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PROTECTIVE COVENANTS, CONDITIONS, RESERVATIONS  
AND RESTRICTIONS OF ALTO ESTATES

UNIT NO. TWO

County of Dona Ana, New Mexico

WHEREAS, Bright View Land Company, hereinafter called "SUBDIVISION DEVELOPER", is the owner of all the following described real estate situate in Dona Ana County, New Mexico (hereinafter called the "Property"):

Alto Estates, Unit Two: Lots 4 through 9, Block 2; Lot 9, Block 4; Lots 1 through 4, Block 4; all being located in the county of Dona Ana, state of New Mexico, as shown and designated on the plat thereof, filed in the office of the County Clerk of said county on \_\_\_\_\_, 1992, in plat record \_\_\_\_\_, pages \_\_\_\_\_; each such lot being hereinafter referred to as the "Lots".

WHEREAS, Subdivision Developer has established a general plan for the improvement and development of the Property, and desires to impose these Protective Covenants, Conditions, Reservations and Restrictions on the Property pursuant to Subdivision Developer's general plan.

NOW, THEREFORE, the Property is hereby made subject to the following Protective Covenants, Conditions, Reservations and Restrictions, which shall run with the land and shall be binding upon all persons owning Lots constituting a part of the Property affected by these Protective Covenants, Conditions, Reservations and Restrictions or claiming under them until \_\_\_\_\_, 2022, after which time these Protective Covenants, Conditions, Reservations and Restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then Owners of the Lots has been recorded, agreeing to change, alter, amend or remove said Protective Covenants, Conditions, Reservations and Restrictions in whole or in part. If the Owners of such Lots, or any of them, or their heirs or assigns, shall violate any of the Protective Covenants, Conditions, Reservations and Restrictions hereinafter set out, it shall be lawful for any other person or entity owning an interest in the Property or any portion thereof to prosecute any proceedings at law or in equity against the person or persons violating any of the Protective Covenants, Conditions, Reservations and Restrictions and either to prevent him from doing so, or to recover damages for such violation, or both, or require removal of the offending structure. It is the intent of this paragraph to give all fee simple Owners, contract sellers or purchases and mortgages standing to enforce these Protective Covenants, Conditions, Reservations and Restrictions.

1. PURPOSE.

The purpose of these Protective Covenants, Conditions, Reservations and Restrictions is to insure the use of the

Property and each Lot therein for attractive residential purposes only; to prevent nuisances; to prevent the impairment of the attractiveness of the Property; to maintain the desired tone of the community and thereby to secure for each Lot Owner the full benefit and enjoyment of his Lot, with no greater restriction on free and undisturbed use of such Owner's Lot than is necessary to insure the same advantage to the other Lot Owners; and to allow only that use which is consistent with these Protective Covenants, Conditions, Reservations and Restrictions. Deeds of conveyance of the Property, or any part thereof, may contain these Protective Covenants, Conditions, Reservations and Restrictions by reference to this document, but whether or not such references made in any such deed, each and all of these Protective Covenants, Conditions, Reservations and Restrictions shall be binding upon the respective grantees, their heirs, successors and assigns.

## 2. APPLICABILITY.

The Protective Covenants, Conditions, Reservations and Restrictions imposed herein shall apply to all Lots described above, unless variations therefrom are granted by the Architectural Review Committee as provided herein.

## 3. LAND USE AND BUILDING TYPES.

a. All Lots described above are hereby declared to be "private" residential Lots, and no Lot shall be used for other than residential purposes. There shall not be allowed on any Lot any structure which allows more than one family to reside therein. One accessory building shall be allowed if constructed simultaneously with or subsequent to the main building and located on the same Lot.

b. The term "private residence" is intended to exclude every form of multi-family dwelling, boarding or lodging house, sanitarium, hospital, and the like; but is not intended to exclude a proper guest house for the entertainment of social guests or servants quarters for servants or other employees employed upon the Lot.

