lighting such that
6 its use does not unreasonably interfere with the enjoyment of other property owners, with
7 astronomical observations, and to promote energy conservation without jeopardizing safety,
8 utility, security and productivity.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

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

- 14 A. All outdoor lights, bulbs, fixtures and/or luminaires which are at least three feet
15 (3') above existing grade shall be:
16 (1) Mounted on a building or structure at a height not to exceed eleven feet
17 (11') above finished grade, deck or porch, and mounted no higher than
18 the building eaves; and

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(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

1 (50) watts for an incandescent bulb or eleven (11) watts for a fluorescent
2 bulb; and,

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

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

13
14 B. Above ground, outdoor light poles, post lights, roadway lights, driveway lights,
15 walkway lights and all other light standards, bollards, poles and other such lights,
16 luminaires or fixtures not attached to a building or structure shall not exceed
17 three feet (3') in height above existing grade, deck or porch. Lights which
18 illuminate walkways, driveways, roadways, patio(s), yard area(s), are permitted
19 provided that said light(s):

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

21 (2) The maximum rating of said lights or bulbs shall be: not more than one-
22 hundred and fifty (150) lumens for permitted bulb or light; and not more

1 than thirteen (13) watts for an incandescent bulb, nor more than three (3)
2 watts for fluorescent bulb; and
3 (3) Shall not be located closer than ten feet (10') from any property line.

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

11 D. As much as reasonably practical, all vehicle lighting shall comply with the light
12 restrictions herein and as regulated by the HOA and shall utilize best practices,
13 techniques and/or methods which shall cause all the light emitted to be directed
14 downward to the surface or area to be illuminated. The emanating source of
15 vehicles light shall be minimally visible from any angle, except those forward and
16 downward angles that exist between the vehicle lights and the area to be
17 illuminated.

18 E. All outdoor, above ground level light fixtures shall bear the "Fixture Seal of
19 Approval" from the International Dark Skies Association (IDA Approved Dark Sky

1 Friendly), or equal rating as may be approved by the ARCHITECTURAL
2 CONTROL COMMITTEE or the HOA.

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

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

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

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

- 12 1. The light emitted shall not exceed 0.1 (one tenth) of one footcandle at the
13 property line; and
- 14 2. Not more than 1 (one) footcandle shall be emitted in an upward direction,
15 as measured four (4) feet above the light source's point of emission or the
16 structure's roof; and
- 17 3. Upon 48 hours notice written notice, the LOT owner shall allow the HOA
18 access to said light source(s) for measuring emitted light and determining
19 compliance with these rules.

20 **4. ARCHITECTURAL CONTROLS.** Architectural controls shall be in effect to govern

21 the SURVEY, the design and style of the DWELLING, observatory(s), out-building, and/or

1 associated structures, final grading of the LOT, water conserving plumbing fixtures, Dark Sky
2 Friendly lighting, and other items as described herein (see also Appendix A "Check List of
3 Requirements for Construction"). The ARCHITECTURAL CONTROL COMMITTEE shall
4 consist of the DEVELOPER, or its designated agent(s), or assignee(s). After all LOTs have
5 been built upon, or at such earlier time as the DEVELOPER deems appropriate, the
6 architectural control of the COMMUNITY shall be vested with and continued by the HOA,
7 thereby turning over architectural control to the LOT owners themselves, and the
8 DEVELOPER shall thereupon be relieved and discharged from all said duties.

9 The LOT owner is the person who has the authority, ability and the responsibility to
10 control their LOT, their employees, their guests, their invitees, and to hire and fire their
11 contractors, their subcontractors, and their materials suppliers. Therefore, neither the other
12 LOT owners, nor the DEVELOPER, nor the ARCHITECTURAL CONTROL COMMITTEE, nor
13 the HOA, nor any agent(s) thereof, shall be responsible in any way for any defects in plans,
14 specifications, survey, materials, workmanship, or other such items, nor for any other defects
15 thereto. By purchasing a LOT within the COMMUNITY and/or by building upon said LOT, the
16 "then current" LOT owner accepts full responsibility (financial and otherwise) for their own
17 actions, their guest's actions, their invitee's actions, their contractor's actions, their
18 subcontractor's actions, their material supplier's actions, and their respective employee's
19 actions, and said LOT owner shall pay for and reimburse the DEVELOPER, the HOA and/or
20 other LOT owners who have incurred or sustained losses, damage, costs, and reasonable
21 attorney fees as a result of said actions. This paragraph shall include all intentional or
22 unintentional: acts, errors, omissions, damage, or other actions, to one's own property and/or
23 the property of others, and/or damage to the roads within the community.

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

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

17 An original SURVEY, prepared by a Professional Surveyor, licensed by the State of
18 New Mexico (SURVEYOR), and not altered in any way, shall be submitted to the
19 ARCHITECTURAL CONTROL COMMITTEE (in duplicate) showing dimensions to, and the
20 location of: property lines, driveway, utilities, side yard setback lines, front setback line, rear
21 setback line, all information contained on the DESIGNATED USE PLAN, construction/safety
22 fence, easements, all existing and proposed structures (DWELLING, out-building, gazebo
23 and/or observatory(s)), existing and proposed grades, well(s), water lines, septic field,

1 landscaping area, permanent fences, clear areas, utilities, garden area, outdoor light fixtures,
2 patio(s) and all other proposed improvements or alterations to the LOT. It is highly
3 recommended that the LOT owner's SURVEYOR contact the ARCHITECTURAL CONTROL
4 COMMITTEE to discuss the COMMUNITY's requirements prior to starting work on any
5 SURVEY. A properly prepared SURVEY can save the LOT owner substantial time and
6 money.

