

DONA ANA TITLE CO., INC.
OFF # 944789-LR

**DECLARATION OF
PROTECTIVE COVENANTS, CONDITIONS,
AND RESTRICTIONS OF
THE ALTO ESTATES III SUBDIVISION**

WHEREAS, Bright View Land Company (hereinafter referred to as the "Declarant"), has caused certain real property in Dona Ana County, New Mexico, described on Exhibit "A" annexed hereto and incorporated herein by this reference, to be surveyed, subdivided, and platted into lots, open areas, and easements (including walkway and cart path easements, drainage easements, and the entry signage easement) as shown on the plat of the Alto Estates III Subdivision, which plat has been filed for record in the real property records of Dona Ana County, New Mexico, the 14th day of JANUARY, 1994, in Plat Records Book 18, pages 1-3;

NOW, THEREFORE, the Declarant, the owner of all of the lands included within the Alto Estates III Subdivision as so platted and described above, does hereby declare and acknowledge that all of the lands included within said Subdivision area shall hereafter be subject to all of the following covenants, conditions, and restrictions.

**ARTICLE I
PURPOSE OF COVENANTS**

1. General Requirements. It is the intention of the Declarant, expressed by its execution of this instrument, that the lands within the Alto Estates III Subdivision be developed and maintained as a highly desirable residential area. It is the purpose of these covenants that the natural beauty of the Alto Estates III Subdivision shall always be protected

and preserved insofar as is possible in connection with the uses and structures permitted by this instrument. It is of primary intent that the privacy and views of each home site in the Subdivision shall be protected insofar as is possible.

ARTICLE II
DEFINITIONS

1. Open Areas and Easements (walkway and cart path easements, drainage easements, and the entry signage easement) shall mean and refer to all areas planned to be used for the mutual benefit of the property owners in the Subdivision.

2. Lot shall mean and refer to any of the numbered plots of land shown upon the recorded Alto Estates III Subdivision plat, with the exception of the Open Areas and Easements as defined in Paragraph 1 above.

ARTICLE III
THE ALTO ESTATES III NEIGHBORHOOD COUNCIL

1. Membership in the Alto Estates III Neighborhood Council. All persons who own or acquire any of the lands in the Alto Estates III Subdivision (other than lands dedicated as public roads), by whatever means acquired, shall automatically become Members of the Alto Estates III Neighborhood Council in accordance with the Articles of Incorporation and the By-laws of the Council, and as the same may be duly amended from time to time and filed or recorded in the Dona Ana County records.

Until the conveyance by the Declarant of two-thirds of the total of residential Lots in the Subdivision, the responsibility to maintain and repair all Open Areas and Easements (walkway and cartpath easements, drainage easements, and the entry signage easement) shall reside with the Declarant. Upon the conveyance by the Declarant of two-thirds of the total of residential Lots in the Subdivision, the responsibility to maintain and repair all Open Areas and Easements (walkway and cartpath easements, drainage easements, and the entry signage

easement) shall reside with the Alto Estates III Neighborhood Council, in accordance with the provisions of the Articles of Incorporation and the By-laws of the Alto Estates III Neighborhood Council and these Covenants. Such responsibility shall include but not be limited to the making of rules and regulations governing the use of the Open Areas and Easements and the levying of any assessments necessary to the maintenance and repair of the Open Areas and Easements. The term "conveyance" as herein above used shall not be construed to include a conveyance by the Declarant to any corporation or partnership of which the Declarant is the owner of at least a fifty-percent interest.

2. Voting. The Alto Estates III Neighborhood Council shall have two classes of membership:

Class A. All of the Owners as defined in Paragraph 1 of this Article with the exception of the Declarant.

Class B. The Declarant.

Voting rights shall be in accordance with the following:

Class A Member. Those Class A members holding an interest in any one Lot shall collectively be entitled to one vote for said Lot. The vote for each Lot shall be exercised by the Owners thereof as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B Member. The Class B member shall be entitled to three votes for each Lot in which it holds the interest required for membership by Paragraph 1 of this Article, provided 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.