c. No trailer, tent, shack, garage, barn, army barracks or other out-building shall be used as a temporary or permanent residence, nor shall any previously existing residence or other structure be moved onto or assembled on any Lot from some other location; nor shall any trailer, tent, shack, garage, barn, army barracks or temporary building be located on any Lot within the Property without the prior written approval of the Architectural Review Committee.

d. No building or portion of a building shall have a height greater than twenty-five (25) feet from the elevation of existing grade of plat plan, nor shall any building have more than two (2) livable stories (excluding a basement). No geodesic domes shall be permitted to be constructed on any Lot within the

Property. Maximum roof pitch to be 6/12. All pitched roofs shall be of tile and shall be of Terra Cotta color family. All houses of two stories with pitched roof must have Architectural Review Committee approval in reference to height.

e. No residential building shall be erected or permitted to remain on any Lot having a ground floor area (exclusive of open porches, basements, carports or garages) of less than 1700 square feet. No two-story residential building shall be erected or permitted to remain on any Lot having an upper floor area (exclusive of open porches, basements, carports or garages) of more than 50% of total combined heated square footage.

f. No building or any part thereof shall be erected on any Lot closer to the property line of such Lot than as follows for the respective designated Lot:

No building, nor projection thereof, shall be located nearer to any property line than shown on the recorded plat and governed by the Las Cruces Extra-Territorial Zoning Ordinance. Front yard setback shall be 20 feet, including corner lots. Rear yard setback shall be 20 feet and side yard setback shall be 7 feet, subject to variance by the Architectural Review Committee and subject to regulations of the Las Cruces Extra-Territorial Zoning Authority and any other governmental authority having actual jurisdiction.

g. There shall be not less than two (2) off-street parking spaces within a garage for each dwelling.

h. All Lots shall have vehicular access from a dedicated street.

i. All buildings constructed on any Lot shall be of mission stone, frame and stucco, adobe and stucco or other such surfaces and materials as may be authorized by the Architectural Review Committee. Garages, carports and permitted accessory buildings shall conform in material and design to the dwelling to which they pertain. Only earth tone colors and white exterior surface materials shall be used for any residence, accessory building, wall or fence.

j. All Lot owners shall join the Picacho Hills Country Club and maintain at least a social membership. Initiation fee shall be paid and dues shall begin upon actual occupancy of the Lot owners' completed residence.

#### 4. APPROVAL OF PLANS.

Except for improvements and/or alterations undertaken by Subdivision Developer, no building, wall or other structure or improvement, and no landscaping or watering system on or about the front or side yards of any Lot to be installed in conjunction with

the initial construction upon any Lot shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition to or change or alteration thereto (other than insignificant landscaping modifications) be made until the plans, specifications and plot plan showing the nature, kind, shape, height, materials, plant materials, and location of the same shall have been submitted and approved in writing by the Architectural Review Committee as to compliance with the provisions of these Protective Covenants, Conditions, Reservations and Restrictions and as to harmony of external design and location in relation to surrounding structures and topography. Accordingly, prior to making any improvements upon any Lot, including front and side yard landscaping, whether such improvements be initial improvements or subsequent material alterations, modifications or other changes (not insignificant changes to landscaping), each Owner shall submit to the Architectural Review Committee a complete set of plans for the proposed improvements, specifications (including exterior color schemes) and a plot plan, all of which shall be to scale and shall include the location of structures and the proposed building site and shall obtain the written approval of the Architectural Review Committee as a condition precedent to each Owner's right to commence construction. No material changes or deviations in or from the approved plans, specifications and plot plan, insofar as the exterior of the proposed improvements is concerned, shall be made without the written approval of the Architectural Review Committee. After construction is completed, no material changes shall be made, including no change of exterior color without further written approval of the Architectural Review Committee.

##### 5. NUISANCES/CONSTRUCTION ACTIVITY.

No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done therein which may be or may become an annoyance or nuisance to any Owner of a Lot within the Property. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept on any Lot, providing that they are not kept, bred or maintained for any commercial purpose. When allowed to be kept, all pets must be kept within a fenced or bounded area upon the Owner's Lot or must be on a leash accompanied by the Owner or with the direct control of a responsible person when outside the fenced or bounded area. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept on any Lot, except in sanitary containers, screened from view from all streets and other Lots within the Property. Refuse placed on the curb or sidewalk for pickup shall not be placed in open view more than twenty-four (24) hours before the scheduled pick up time.