7 DWELLING styles shall be compatible with the existing area and the contour of the
8 land. Walkout basements, lower level garages, and "daylight" basements may be permitted
9 where the DESIGNATED USE PLAN allows. Minimal grade changes are permitted (less than
10 one foot (1') from existing grade). Minor grade changes may be permitted (between one foot
11 (1') and three feet (3') from existing grade) with the express written permission of the
12 DEVELOPER or the ARCHITECTURAL CONTROL COMMITTEE, but grade changes greater
13 than three feet (3') are hereby prohibited, unless approved with the express written permission
14 of the ARCHITECTURAL CONTROL COMMITTEE, or are shown on the DESIGNATED USE
15 PLAN. Only DWELLING styles compatible with the architecture of the southwest United
16 States shall be permitted. Diversity in DWELLING styles, roof lines and appearance shall be
17 encouraged (identical DWELLING styles will be discouraged). Except for "Santa Fe" style
18 homes (adobe with flat roofs), observation decks, and other roof styles permitted with the
19 express written permission of the DEVELOPER or the ARCHITECTURAL CONTROL
20 COMMITTEE, the minimum allowable roof slope shall be three feet (3') of rise in twelve feet
21 (12') of run.

22 Only new Modular, Manufactured, and Site-Built single family homes (DWELLING) shall
23 be erected within the COMMUNITY. No temporary DWELLING(s) shall be allowed. No used,

1 or previously occupied DWELLING shall be allowed to be built or place on any LOT. All
2 materials shall be new, professionally finished, and/or first quality. Fire resistant building
3 materials (such as fiber cement siding and metal roofs) are strongly encouraged and a
4 perimeter "clear area" for fire protection may be maintained. All Manufactured Homes shall
5 have permanent skirting around the entire DWELLING made from masonry or cement
6 products such as brick, block, concrete, EIFS (e.g. Dryvit or Synergy), stucco and/or other
7 masonry or cement products as may be approved by the ARCHITECTURAL CONTROL
8 COMMITTEE.

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

13

14 **4 (A). FORMAL PLAN REVIEW PROCESS.** Two (2) complete sets of:
15 professionally prepared, legibly drawn to an appropriate scale (e.g. 1/4" = 1'), written copies of
16 all plans, specifications, SURVEY(s), the CHECK LIST completed and signed by the owner,
17 proof of insurance, and one (1) plan review fees (if required) shall be submitted **by the LOT**
18 **OWNER** (submissions by architects, engineers, contractors and/or other parties, will not be
19 accepted) to the ARCHITECTURAL CONTROL COMMITTEE for their formal review. No
20 "reversed" or "mirror image" plans shall be accepted (all text and dimensions shall be clearly
21 and properly readable). Said submissions are subject to the ARCHITECTURAL CONTROL
22 COMMITTEE's review and determination of conformance with these COVENANTS. Plan
23 review will begin ONLY after the ARCHITECTURAL CONTROL COMMITTEE **RECEIVES**

1 **TWO (2) COMPLETE SETS OF: PLANS, SPECIFICATIONS, SURVEY(s), COMPLETED**
2 **CHECK LIST SIGNED BY THE OWNER, PROOF OF GENERAL LIABILITY INSURANCE,**
3 **and ONE (1) PLAN REVIEW FEE (if required)** for the proposed improvements (a Complete
4 Submission). Incomplete submissions shall NOT be reviewed until such time as all the
5 necessary documents (a Complete Submission) have been received. Approval or disapproval
6 shall be given by the ARCHITECTURAL CONTROL COMMITTEE, in writing, within thirty (30)
7 days after a Complete Submission has been received by the ARCHITECTURAL CONTROL
8 COMMITTEE. Should the ARCHITECTURAL CONTROL COMMITTEE find any required
9 item(s) to be deficient, defective, or does not comply with these COVENANTS, they shall
10 notify the LOT owner in writing of the disapproval and they shall list all deficiencies. Should
11 deficiencies be found, the LOT owner shall start the review process over with a revised,
12 amended and/or corrected submission as outlined in the disapproval letter. Once the LOT
13 owner corrects said deficiencies, the PLAN APPROVAL PROCESS shall begin with a
14 subsequent submission that starts the 30 day review period anew. The first, formal PLAN
15 REVIEW by the ARCHITECTURAL CONTROL COMMITTEE under this section is at no
16 charge to the LOT owner. Subsequent PLAN REVIEW(s), regardless of the reason, for the
17 same LOT(s) shall be charged a two-hundred dollar (\$200.00) PLAN REVIEW FEE for each
18 and every subsequent submission, payable directly to the ARCHITECTURAL CONTROL
19 COMMITTEE's designated plan reviewer. Payment in full shall accompany subsequent
20 submission(s) to cover the costs of the subsequent PLAN REVIEW PROCESS.

21 Partial plan approval(s) shall not be permitted, although a Complete Submission may
22 be submitted separately for the DWELLING, the observatory(s), the out-building and/or any
23 other permitted improvements. Separate plan reviews shall be treated as a subsequent

1 submission and a PLAN REVIEW FEE shall be due and payable at the time of subsequent
2 submission(s). Construction may commence only when written approval is granted by the
3 ARCHITECTURAL CONTROL COMMITTEE or as permitted herein. In the event neither
4 written approval, nor disapproval is granted by the ARCHITECTURAL CONTROL
5 COMMITTEE, construction may commence after forty (40) days (allowing thirty (30) days for
6 plan review and ten (10) days for return mail or courier) from the time the ARCHITECTURAL
7 CONTROL COMMITTEE received a Complete Submission. Whether construction
8 commenced by written approval of the ARCHITECTURAL CONTROL COMMITTEE or by the
9 ARCHITECTURAL CONTROL COMMITTEE's failure to act in a timely fashion, all
10 improvements shall conform to these COVENANTS. Failure of the ARCHITECTURAL
11 CONTROL COMMITTEE to act in a timely fashion is NOT a waiver by the DEVELOPER, the
12 ARCHITECTURAL CONTROL COMMITTEE, or the HOA, nor does it imply any type of an
13 approval.