3. Covenant for Maintenance Assessments. The Declarant, for each Lot that it owns within the Subdivision, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Alto Estates III Neighborhood Council annual

assessments or charges. The assessments levied by the Council upon the Lots shall be used exclusively for the purpose of maintaining and repairing the Open Areas and Easements referred to in Paragraph 1 of this Article and shall include but not be limited to the cost of labor, equipment, materials, and supervision necessary for the task.

4. Basis and Maximum of Annual Assessments. Each Lot shall, as provided hereinafter and in the By-laws of the Council, be subject to an annual assessment of not more than \$200.00. The Board of Directors of the Alto Estates III Neighborhood Council shall fix the annual assessment and may raise or lower the annual assessment within said maximum as it deems necessary at its discretion. From and after January 1, 2000, the maximum annual assessment may be increased or decreased by the assent of two-thirds of the votes of the Members who are voting in person or by proxy at a Council Meeting, written notice of which setting forth the fact that the question of the change in the assessment limit shall be considered shall be sent to all Members not less than fifteen days and not more than thirty days prior to the meeting.

ARTICLE IV

DESIGN CONTROL COMMITTEE

1. Appointment Duties. The Declarant shall appoint three persons to serve as the Design Control Committee for the Subdivision. The Design Control Committee shall have the duty and the power by the exercise of its best judgment to see that the construction, improvements, and landscaping on the Lots conform to and harmonize with the existing surroundings and structures within the Subdivision.

2. Design Guidelines. Design Controls for the Alto Estates III Subdivision are appended to, and are a part of, these Covenants. It is intended that the Design Controls shall be followed by all builders, property owners, and residents of the Subdivision and that the Design Control Committee follow the Design Controls in its reviewing process. Purchasers of Lots shall be asked to acknowledge receipt of the Design Controls.

The Design Controls can serve the prospective homeowner or designer in arriving at design decisions that are aesthetically and ecologically responsive to the environment of the Alto Estates III Subdivision, helping to see to it that all structures and landscaping are compatible with one another and, insofar as is possible, are in harmony with the natural surroundings.

3. Approval by the Design Control Committee. No improvements of any kind, including but not limited to dwelling houses, sheds, outbuildings, swimming pools, tennis courts, parking areas, fences, walls, garages, driveways, antennae, flagpoles, curbs, and walks, shall be constructed or altered on any lands within the Alto Estates III Subdivision, nor may any vegetation be altered or destroyed nor any landscaping performed on any Lot, unless the complete plans for such construction or alteration or landscaping are approved in writing by the Design Control Committee prior to the commencement of such work. In the event that the Design Control Committee fails to take any action within thirty days after complete plans for such work have been submitted to it, then all of such submitted plans shall be deemed to be approved. All submissions, approvals, and/or disapprovals shall be submitted in writing, shall be dated, and shall be signed for as proof of receipt. In the event that the Design Control Committee disapproves any plans, the Committee is required to state the reason(s) for disapproval. Upon resubmittal of plans, the Committee must respond within fifteen days.

The Design Control Committee shall monitor construction of houses, improvements, and landscaping within the Subdivision to help see to it that trash and debris are disposed of properly and that no damage is done to roads or neighboring property during construction, and to this end the Committee shall, at the time of approval of plans for a Lot, collect a damage deposit of \$250.00 to be used by the Committee for clean up and/or repair made necessary by the construction referenced herein. This deposit shall be kept in an interest-bearing account and returned with interest to the owner of the Lot upon completion of construction, less any sums expended by the Committee for the clean up and repair

referenced herein. In the event that the damage exceeds the sum of \$250.00, the Committee may require an additional damage deposit or the Alto Estates III Neighborhood Council may charge the balance of the cost of the clean up and repairs to the owner of the Lot as a special assessment against the property, to be collected in the manner of other assessments as provided in the Articles of Incorporation and the By-laws of the Alto Estates III Neighborhood Council and by any rules and regulations promulgated by the Council. The Committee urges each Lot owner to encourage contractors working for the Lot owner to control trash and debris during periods of construction.

Application to Dona Ana County for a Building Permit shall not be made prior to approval of plans by the Design Control Committee. The Design Control Committee shall disapprove any plans submitted to it that are not sufficient for it to exercise the judgment required of it by these Covenants.

