

**ARTICLES OF INCORPORATION OF  
THE ALTO ESTATES III NEIGHBORHOOD COUNCIL, INC.**

The undersigned, as the Incorporator under and pursuant to Sec 53-8-1 et seq., *New Mexico Statutes Annotated* (1978 Compilation), otherwise known as the Non-Profit Corporation Act, does hereby adopt the following Articles of Incorporation.

ARTICLE I

The name of the corporation is the Alto Estates III Neighborhood Council, Inc.

ARTICLE II

The period of duration for this corporation is perpetual.

ARTICLE III

The purpose for which the corporation is organized is to maintain and repair in perpetuity all open areas, all walkway and cartpath easements, all drainage easements, and the entry signage easement within the Alto Estates III Subdivision after two-thirds of the total of residential Lots have been conveyed by Bright View Land Company, the developer, said maintenance and repair to be undertaken for the mutual benefit of the property owners in the Subdivision. To this end, the corporation is authorized to engage in necessary and proper business.

ARTICLE IV

The name and address of the corporation's initial registered agent are as follows:

John T. Moscato  
6500 Vista de Oro  
Las Cruces, NM 88005

ARTICLE V

The number of directors constituting the initial Board of Directors shall be three, the names and addresses of whom are as follows:

John T. Moscato  
6500 Vista de Oro  
Las Cruces, NM 88005

Frances M. Lavery  
6500 Vista de Oro  
Las Cruces, NM 88005

David G. Batcho  
5611 Desert Star Road  
Las Cruces, NM 88005

ARTICLE VI

The name and address of the incorporator are as follows:

John T. Moscato  
6500 Vista de Oro  
Las Cruces, NM 88005

IN WITNESS WHEREOF, the incorporator has hereunto set his hand on this 19<sup>th</sup> day of January, 1994.

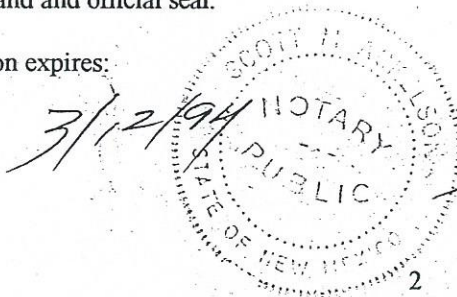
  
\_\_\_\_\_  
John T. Moscato

STATE OF NEW MEXICO        )  
  ) ss.  
DONA ANA COUNTY            )

On this 19 day of January, 1994, before me, a Notary Public in and for the State of New Mexico and Dona Ana County personally appeared John T. Moscato, who, being duly sworn, executed the foregoing instrument.

Witness my hand and official seal.

My commission expires:




By   
\_\_\_\_\_  
Notary Public

AFFIDAVIT OF ACCEPTANCE OF APPOINTMENT BY  
THE CORPORATION'S INITIAL REGISTERED AGENT

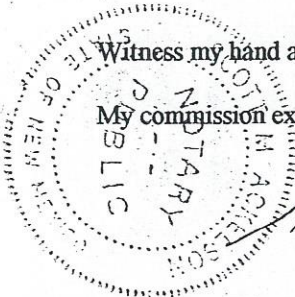
To the State Corporation Commission  
State of New Mexico

STATE OF NEW MEXICO     )  
  ) ss.  
DONA ANA COUNTY         )

On this 19<sup>th</sup> day of January, 1994, before me, a Notary Public in and for the State of New Mexico and Dona Ana County, personally appeared John T. Moscato, who, being duly sworn, acknowledged to me that he does accept his appointment as the initial Registered Agent of the Alto Estates III Neighborhood Council, Inc., the non-profit corporation that is named in the foregoing Articles of Incorporation, and which is applying for a Certificate of Incorporation pursuant to the provisions of the Non-Profit Corporation Act, Sec. 53-8-1, *New Mexico Statutes Annotated* (1978 Compilation).

  
\_\_\_\_\_  
JOHN T. MOSCATO  
Registered Agent  
6500 Vista de Oro  
Las Cruces, NM 88005

Witness my hand and official seal.  
My commission expires: 3/12/94



By   
\_\_\_\_\_  
Notary Public

**BY-LAWS OF**  
**THE ALTO ESTATES III NEIGHBORHOOD COUNCIL, INC.**

1. Identity. These are the By-laws of the Alto Estates III Neighborhood Council. Members of the Council shall be the record title owners of all Lots within Alto Estates III, a subdivision located in Dona Ana County, New Mexico.