14 The DWELLING, observatory(s) and/or out-building on said LOT shall be built by a
15 licensed and bonded general contractor, or an owner who has successfully passed the general
16 contractor's licensing examination given by the appropriate governmental authority, or by an
17 owner who can provide written documentation of actual experience and/or formal training
18 which demonstrates to the ARCHITECTURAL CONTROL COMMITTEE a level of competency
19 required to professionally complete said improvements in a timely and workmanlike manner.
20 All construction shall be completed within nine (9) months from the date of issuance of the
21 building permit. No improvement which has been partially or totally destroyed by fire or
22 otherwise, shall be allowed to remain in such state for more than three (3) months from the
23 time of such destruction or damage.

1 **4 (B). CERTIFICATE OF OCCUPANCY.** The LOT owner shall provide written notice
2 to the DEVELOPER, the ARCHITECTURAL CONTROL COMMITTEE **AND** the HOA, as
3 required herein, of the issuance of the Certificate of Occupancy for the DWELLING,
4 observatory(s), out-building and/or any other permitted structure. The ARCHITECTURAL
5 CONTROL COMMITTEE, the DEVELOPER, and/or the HOA may inspect the improvements
6 within 120 days after receipt of the LOT owner's written notice of Certificate of Occupancy for
7 compliance with these COVENANTS. If deficiencies or non-compliance with these covenants
8 are found, the ARCHITECTURAL CONTROL COMMITTEE, the DEVELOPER and/or the
9 HOA shall notify the LOT owner in writing of said deficiencies consistent with the NOTICE &
10 REMEDIES provision herein. If no suit has been filed prior to expiration of the applicable New
11 Mexico Statute of Limitations, with all parties agreeing that the date of commencement for said
12 Statute of Limitations begins on the date of said inspection by the ARCHITECTURAL
13 CONTROL COMMITTEE, the DEVELOPER and/or the HOA, said improvement shall be
14 deemed to comply with the appropriate COVENANTS by the ARCHITECTURAL CONTROL
15 COMMITTEE and the HOA.

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

19 **4 ©). OBSERVATORY(S) AND HEIGHT LIMITS.** No more than **THREE (3)**
20 observatories (or roll offs), for either visual and/or robotic (remote control) amateur astronomy
21 **AND** one (1) additional observatory (or roll off) exclusively for visual use astronomy shall be
22 permitted on any LOT. No more than two (2) of the observatories may be elevated. The total

1 ground level footprint area of all observatories, including any "warm rooms" shall not exceed
2 **one thousand (1,000) square feet** (e.g. a 15' diameter observatory = 177± sq. ft.).

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

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

- 14 1. The default, normal, failsafe location for the robotic air terminals shall be
15 retracted to the maximum permitted height of the structure they are attached to;
16 and
- 17 2. The maximum, temporary height of the robotic air terminals at the elevated
18 height shall not exceed ten (10) feet above the maximum permitted height of the
19 structure they are attached to; and
- 20 3. The robotic air terminals shall only be elevated during periods of bona-fide
21 lightning events and shall be controlled by advanced lightning detection
22 equipment acceptable to the HOA and/or the DEVELOPER.

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

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

8

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

10 b. There are no other **existing**, elevated observatories or a mega-elevated
11 observatory located on LOTs owned by others, whose line of sight would be
12 impacted by the mega-elevated observatory's increased height as described
13 herein. For the purposes of this paragraph, the maximum height of the proposed
14 mega-elevated observatory shall be reduced as necessary to maintain any
15 existing, elevated telescope's observing line of sight located on a surrounding
16 LOT(s) to no more than fifteen Degrees (15°) above the horizon of said line of
17 sight. If a mega-elevated observatory is proposed under this section, a separate
18 "Line of Sight" SURVEY (drawing) shall be prepared by the LOT owner's
19 SURVEYOR which demonstrates compliance with this section. Said Line of
20 Sight SURVEY shall be submitted to the ARCHITECTURAL CONTROL
21 COMMITTEE at the same time the plans, specifications, etc., are submitted for
22 said mega-elevated observatory; and

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

4 **Number of permitted observatories per LOT.**

	Ground Level - Visual Only	Ground Level - Robotic / Visual	Elevated - Robotic / Visual	Mega-Elevated - Robotic / Visual
5 All Ground 6 Level	1	3	0	0
7 Ground 8 Level & 9 Elevated	1	2	1	0
10 Ground Level 11 & Elevated	1	1	2	0
12 Ground Level 13 & Elevated	1	2	0	1
14 Mega - 15 Elevated	1	1	1	1

16 **5. ADDITIONAL STRUCTURES.** No garage, barn, storage shed, green house,
 17 gazebo, outbuilding, or any other additional structure (out-building) shall be used either
 18 temporarily or permanently as a DWELLING or residence. Prior to construction of the
 19 DWELLING, a single recreational vehicle, travel trailer, or other mobile housing unit may be
 20 used by the LOT owner as an observatory warm room or living quarters for up to two (2)
 21 months during any calendar year. During the construction of the DWELLING, observatory(s),
 22 and/or out-building, a single recreational vehicle, travel trailer or other mobile housing unit may
 23 be used as temporary living quarters for the owner. Additionally, during said construction, a

1 fully enclosed storage trailer or container may be kept on site for material storage only. Once
2 the Certificate of Occupancy has been granted by the appropriate authority, said temporary
3 living quarters and/or storage unit shall be removed within two (2) months.

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

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

19 Damaged and/or wrecked and/or non-roadworthy motor vehicles (licensed or unlicensed) shall
20 not be permitted on any LOT for a period of time to exceed two (2) weeks. **ONLY** properly
21 licensed, roadworthy motor vehicles, one (1) ton or less rated capacity, which are in good
22 working order and proper repair, and/or those **OFF ROAD AND/OR UNLICENSED VEHICLES**
23 which have valid, written permission from the HOA to use the **COMMUNITY's** roadways

1 pursuant to the paragraph titled "OFF ROAD AND/OR UNLICENSED VEHICLES" herein, are
2 exempt from this paragraph.