In connection with each Owner's construction of a private residence upon each such Owner's Lot, each such Owner and/or its Contractors shall: (i) comply with and observe all ordinances, rules, regulations, laws or statutes of any governmental authority exercising jurisdiction; (ii) comply with these Protective Covenants, Conditions, Reservations and

Restrictions made applicable to each Lot and/or construction thereon; (iii) maintain adequate drainage upon each Lot so as not to cause drainage to abutting Lots or construct adequate drainage facilities to prevent any such drainage; (iv) cause any work to be performed so as not to in any way damage, hinder or delay the construction and development activities of others within the Property; and (v) maintain each such Lot so as not to permit or commit any waste upon each such Lot or impair the value thereof, including, but not limited to, periodically taking such action necessary for weed control and during construction of private residences to take such action as may be required to control and remove construction debris, dust and dirt; it being understood and agreed that should any such Owner and/or its Contractors fail to so properly maintain and police each Lot as herein required, Subdivision Developer may take such action as may be deemed necessary by Subdivision Developer for the proper maintenance thereof as aforesaid, and each such Lot Owner hereby expressly agrees to pay Subdivision Developer, upon demand, any and all disbursements made under the provisions of this section together with interest thereon at the rate of fifteen percent (15%) per annum from and after the date of making thereof failing which Subdivision Developer shall and is hereby granted a Lien covering each such Owner's Lot subject to foreclosure as provided by law.

#### 6. SIGNS.

No signs or other advertising shall be displayed on any Lot unless the size, form and number of same are first approved in writing by the Architectural Review Committee. Provided, however, that any Owner may, without such prior approval, erect the following:

a. two name or identification signs not exceeding four (4) square feet in area and pertaining only to the Lot of the owner or occupant thereof, upon which the sign is located.

b. two unlighted signs, not exceeding four (4) square feet in area, to advertise the lease, rental or sale of the Lot upon which it is located. Such sign may show only the name, address and telephone number of the Owner or his sole authorized agent, but shall not show any other description or identification.

c. In lieu of the sign mentioned in subsection (b) above, one open house sign, not exceeding two (2) square feet in area, which invites the general public to inspect the premises for lease, rent or sale shall be permitted to be displayed, provided that at the time such property is open for inspection and the open house sign is displayed, the Owner, his tenant, or his agents is in attendance to display any such house or building thereon. Such open house sign shall only be displayed on or from the Lot being leased, rented or sold and shall not show the name, address, telephone number or any other description or identification of any person, firm or corporation other than the Owner of the Lot or his sole authorized agent.

## 7. WALLS AND FENCES.

a. Retaining walls shall be party walls if placed on the common property line between two (2) Lots and shall not be removed by either Lot Owner without the written consent of the other party and the Architectural Review Committee.

b. Party walls may be constructed on the Lot property lines such that rear yards and side yards are enclosed. Subject to other limitations contained herein and in the applicable zoning ordinances, the party walls shall be a minimum of forty-two (42) inches in height, except where otherwise limited to a lower height. The party walls shall be no more than seventy-two (72) inches in height as measured from the highest grade of the yard. All lots that border on the golf course shall have constructed at the Lot Owners' expense at the rear property line, a rock wall between thirty-six (36) and forty-two (42) inches in height.

c. Proper weep holes or drainage shall be provided in all retaining walls.

d. All party walls and retaining walls in view from at least one side, shall be constructed of rock or stone in conformance with what is known as "Brown Picacho Rock" standards, materials, and styles, subject to availability, and Architectural Review Committee approval is necessary for any deviation. However, those walls, not on the property line forming the "return" from the residence, or courtyard and patio walls tied to the residence, may be of the same material used in the residence construction; however, such walls are subject to Architectural Review Committee approval. Decorative wrought iron may be used for wall accents, gates and such, subject likewise to Architectural Review Committee approval.

e. In no case shall broken glass or any other sharp objects be embedded in walls.

f. Except for required retaining walls, the following requirements shall be applied to fences or walls:

(1) No fence or wall may be erected, placed, altered, relocated or removed without the express written consent of the Architectural Review Committee.