2. Council Meetings. Council Meetings shall be held as follows:

a. All Members shall be notified in writing of the time and place of any Council Meeting, said notice to be sent to Members not less than fifteen days and not more than thirty days prior to the meeting.

b. The Inaugural Council Meeting shall be held within thirty days of the conveyance of two-thirds of the Lots in the Subdivision by Bright View Land Company, the developer of the Subdivision, or at such time as Bright View Land Company shall decide to call the Inaugural Council Meeting, whichever is earlier.

c. The Annual Council Meeting shall be held on the second Thursday in November of each year for the purpose of electing Directors and transacting any business authorized by the Members.

d. A Special Council Meeting shall be held whenever called by the President of the Board of Directors or a majority of the Board of Directors, or whenever requested in writing by a total of one-third of the Members.

e. A quorum shall consist of one-half of the total number of Members. If a Council Meeting cannot be held because a quorum has not attended, the Members who are present shall adjourn the meeting for at least fifteen days, whereupon notice of the new date shall be given pursuant to Subparagraph (a) above. A quorum at the subsequent Council Meeting shall consist of one-quarter of the total number of Members.

f. If a Lot is owned by one person, the right of that person to vote at a Council Meeting shall be established by the record title to the Lot. If a Lot is owned by more than one person, or is under lease, the person entitled to cast the vote of that Lot shall be designated by a certificate of appointment signed by all

of the record owners of that Lot and filed with the Secretary of the Board of Directors. If a Lot is owned by a corporation, the person entitled to cast the vote of that Lot shall be designated by a certificate of appointment signed by the president of that corporation. Such certificates shall be valid until revoked, or until superseded by a subsequent certificate, or until a change in the record ownership of the Lot.

g. Votes may be cast in person or by proxy. Votes by proxy shall be recognized only when the proxy is signed by the record owner or by the person designated by a certificate of appointment.

3. Voting. The Council shall have two classes of membership:

a. Class A. All Members except for Bright View Land Company. Class A Members shall be entitled to one vote each, in accordance with Subparagraph 2 (f) above.

b. Class B. Bright View Land Company. The Class B Member shall be entitled to three votes for each Lot in which it holds ownership, except that the Class B membership shall cease and become converted to Class A membership when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership.

4. Directors. The business of the Council shall be managed by a Board of Directors as follows:

a. The Board shall consist of not less than three and not more than five Directors elected by and from among the Members. The exact number (which shall be an odd number) shall be determined by the Members at the time of the election of the Directors. The foregoing notwithstanding, the original Directors shall be John T. Moscato, Frances M. Lavery, and David G. Batcho.

b. Election of Directors shall be conducted at the Inaugural Council Meeting and at each Annual Council Meeting. Nominations for Directors shall be made from the floor. The election shall be by ballot and by a plurality of votes cast, each person voting being entitled to cast his or her votes for each of as many nominees as there are vacancies to be filled.

c. Any Director may be removed by concurrence of two-thirds of the votes of all of the Members at a Special Council Meeting called for that purpose. The vacancy in the Board so created shall be filled by the Members at the same meeting.

d. Except as to vacancies created by removal of Directors by the Members, vacancies in the Board occurring between Annual Council Meetings shall be filled by the remaining Directors.

e. Each Director shall be elected for a term of two years, except that the Board elected at the Inaugural Council Meeting shall contain two Directors whose terms shall expire in one year.

5. Directors' Meetings. The Directors shall hold meetings as follows:

a. Regular Meetings of the Board of Directors may be scheduled as shall be determined, from time to time, by a majority of Directors. Notice of Regular Meetings shall be given to each Director, in a manner to be determined by the Board, at least three days prior to the date named for such a meeting.

b. Special Meetings of the Board of Directors may be called by the President or, though the Secretary, at the request of any Director. Notice of Special Meetings shall be given to each Director, in a manner to be determined by the Board, at least three days prior to the date named for such a meeting.

c. Any Director may waive notice of a meeting, and such waiver shall be deemed equivalent to the giving of notice.

d. A quorum at a Directors' Meeting shall consist of a majority of the entire Board of Directors. If at any meeting less than a quorum is present, those Directors present may adjourn from time to time until a quorum is present. The acts approved by a majority of those present at a meeting for which there is a quorum shall constitute the acts of the Board of Directors.

6. Powers and Duties of the Board of Directors. All of the powers and duties of the Alto Estates III Neighborhood Council that exist under the Declaration of Protective Covenants, Conditions, and Restrictions of the Alto Estates III Subdivision shall be exercised exclusively by the Board of Directors, its agents, contractors, or employees, subject only to approval by the Members when such approval is specifically required.

7. Officers. The officers of the Council shall be as follows:

a. The President, who shall be the chief executive officer of the Council and of the Board of Directors, and who shall have all of the powers and duties that are normally vested in the office of President, including, but not limited to, the power to appoint committees from among the Members from time to time;

b. The Secretary, who shall be the recording officer of the Council and of the Board of Directors, who shall attend to all necessary notices, who shall keep the records of the Council and of the Board of Directors, and who shall exercise the powers of the President in the absence of the President; and

c. The Treasurer, who shall be the financial officer of the Council and of the Board of Directors, who shall be in charge of the funds and expenditures of the Council, who shall keep the financial books of the Council in good order, and who shall perform all other duties related to the officer of Treasurer.

d. Officers and Directors shall receive no compensation for the performance of their duties.