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

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

18 **8. FENCES.** All permanent fences shall be constructed of such materials and in a
19 manner which does not detract from the natural quality and aesthetic appearance of the
20 existing geographic areas within the COMMUNITY. The materials, height and location of said
21 fence shall be consistent with the DESIGNATED USE PLAN. Except as expressly permitted

1 herein or as shown on the DESIGNATED USE PLAN, no fence of any kind shall be erected,
2 placed or maintained in the area between the front, exterior wall of the DWELLING and the
3 front property line. All fences shall be kept in good repair by the owner. Fences are only to be
4 constructed within the area(s) shown on the DESIGNATED USE PLAN, the "DWELLING site"
5 area and/or immediately surrounding a ground level observatory. The maximum square
6 footage of the combined fenced-in area shall not exceed five-thousand (5,000) square feet.
7 No permanent fence shall be located closer than twenty feet (20') from any side property line,
8 or fifteen feet (15') from the rear property line. The HOA may establish bylaws, conditions,
9 rules, procedures and other provisions which further limit fences.

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

- 14 (i) Remove all trash, debris or rubbish; and
15 (ii) Prevent the existence of any item(s) that reasonably tend(s) to detract
16 from or diminish the aesthetic appearance of the LOT; and
17 (iii) Keep the exterior of all improvements in such state of repair or
18 maintenance as to avoid their becoming unsightly or unsafe; and
19 (iv) Keep all building materials, tools, equipment, machinery, and any other such
20 items out of plain sight or stored within a building; and
21 (v) The HOA may establish bylaws, conditions, rules, procedures and other
22 provisions which further specify maintenance duties.

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

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

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

15 **13. CONSTRUCTION OF DRIVEWAYS AND SAFETY FENCING.** All driveways and
16 entrances to any LOT shall be covered with at least four inches of stone base course. It is
17 recommended that the stone base course be in place prior to tree clearing, and it is required
18 that the stone base be in place prior to any foundation excavation and said stone driveway
19 shall be maintained in good condition at all times. Prior to the ARCHITECTURAL CONTROL
20 COMMITTEE granting approval of any improvements, the LOT owner shall install a temporary,

1 high visibility, 4' high (minimum) construction/safety fence entirely surrounding all of the
2 proposed improvements, with only one opening not to exceed 25' wide located at the
3 driveway. Said safety fence shall be kept in good repair and maintained in a professional,
4 workmanlike manner during the entire construction period and shall be removed within two (2)
5 weeks after the Certificate of Occupancy has been granted. Adequate silt fencing, and other
6 erosion control measures are the sole responsibility of the LOT owner. No silt, sediment,
7 erosion or soil shall be permitted on the roadways of the COMMUNITY, nor shall same be
8 permitted to leave one's property.

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

13 **15. LANDSCAPING.** All landscaping shown on the survey, plans and specifications as
14 approved by the ARCHITECTURAL CONTROL COMMITTEE and such other landscaping as
15 is necessary for the integrity of the COMMUNITY shall be completed by the LOT owner within
16 one hundred and eighty (180) days of occupancy. ONLY native, locally grown landscaping
17 shall be permitted. No invasive species shall be permitted. The HOA may establish bylaws,
18 conditions, rules, procedures and other provisions which further limit plants, species and
19 landscaping.

20
21 **16. RIGHT OF FIRST REFUSAL (ROFR) FOR RESALE.** Until such time as a
22 DWELLING is built upon a LOT, and a Certificate of Occupancy for said DWELLING upon

1 said LOT is issued, and the DWELLING upon said LOT is actually occupied in compliance
2 with these COVENANTS, each LOT (and/or each portion of a LOT and all other real estate)
3 within the COMMUNITY may not be sold or transferred until after there is compliance with the
4 following procedures:

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

12 **B.** A written notice shall be served upon the DEVELOPER, the owner(s) of record of
13 the LOTs within the COMMUNITY that are on the left and the right side of the Sale Parcel (all
14 of said persons and entities are referred to herein as "ROFR Parties" and each of which is
15 referred to as an "ROFR Party"), written notice which must expressly describe all of the terms
16 and conditions of the proposed sale and/or conveyance, must include a true and complete
17 copy of all contracts, agreements, and other documents that relate to the proposed sale
18 and/or conveyance (said documents are referred to herein as the "Sale Documents"), must
19 state that the ROFR Parties have the right to purchase the Sale Parcel upon the same terms
20 and conditions by giving written notice within fourteen (14) days after service of this written
21 notice to the ROFR Parties, and must state the name and address of the person and/or entity
22 to whom said written notice by the ROFR Parties may be given; and

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

8 D. If one or more of the ROFR Parties timely serve such a written notice in
9 accordance with the provisions set forth in the immediately preceding subsection **C**, then the
10 Sale Parcel shall be sold to the ROFR Party giving said notice upon the same terms and
11 conditions as set forth in the Sale Documents and consistent with the requirements herein
12 [NOTE: If more than one of the ROFR Parties timely serves such a notice in accordance with
13 the provisions set forth in the immediately preceding subsection **C**, then the ROFR Party to
14 whom the Sale Parcel shall be sold shall be selected in the following order of priority: (1) to the
15 ROFR Party who owns the LOT to the left of the Sale Parcel (as shown on the DESIGNATED
16 USE PLAN, or if not shown it shall be determined when standing in the center of the Sale
17 Parcel's designated "DWELLING area" and facing the LOT's largest street frontage or
18 roadway frontage of the Sale Parcel), but only if said ROFR Party timely served a notice in
19 accordance with the provisions set forth in the immediately preceding subsection **C** (should
20 two or more ROFR parties on the left serve timely notice, the date and time of mailing shall
21 determine the first priority); (2) next, to the ROFR Party who owns the LOT to the right of the
22 Sale Parcel (determined when standing in the center of the Sale Parcel's designated
23 "DWELLING site" and facing the street, roadway or front of the Sale Parcel), but only if said