(2) In the event any such party wall which does not form a structural part of a dwelling or garage is damaged or destroyed by some cause (including ordinary wear and tear and deterioration from lapse of time), other than the act of one of the adjoining Owners, his agents, tenants, licensees, guests or family, then, in such event both such adjoining Owners shall proceed forthwith to rebuild or repair the wall to

as good condition as formerly in at their joint and equal expense.

(3) The right and responsibilities of any Owner to or from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owners' successors in title.

(4) In addition to meeting the other requirements of these Protective Covenants, Conditions, Reservations and Restrictions and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild his party wall in any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of the adjoining Owner.

(5) In the event of a dispute between Owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of the cost thereof, the matter shall be submitted in writing to three arbitrators who are experienced in construction, one chosen by each of the Owners and third by the two arbitrators so chosen. A determination of the matter signed by any two of the three arbitrators shall be binding upon the Owners, who shall share the cost of arbitration equally. In the event one party fails to choose an arbitrator within ten (10) days after receipt of a request in writing for arbitration from the other party, then the requesting party shall have the right and power to choose both arbitrators.

(6) All party walls built on the common property line between two (2) Lots shall be built at the joint and equal expense of the two Lot Owners. In the event a Lot Owner builds at his own expense a party wall between his Lot and an unsold Lot, one-half of the cost of said wall shall be chargeable to the purchaser of said unsold Lot at the closing of the transaction to purchase the previously unsold Lot.

## 8. LANDSCAPING.

a. The Architectural Review Committee shall review all landscaping plans for the initial improvement of front yards and Lots and side yards facing streets on corner Lots and if in keeping with the provisions hereof shall approve the same and thereafter such work must be prosecuted in accordance with such approved landscaping plans within ninety (90) days of completion of a residential building on each Lot. The clear intent herein is the enhancement and protection of property values and desirability and attractiveness of Alto Estates generally.

b. Typical desert environment and drought resistant landscaping is encouraged.

c. Trees should reach no more than twenty-five (25) foot maximum height at full maturity.

d. In order to preserve all views, all landscaping shall be subject to continuing review by the Architectural Review Committee.

e. It is understood that the landscaping material and placement will be such as to provide a unified, complete and aesthetically pleasing view from the street at the front of each Lot and private residence thereon.

f. At any time a substantial change, alteration or modification is made to the front yard or side yard of a Lot relative to landscaping, the Architectural Review Committee must approve such change, modification or alteration. Included within the purview of this paragraph shall be the instance where plants, trees, shrubbery or other landscaping material may die, be destroyed, removed, or similarly caused to be reduced in quantity, and as such, require replanting or replacement according to the same rules as apply to the initial planting requirements above set forth.

9. STORAGE, MAINTENANCE AND USE OF VEHICLES AND RECREATIONAL EQUIPMENT.

a. All boats, campers, trailers, mobile homes, motor homes, wagons, trailers, recreational vehicles, including dismantled vehicles or other mechanical equipment of a similar nature used in hobbies or recreation shall be stored, maintained and kept in the enclosed garage of the Lot Owner or kept entirely off the premises designated as Alto Estates and shall not remain on any public street for more than a twenty-four (24) hour period.

10. SATELLITE DISH ANTENNAS AND SOLAR COLLECTORS.

No Satellite Dishes, or Antennas will be allowed. Solar Collectors and Clothes Lines are permissible only if screened from any exterior view perspective.

11. STORAGE SHEDS AND SWINGS.

No storage shed or similar object shall be located on any Lot if the height of such object is greater than the height of the wall on or adjoining said Lot or if such object is visible from the front of the Lot. All swings and slides (including those used in connection with a swimming pool) shall be at least seven (7) feet from all fences located on or near perimeter Lot lines.