8. Accounting. The funds and expenditures of the Council shall be credited and charged to accounts under the following classifications as shall be appropriate:

a. "Current Expenses," which shall include all funds and expenditures to be made within the fiscal year for which the funds are budgeted, including a reasonable allowance for contingencies. (The Council's fiscal year shall be the calendar year, with the exception of the first fiscal year, which shall begin on the date of the Inaugural Council Meeting and end on December 31st of that year.) The balance in this fund at the end of each fiscal year shall be applied to reduce the assessments for current expenses for the succeeding year.

b. "Reserve for Deferred Maintenance and Replacement," which shall include funds for maintenance items that occur less frequently than annually, and funds for repair or replacement required because of damage, depreciation, or obsolescence.

c. "Capital Improvements," which shall include the funds to be used for capital expenditures for additional improvements.

9. Expenditures. The expenditure of funds shall be determined as follows:

a. Budgets. The Board of Directors shall adopt a budget for each fiscal year that shall include the proposed assessments required to defray all of the expenses and costs of the accounts contained in Paragraph 8 above. Copies of the budget and proposed assessments shall be transmitted to each Member prior to the Annual Council Meeting. If the budget is subsequently amended, a copy of the amended budget shall be furnished to each Member within fifteen days of its adoption by the Board.

b. Limitations. No expenditure for any capital addition or improvement having a total cost in excess of \$1,000.00 shall be made without the prior approval of the Members at a Council Meeting called for that purpose.

9. Assessments. Assessments shall be made as follows:

a. Assessments against each Member (including Bright View Land Company or its assigns) for each Member's share of the budget shall be made on or before December 1st for the calendar year to follow. Each Member's liability for the assessment shall commence upon the date of the Member's closing on the purchase of a Lot in the Subdivision and shall be prorated for the initial year. The assessment shall be due and payable in full on January 1st of the year for which the assessment applies, or, in the case of a prorated assessment, within thirty days of the billing of the assessment. If the Board of Directors increases the assessment during the fiscal year because of a lack of funds to meet expenses, such additional assessment shall be due and payable in full within thirty days of the billing of the assessment. Any increase in assessment of more than twenty percent from one fiscal year to the next, or any additional assessment of more than twenty percent during the fiscal year, must be approved by a majority of Members present at a Council Meeting.

b. Since there are forty-three Lots in the Subdivision, each Member shall be assessed one-forty-third of the total assessment for the Subdivision, except that a Member who owns more than one Lot shall be assessed by a multiple equal to the number of Lots owned by that Member.

c. If a Member is in default in the payment of an assessment or an additional assessment, the Board of Directors may, not less than fifteen days after the mailing of a notice to the Member by certified mail, declare such Member in default and take whatever measures it deems appropriate to collect the assessment or additional assessment.

d. All assessments or additional assessments shall be deposited by the Treasurer into an account or accounts at a bank to be designated from time to time by the Board of Directors. Withdrawal of funds from such accounts shall be made only by checks signed by two persons so authorized from time to time by the Board of Directors.



10. Board of Directors Not Liable. The Board of Directors, both as a group and individually, shall not be liable for damages to any owner(s) of land within the Alto Estates III Subdivision, by reason of any action or failure to act. Any person(s) or company acquiring title to any property in the Alto Estates III Subdivision, does agree and covenant that he or she (they) or it will not bring any action or suit to recover damages against the Board of Directors, its members as individuals, or its advisors, employees, or agents.

11. Amendments. These By-laws may be amended in the following manner:

a. Notice of the subject matter of a proposed amendment shall be included in the notice of any Council Meeting at which a proposed amendment is to be considered.

b. A resolution to adopt a proposed amendment may be made by any Member. An amendment shall be adopted only if approved by a majority of Members at a Council Meeting.

c. No amendment shall discriminate against any Member. No amendment shall limit the Council's responsibility to maintain and repair the easements as indicated in Article III of the Declaration of Protective Covenants, Conditions, and Restrictions of the Alto Estates III Subdivision. No amendment shall affect the sale of any Lot or Lots in the Subdivision owned by Bright View Land Company or its assigns. No amendment shall affect the provision in Paragraph 10 above concerning the absence of liability for the Board of Directors.

d. A copy of each amendment that is approved by the Members shall be certified by the President and Secretary as having been duly adopted and shall be in full force and effect only when recorded in the office of the County Clerk of Dona Ana County, New Mexico.

The foregoing are adopted as the By-laws of the Alto Estates III Neighborhood Council by the undersigned sole owner of the property in the Alto Estates III Subdivision and shall be attached to and recorded with the Declaration of Protective Covenants, Conditions, and Restrictions of the Alto Estates III Subdivision.