1 ROFR Party timely served a notice in accordance with the provisions set forth in the
2 immediately preceding subsection C (should two or more ROFR parties on the right serve
3 timely notice, the date and time of mailing shall determine the first priority); and (3) next, to the
4 DEVELOPER, but only if the DEVELOPER timely served a notice in accordance with the
5 provisions set forth in the immediately preceding subsection C]; and

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

14 If more than one of the ROFR Parties timely serves a written notice in accordance with
15 the provisions set forth in the immediately preceding subsection C and the first priority ROFR
16 Party who gave such written notice fails to timely perform its obligations to purchase the Sale
17 Parcel, then written notice of such default shall be given to the next priority ROFR Party who
18 gave such written notice and such ROFR Party shall purchase the Sale Parcel upon the same
19 terms and conditions within thirty (30) days after service of such written notice of default. The
20 same procedure [i.e., service of written notice and thirty (30) days to purchase] shall be
21 followed with respect to any other defaults by any other ROFR Party who gave such written
22 notice.

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

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

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

1 **17. FIREPLACES and THERMAL EMISSIONS.** Only UL listed, high efficiency
2 (90%+) gas furnaces, gas boilers, and gas water heaters shall be permitted to vent outside the
3 DWELLING, OUT-BUILDING or other permitted structure. Wherever possible, side venting of
4 the permitted gas appliances shall be encouraged. Other vented appliances or heaters, such
5 as fireplaces, kilns, ovens, heaters, or stoves, either gas, wood or oil burning or any other heat
6 source(s) are prohibited. Unvented fireplaces, kilns, ovens, heaters, or stoves (those which do
7 not vent to the outside) shall be allowed. No fireworks, nor any type of smoke generating or
8 emitting device shall be permitted within the COMMUNITY. The HOA may establish bylaws,
9 conditions, rules, procedures and other provisions which further limits such uses, or emissions.
10 Propane storage tanks shall be located in an area which is minimally visible from the roadway.

11 **18. OUTDOOR FIRES.** Notwithstanding the previous section, commercially
12 purchased, UL listed, gas fire pits and/or gas barbeques may be used where there is a
13 minimum 10' radius of fireproof material surrounding the gas fire. Use of said fire pits and
14 barbeques shall be limited to those hours between sun rise and that evening's astronomical
15 twilight. Additionally, "full-moon" gatherings shall be allowed where the UL listed, gas fire pit or
16 barbeque is permitted to be used between sun rise and 11:00 P.M., only on the 4 nights prior
17 to full moon, the night of the full moon, and the 2 nights after the full moon. The maximum
18 rated BTU input of any gas fire pit or barbeque shall be 200,000 BTUs per hour. All other
19 outdoor fires, charcoal or wood burning barbeques, and/or other burning is strictly prohibited.
20 No bon-fires, trash burning, construction material burning, or other outdoor fires are permitted.
21 The HOA may establish bylaws, conditions, rules, procedures and other provisions which
22 further limit such uses.

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

16
17 **20. AIRCRAFT.** The use of piloted, remote control, guided, or unguided airplanes, air
18 ships, helicopters, rockets, projectiles, fireworks, and other such uses are prohibited within the
19 COMMUNITY. The HOA may establish bylaws, conditions, rules, procedures and other
20 provisions which further limit such aircraft use.

21
22 **21. RENTAL OF DWELLING.** As this COMMUNITY desires to be a predominantly
23 owner occupied, amateur astronomy enclave, the rental of one's DWELLING is a privilege, not
24 a right. It is essential the COMMUNITY knows who our neighbors are. Therefore, the HOA

1 shall establish formal written procedures which may permit limited DWELLING rentals
2 consistent with this section. These COVENANTS shall establish a minimum and maximum
3 amount of rental time(s) that may be permitted. Rentals shall be permitted only with the
4 express written permission of the HOA, a minimum rental period of 30 consecutive days shall
5 be allowed for the DWELLING rental, and a maximum of 4 rental periods, for a total of 120
6 days, may be permitted in any 12 months. No rental of the LOT, observatory(s), and/or out-
7 building shall be permitted. Incidental use of the observatory(s) and LOT by the renter will be
8 permitted only during the DWELLING's approved rental period(s). All rentals shall be at fair
9 market value, "arms-length" transactions.

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

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

20 Ownership, maintenance, operation, upkeep and all other day to day functions
21 pertaining to the roadway maintenance, the shared water system and other such purposes as
22 the HOA may establish shall be vested solely with the HOA. The HOA may establish

1 additional bylaws, conditions, rules, dues, fees, assessments, or other procedures to efficiently
2 operate such obligations.

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

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

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

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

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

14 e. As no one can guarantee water quality or quantity from the water wells, neither
15 the Developer, the ARCHITECTURAL CONTROL COMMITTEE, the HOA, nor
16 any other person or entity shall be held liable for the water quantity, quality, or
17 any changes thereto by any LOT owner(s), their families, their guests or invitees.
18

19 **23. ONSITE FIRE PROTECTION WATER STORAGE.** Each LOT shall have an
20 onsite water storage tank (above or below ground) for fire protection use installed prior to the
21 Certificate of Occupancy being issued for the DWELLING. Minimum onsite fire protection
22 water storage shall be 2,000 gallons and the tank(s) must, at all times, be filled with
23 chlorinated water. If the tank is filled via the shared water system, an HOA approved back-
24 flow prevention device(s) and an approved air gap device shall be installed and properly

1 maintained by the owner at all times. Access to the fire protection water tank(s) shall be
2 clearly marked so that it is visible from the road, and the water may be used by any bona-fide
3 fire fighting organization. The fire protection water shall be totally isolated from the shared
4 water system. Cross connection and/or cross contamination shall be prohibited. The storage
5 system shall be installed consistent with best practices and all applicable codes. Prior to
6 backfilling of the fire protection water storage system and from time to time thereafter the HOA
7 and/or the ARCHITECTURAL CONTROL COMMITTEE shall be permitted to inspect said
8 system for compliance, and to insure no cross connection(s) with the shared water system
9 exists. The HOA may establish bylaws, conditions, rules, procedures and other provisions
10 regarding the onsite, fire protection storage.