12. GARBAGE AND RUBBISH - STORAGE AREAS.

Each Lot shall be maintained free of rubbish, trash, garbage,



weeds or other unsightly items or equipment, and the same shall be promptly removed from each Lot and not allowed to accumulate thereon, and no garbage, trash, weeds or other waste materials shall be burned on any Lot.

### 13. EASEMENTS.

Easements for installation and maintenance of utilities and other uses are reserved and are hereby expressly acknowledged and granted as shown on the recorded plat of the property. Upon the described easements, no structure shall be placed or permitted to remain, except as in accordance with such easement and as may be authorized in writing by the Architectural Review Committee. The easement area of each Lot and all improvements thereon shall be maintained by the Owner of the Lot, except those improvements for which the easement owner is responsible, as determined by the Architectural Review Committee. The Owner of each Lot shall also be responsible for maintaining the strip of land between his property line and the back of the curb on the near side of the street adjacent to or in front of each Owner's Lot.

### 14. COMMENCEMENT AND COMPLETION OF CONSTRUCTION.

Each Owner of a Lot, by the acceptance of a Deed and recordation thereof in the Deed Records of Dona Ana County, New Mexico, covenants to substantially and in good faith commence construction of a private residence upon the Lot so conveyed in accordance with plans, specifications and plot plans approved by the Architectural Review Committee within twelve (12) months after the date of the Warranty Deed from Subdivision Developer to Owner. Sale of the Lot by the Lot Owners will not alter the twelve-month deadline. Should any Owner fail to commence construction as aforesaid within the time allowed, Subdivision Developer shall have the right and option for a period of ninety (90) days after the expiration of such twelve (12) month period to repurchase the Lot for 90% of the original selling price unless otherwise approved by the Architectural Review Committee. Should Subdivision Developer elect to repurchase the Lot, written notice thereof shall be given to Owner or its successors or assigns, and each Owner or their successors or assigns shall convey the Lot to Subdivision Developer within thirty (30) days after the date of such notice free and clear from any and all liens and simultaneously therewith, the Purchase Price for such Lot shall be paid by Subdivision Developer to Owner in cash.

Upon commencement of construction of any private residence or other improvement upon any Lot, the same shall be prosecuted with due diligence continuously from the time of commencement until fully completed, and no building shall be occupied for dwelling purposes until construction has been completed and a certificate of occupancy therefore has been issued by the City of Las Cruces. Permissible accessory buildings shall not be constructed prior to the construction of the main residential structure.

Any residence or other improvement on any Lot, the construction of which has been commenced, shall be completed within twelve (12) months subsequent to commencement, except when a delay is caused by acts of God, strikes, actual inability of the Owner to procure delivery of necessary materials, or by interference by other persons or forces beyond the control of the Owner which prevents completion. Financial inability of the Owner or a contractor to secure labor or materials or discharge liens or attachments shall not be deemed to be a cause beyond a persons or entities control.

In the event of cessation of construction of any building for a period of one hundred twenty (120) days where such interruption is not excused by the provisions hereof, the existence of such incompleted building shall be deemed to be a nuisance and the Subdivision Developer shall have the right to enter upon such incompleted property and remove same, or carry such construction work to completion, and the expense incurred in connection with the removal or completion of such building shall become a lien upon the Lot and improvements thereon located, and which may be foreclosed either as a mechanic's lien and/or as a mortgage made on real property.

15. TEMPORARY USES PERMITTED.

a. Model homes, temporary real estate offices and adjacent parking areas are permitted, subject, however, to rules and regulations as may be prescribed by the Architectural Review Committee.

b. Temporary storage and parking for contractor's equipment during actual construction is permitted, subject however, to rules and regulations as may be prescribed by the Architectural Review Committee.

c. Real estate signs advertising a Lot or Lots for sale or rent, or signs to advertise a Lot or Lots during the construction and sales period will be permitted provided that prior written permission is granted by the Architectural Review Committee, and that such signs shall be removed when the Lot and improvements thereon are sold and occupied.