11 **24. RAIN WATER STORAGE SYSTEMS.** Rain water and/or grey water storage
12 systems may be installed for irrigation purposes and other outdoor use. Said water storage
13 system shall be installed consistent with best practices, disinfected as necessary, and comply
14 with all applicable codes. Prior to backfilling of said water storage system and from time to
15 time thereafter the HOA and/or the ARCHITECTURAL CONTROL COMMITTEE shall be
16 permitted to inspect said system for compliance, and to insure no cross connection(s) with the
17 shared water system exists. The HOA may establish bylaws, conditions, rules, procedures
18 and other provisions which further limit or restricts said water system use.

19 **25. OTHER COVENANTS.** Some of the LOTs and/or other real estate within the
20 COMMUNITY may be subject to other covenants and restrictions. Such other covenants and
21 restrictions includes, but are not limited to the Mt. Joy Home Owners Association, Declaration

1 of Restrictions, recorded in the Otero County Clerks Office in Book 867 & Book 481, and the
2 Mt. Joy Estates Property Owners' Association documents, recorded in Book 922.

3 Said other covenants and restrictions are referred to in these COVENANTS solely to
4 note that such other covenants and restrictions may be in effect and may apply to some of the
5 LOTS and/or other real estate within the COMMUNITY. It is the intent of these COVENANTS
6 that the other covenants and restrictions referred to above and any other covenants and
7 restrictions that may be in effect and/or may apply to some of the LOTS and/or other real
8 estate within the COMMUNITY are NOT incorporated into these COVENANTS, are NOT
9 made a part of these COVENANTS, and shall NOT be expanded (to other real estate or in
10 scope) beyond whatever legal effect such other covenants and restrictions may otherwise
11 have.

12 **CLAUSE IV.**

13 **GENERAL PROVISIONS**

14 **IV - 1. SEVERABILITY.** In the event that any part(s) of the COVENANTS is construed
15 or declared unenforceable by a Court of competent jurisdiction, the remainder shall so
16 continue in full force and effect as though the unenforceable portion or portions were not
17 included herein.

18 **IV - 2. INITIAL TERMS AND EXTENSIONS.** These COVENANTS shall run with the
19 land and shall be binding on all parties, persons, or entities claiming under them or onto the
20 land for a period of twenty (20) years from the date of recording of this document. After which
21 time said COVENANTS shall automatically extend for successive periods of 10 years, unless

1 a written agreement, signed by seventy-five percent (75%) or more of the "then current" LOT
2 owners has been properly recorded, modifying these COVENANTS in whole or in part.

3 It is contemplated and anticipated that land owner(s) not mentioned in this original
4 document may wish to become signatory to these COVENANTS and/or the HOA. Therefore,
5 during the initial twenty (20) year period (after the date of recording this document), those
6 parcels, LOTS, land owners, real estate owners and/or other parties who wish to become
7 signatory to this document or the HOA, must have the express written permission of the
8 DEVELOPER prior to becoming signatory to this document and/or the HOA. During said
9 initial twenty (20) year time period, the DEVELOPER shall have the exclusive authority to
10 permit other parcels, LOTS, land owners, real estate owners and/or other parties to become
11 signatory to this document and to become a member of the HOA. After the initial twenty (20)
12 year time period, the HOA shall have the exclusive authority to allow additional parcels, LOTS,
13 land owners, real estate owners and/or other parties to become signatory to this document
14 and to become a member of the HOA.

15 **IV - 3. NOTICE & REMEDIES.** Each and every LOT owner found or alleged to be in
16 violation of these COVENANTS shall be given a written notice to cure as required herein.
17 Should the violation directly involve or affect the shared water system, and the HOA
18 determines that the alleged violation creates a hazard to life, limb, property, or could adversely
19 affect the health, safety or welfare of any part of the COMMUNITY or the shared water system,
20 the HOA may immediately shut off the shared water system to the offending LOT and the
21 written notice to cure shall be seven (7) days. For all other violations, the time to cure shall be
22 specified in the notice, provided that minimum notice period shall ten (10) days. If the violation
23 is NOT cured within the notice period, legal action may then be initiated.

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

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

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

20 **IV - 4. ASSIGNMENT.** DEVELOPER reserves the right to assign (either temporarily or
21 permanently) all or any of the rights, privileges, easements, interests in real or personal
22 property, powers and/or duties herein retained, vested, controlled, owned or reserved by the
23 DEVELOPER. An assignment shall be effective when a duly executed written instrument is

1 recorded in the Office of the County Clerk of Otero County, New Mexico, and the
2 DEVELOPER shall be immediately relieved and discharged from all such duties and rights so
3 assigned. Should the DEVELOPER's assignment be to the HOA, the HOA is obligated to
4 accept such assignment, with no further acts or formal acceptance required by the HOA.