16. OIL AND MINERAL OPERATIONS.

No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil, natural gas or other minerals shall be erected, maintained or permitted upon any Lot.

17. ARCHITECTURAL REVIEW COMMITTEE.

There is hereby established the Architectural Review Committee referred to herein. The Committee shall initially be composed of John T. Moscato and whomever else he may appoint. A

majority of the members of the Architectural Review Committee may designate a representative to act on its behalf. In the event of the death or resignation of any member of the Architectural Review Committee, the remaining members, whether or not constituting a majority, shall have full authority to designate a successor to fill such vacancy.

Upon completion of construction on all Lots subject to these Protective Covenants, Conditions, Reservations and Restrictions, or ten (10) years from the date of recordation hereof, whichever occurs first, the Architectural Review Committee shall be deemed to have resigned without further notice. After such date, all privileges, powers, right and authority of the Architectural Review Committee shall be exercised by and vested in an Architectural Review Committee to be selected by the Owners of a majority of the Lots in the Property.

#### 18. POWERS OF THE COMMITTEE.

The Architectural Review Committee shall have the power to authorize, on a case-by-case basis, variances from the requirements herein contained, in cases where strict adherence to those requirements would operate to work a hardship on any Lot Owner, or where the requirements cannot reasonably be met due to the topography, location or shape of a particular Lot. The Architectural Review Committee's approval or disapproval as required in these Protective Covenants, Conditions, Reservations and Restrictions must be in writing.

#### 19. NONLIABILITY OF COMMITTEE.

Members of the Architectural Review Committee, or their representative, shall not incur any liability of any nature to any person or entity, their assigns, purchasers or personal representatives submitting plans, specifications and plot plans as hereinbefore provided for, or to any Owner of a Lot or Lots within the Property, by reason of a mistake in judgment or discretion, of nonfeasance, or negligence arising out of or in connection with the approval, disapproval or the failure to approve any plan, specifications and plot plan submitted.

#### 20. SUBDIVISION OF A LOT

The Lots constituting a part of the Property shall not be further subdivided into parcels smaller than the original Lot.

#### 21. GENERAL PROVISIONS.

a. Tolerance. A twelve (12) inch tolerance by reason of mechanical variance of construction is hereby automatically allowed for any distance requirements imposed by these Protective Covenants, Conditions, Reservations and Restrictions.

b. Amendments. These Protective Covenants, Conditions, Reservations and Restrictions may be modified, changed or altered

at any time upon the approval of any Amendment in writing, signed by the Owner or Owners of seventy-five percent (75%) of the acreage within this Subdivision.

c. Severability. Invalidation of any one or more of these Protective Covenants, Conditions, Reservations and Restrictions by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

d. Grading Plan. A Grading Plan showing finished elevations of areas to be graded, paved areas, building sites, retention or detention areas, retaining walls and other structures has been approved by the County of Dona Ana. No grading, land filling, excavating or other alterations shall be permitted except pursuant to the approved plan or a revision thereof likewise approved by the County of Dona Ana.

22. MODIFICATION WITH CONSENT OF COMMITTEE.

Until the Architectural Review Committee is deemed to have resigned, Subdivision Developer shall have the authority to unilaterally change, amend or modify these Protective Covenants, Conditions, Restrictions and Reservations; provided that such changes, modifications or amendments do not materially change the character or quality of the Lots subject to these Protective Covenants, Conditions, Restrictions and Reservations and do not materially increase the number of Lots subject to these Protective Covenants, Conditions, Restrictions and Reservations within the Property and provided further, that the prior written consent of the Architectural Review Committee has been obtained.

IN WITNESS WHEREOF, the undersigned has executed this instrument on the \_\_\_ day of \_\_\_\_\_, 1992.

BRIGHT VIEW LAND COMPANY  
a Delaware corporation  
authorized to do business in  
New Mexico.

By: \_\_\_\_\_  
John T. Moscato, President

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 1992 by John T. Moscato, President of Bright View Land Company, a Delaware corporation authorized to do business in New Mexico on behalf of said corporation.

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR THE  
STATE OF \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