5 **IV - 5. FAILURE TO ENFORCE.** Enforcement of these COVENANTS is a right that's
6 available to all "then current" LOT owner(s), the DEVELOPER, the ARCHITECTURAL
7 CONTROL COMMITTEE, and/or the HOA. While the right to enforce is an option, there is no
8 duty or obligation to enforce placed upon any party hereto. The failure to enforce any of these
9 COVENANTS by any LOT owner, the DEVELOPER, the ARCHITECTURAL CONTROL
10 COMMITTEE, and/or the HOA, shall not constitute a waiver or a continuing waiver, nor shall it
11 create a waiver of any subsequent breach of the same, similar, or different term, condition or
12 COVENANT(S). No such failure to enforce shall entitle any LOT owner to claim, sue for, or
13 receive any damages or other payment from any other LOT owner, the DEVELOPER, the
14 HOA, the ARCHITECTURAL CONTROL COMMITTEE and/or other entity. In addition, if any
15 other LOT owner(s), the DEVELOPER, the HOA, the ARCHITECTURAL CONTROL
16 COMMITTEE and/or any other entity(s) is named by any LOT owner in any legal action for
17 failure to enforce, the other LOT owner(s), the DEVELOPER, the HOA, the ARCHITECTURAL
18 CONTROL COMMITTEE and/or any other entity(s) shall be entitled to recover from said LOT
19 owner the reasonable attorney fees, costs and expenses incurred in defending said action.

20 **IV - 6. INTERPRETATION.** The DEVELOPER and the HOA (jointly) may interpret or
21 clarify the meaning of any of these COVENANTS or any portion thereof. For instance, should
22 the LOT owner desire to use new or innovative building materials, new types of construction,

1 or other items not specifically addressed herein, the DEVELOPER and the HOA may consider
2 those items on a case by case basis. If such interpretation is by a written document, duly
3 executed by the DEVELOPER and the HOA, and recorded with the Otero County Clerk, the
4 same shall interpret or clarify the meaning of the COVENANTS for the mutual benefit and
5 protection of the COMMUNITY and shall hence forth be binding upon the COMMUNITY's LOT
6 owners and their respective legal representatives, heirs, successors, grantees, and assigns.

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

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

- 16 (1) Two PERMITTED OWNERS (i.e., two individuals, an individual and a legally
17 married couple, or two legally married couples);
- 18 (2) Any combination of individuals comprising a single-family unit that consists of
19 legally married parents and their children (and/or their stepchildren);
- 20 (3) A self-directed Individual Retirement Account held by a financial institution;
- 21 (4) A living trust or other estate planning entity, but only if:
- 22 (a) The sole beneficiary and/or owner of said trust and/or entity is a
23 PERMITTED OWNER, or

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

3
4 The ownership of any LOT or other real estate within the COMMUNITY shall not, under
5 any circumstances be vested in:

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

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

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

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

20 Other sections of these COVENANTS contain provisions that limit the use and
21 occupancy of the LOTS within the COMMUNITY. All of the LOT owners within the
22 COMMUNITY who are permitted to be owners pursuant to the foregoing provisions of this
23 section are entitled to use and occupy their LOT(s), except as prohibited by these

1 COVENANTS and/or applicable law. Any use and/or occupancy of any of the LOTS and/or
2 other real estate within the COMMUNITY by any persons or entities who are not the owners of
3 said LOTS and/or other real estate within the COMMUNITY (e.g., rentals) is expressly
4 prohibited, except to the extent that such use and occupancy is expressly authorized and
5 permitted by other provisions of these COVENANTS (see "21. RENTAL OF DWELLING.")
6 above for permitted use). The maximum permitted occupancy of any DWELLING shall not
7 exceed 2 persons per bedroom.

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

15 **IV - 9. MISCELLANEOUS.** The underlined titles preceding the various paragraphs and
16 subparagraphs of the COVENANTS are for convenience of reference only, and none of them
17 shall be used as an aid to the construction of any provision of the COVENANTS. Whenever
18 capital letters, bold letters or underlined letters are shown herein they are for the convenience
19 of the reader and they serve to make the document more readable. Wherever and whenever
20 applicable, the singular form of any word shall be taken to mean or apply to the plural, and the
21 masculine form shall be taken to mean or apply to the feminine or to the neuter and vice-
22 versa. This document shall be interpreted to be gender neutral, numerically neutral, and

1 subject to laws and jurisdiction of the State of New Mexico. The word "owner" or "Owner" shall
2 be defined for purposes of this document as a bona-fide PERMITTED ENTITY which holds
3 title to a LOT(s) in this COMMUNITY, and any executors, heirs, legatees, successors, and
4 assigns thereof, who shall comply with paragraph "IV-7. LOT OWNERSHIP AND
5 OCCUPANCY."

6 Once these COVENANTS are signed by a LOT owner, parcel owner, land owner, or the
7 DEVELOPER, all owner(s) shall be thereafter subject to the mutual benefits, burdens,
8 restrictions, and protections afforded hereunder, and shall be hence forth bound by these
9 COVENANTS. It is contemplated and anticipated that land owner(s) not mentioned in this
10 original document may wish to become signatory to these COVENANTS. It is only via the
11 method established above, pursuant to paragraph: "IV - 2. INITIAL TERMS AND
12 EXTENSIONS" herein, that other parcels, Tracts, LOTs, land owners, real estate owners
13 and/or other parties can become signatory to these COVENANTS and become a member of
14 the HOA.

15 Any non-conforming improvement(s) that exist(s) as of the day the LOT owner becomes
16 signatory to these COVENANTS shall be "GRAND-FATHERED" and shall be exempt from
17 those individual, non-conforming provisions until such time as the improvement(s) becomes at
18 least 60% destroyed or damaged. At such time, the improvement(s) shall be made to conform
19 to these COVENANTS or removed from the LOT.

20

21 **IV-10. HOME OWNERS ASSOCIATION.** A homeowners association for the
22 COMMUNITY (hereinafter "HOA") has been or will be formed as an entity under New Mexico
23 law. Although the purpose, powers, rights, procedures, rules, and other matters are or will be

1 set forth in the documents that create and govern the HOA, said documents shall contain the
2 following provisions.

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

10 **B. BOARD OF DIRECTORS** – The initial Board of Directors (Board) shall consist of
11 such persons as the DEVELOPER appoints and shall serve at the pleasure of the
12 DEVELOPER for a term of no more than six (6) years after the date of said appointment or
13 reappointment. For a period of six (6) years after the date of this declaration, the DEVELOPER
14 shall appoint, reappoint, or relieve any and all such Board members. It is anticipated that
15 some of the Board members may live out of state, as such the Board members may attend
16 meetings in person or via electronic teleconferencing means.

17 **C. ASSESSMENTS, DUES, FEES, AND OTHER CHARGES** – The HOA shall have
18 the right to impose assessments, dues, fees, and other charges for, among other things: 1).
19 water use and/or availability; 2). a general assessment fee for road maintenance,
20 maintenance of any property owned, controlled, and/or to be maintained by the HOA, reserves
21 for replacements, legal, accounting, administrative, and other matters for the benefit of the

1 COMMUNITY, regardless of whether or not the HOA holds title and/or ownership to the
2 property to which such assessments, fees, and other charges relate; 3). recreational facility
3 fees (if any); and 4). special assessments or charges as approved by the HOA Board (if any).
4 All such assessments, dues, fees, and other charges shall be allocated **in equal shares**
5 among and against the **Owner(s)** of LOT(s) within the COMMUNITY as described herein. The
6 assessments, dues, fees and other charges shall be allocated against the Owner and the
7 LOT, regardless of any improvements (DWELLING, Out Building, Observatory, etc.) thereto.

8 Where an Owner owns multiple LOTs in the COMMUNITY, one general assessment
9 fee shall be charged **PER LOT**, and **ONLY** one (1) water use/availability fee **per Owner**,
10 **ONLY** one (1) recreational facility fee (if any) **per Owner**, and **ONLY** one (1) special
11 assessment **per Owner** shall be due and payable until such time as a DWELLING is approved
12 by the ARCHITECTURAL CONTROL COMMITTEE for construction on the additional LOT(s),
13 or until such time as a multiple LOT Owner utilizes the water allocated to two (2) or more
14 LOTs. Thus, upon approval of a DWELLING by the ARCHITECTURAL CONTROL
15 COMMITTEE as provided in these COVENANTS said additional LOT(s) shall thereafter be
16 included for purposes of allocating all such assessments, dues, fees, and other charges.
17 Additionally, when an Owner of multiple LOTs connects to the water tap on the additional
18 LOT(s), regardless of whether a DWELLING has been built or approved, they shall be charged
19 an additional water usage/availability fee. For example: **(A)**. If an Owner owns two (2) LOTs
20 and no DWELLING on either LOT, they shall be charged two (2) general assessment fees,
21 one water availability/use fee, one recreational facilities fee (if any), and one special
22 assessment fees (if any); **(B)**. If an Owner owns two (2) LOTs and one DWELLING, they
23 shall be charge two (2) general assessment fees, one (1) water use/availability fee, one (1)
24 recreational fee (if any), and one special assessment fee (if any); **(C)**. If an Owner owns two

1 LOTs and two DWELLINGs (either built or approved by the ARCHITECTURAL CONTROL
2 COMMITTEE), they shall be charged two (2) of each assessment, dues, fees and/or other
3 charges.

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

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

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

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

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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.

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 following, additional parcels have become duly authorized signatory(s) to this document and their respective duly authorized signature pages are attached hereto.

SEE ATTACHED EXHIBIT FOR LEGAL DESCRIPTION

STATE OF NM)
COUNTY OF OTERO) SS

The foregoing instrument was acknowledged before me this day by:

Signature Thomas N. Simstad MANAGER/MEMBER
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. IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal this

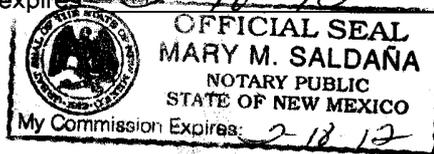
18th day of February, 2009. TNS

Notary Public Mary M. Saldaña

Notary Public MARY M. SALDAÑA
Signed
Printed

Notary Public's County & State of Residence 2420 N. White Sands Alamogordo NM

Notary Public's commission expires 2-18-12



LEGAL DESCRIPTION - ATTACHED EXHIBIT

A TRACT OF LAND IN THE S1/2 NW1/4 OF SECTION 21, T16S, R14E, NMPM,
DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

STARTING AT THE WEST ONE-QUARTER CORNER OF SAID SECTION 21
AND GOING N00°02'22"W ALONG THE WEST LINE OF SAID SECTION 21 A
DISTANCE OF 174.70 FEET TO THE PLACE OF BEGINNING OF THE TRACT
OF LAND HEREIN DESCRIBED; THENCE CONTINUING N00°02'22"W A
DISTANCE OF 485.30 FEET; THENCE S89°50'33"E A DISTANCE OF 660.00
FEET; THENCE S00°02'22"E A DISTANCE OF 200.27 FEET; THENCE
S89°58'16"W A DISTANCE OF 111.67 FEET; THENCE S31°22'28"W A
DISTANCE OF 332.51 FEET; THENCE N89°53'18"W A DISTANCE OF 375.02
FEET TO THE SAID PLACE OF BEGINNING, AND CONTAINING 6.055 ACRES,
MORE OR LESS.

SUBJECT TO ANY RIGHTS-OF-WAY OR OTHER EASEMENTS AS GRANTED
OR RESERVED BY INSTRUMENTS OF RECORD OR AS NOW EXISTING ON
SAID TRACT.

REC DATE: 2/18/09 REC TIME: 3:03:24 PM INSTR#: 200901474 CLK: *OR*
OTERO COUNTY, ROBYN HOLMES COUNTY CLERK PAGE 59 OF 59