5. Design Control Committee Not Liable. The Design Control Committee shall not be liable for damages to any person(s) or company submitting any plans for approval, or to any owner(s) of land within the Alto Estates III Subdivision, by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove, with regard to such plans. Any person(s) or company acquiring title to any property in the Alto Estates III Subdivision, or any person(s) or company submitting plans to the Design Control Committee for approval, by so doing, does agree and covenant that he or she (they) or it will not bring any action or suit to recover damages against the Design Control Committee, its members as individuals, or its advisors, employees, or agents.

6. Written Record. The Design Control Committee shall keep and safeguard for at least six years complete permanent written records of all applications for approval submitted to it (including one set of all plans so submitted) and of all actions of approval or disapproval and all other actions taken by it under the provisions of this instrument.

7. Variances. The Design Control Committee shall have the authority to grant variances from the provisions of the design guidelines in cases of irregularly shaped lots,

unusual terrain, or other conditions under which strict enforcement would result in unusual hardship. The Committee shall be the sole judge of whether or not such hardship exists.

ARTICLE V

GENERAL RESTRICTIONS

1. Zoning Regulations. No lands within the Alto Estates III Subdivision shall be occupied or used for any purpose or in any manner that is contrary to the applicable zoning regulations, validly in force from time to time, except as the same may be allowed under said regulations as a non-conforming use.

2. No Mining, Drilling, or Quarrying. No mining, quarrying, tunneling, excavating, or drilling for any substances within the earth, including oil, gas, minerals, gravel, sand, rock, and earth, shall ever be permitted within the limits of the Alto Estates III Subdivision.

3. Model Home/Office. Notwithstanding other provisions in these Covenants, the Declarant may, at its sole discretion, construct and occupy a house on one of its unsold lots and use the house as a model home/office.

4. Signs. With the exception of one "For Rent" or "For Sale" sign (not to be larger than 24 x 36 inches), and one entrance gate sign of a style and design approved by the Design Control Committee, no advertising signs, billboards, unsightly objects, or nuisances shall be erected, altered, or permitted to remain on any Lot in the Alto Estates III Subdivision. A construction sign (not to be larger than 48 x 48 inches) identifying contractors and owner may be placed on a Lot for the duration of construction, not to exceed four months. These restrictions regarding signs shall not apply to the Lot containing the Declarant's model home/office or to the area designated as the signage easement.

5. No Resubdivision. No residentially zoned Lot described on the recorded plat of the Alto Estates III Subdivision shall ever be resubdivided into smaller tracts or lots nor conveyed or encumbered in any less than the full original dimensions as shown on the recorded plat of the Alto Estates III Subdivision, except that conveyances or dedications of

easements for walkways, cart paths, drainage, entry signage, or utilities may be made for less than all of one Lot.

6. Trash. All rubbish and trash shall be removed from all lots in the Alto Estates III Subdivision and shall not be allowed to accumulate or be burned thereon.

7. Public Nuisance. No obnoxious or offensive activity shall be carried on within the Subdivision, nor shall anything be permitted which shall constitute a public nuisance thereon.

8. Hunting. There shall be no hunting of any animals within the boundaries of the Alto Estates III Subdivision, nor shall there be the discharge of any firearms.

9. Maintenance in Public Rights-of-Way. Each Lot owner shall be responsible for maintaining the unpaved portion of the public right-of-way contiguous with the owner's Lot. This area shall be maintained as if it were a part of the owner's Lot. Upon failure of the owner to maintain this area, the Board of Directors of the Alto Estates III Neighborhood Council may, at its discretion, after giving the owner thirty days written notice, have the area maintained. The cost of this maintenance may be charged to the Lot owner as a special assessment against the property by the Alto Estates III Neighborhood Council.

In addition, the responsibility of the Alto Estates III Neighborhood Council to maintain and repair drainage easements in the Subdivision shall include (1) maintenance and repair of any public rights-of-way that exist between drainage easements and the paved roadway in the Subdivision, (2) maintenance and repair of any drainage structures located within public rights-of-way, and (3) maintenance and repair of the drainage channel (arroyo) between the Subdivision and the adjoining golf course fairway (depicted in Exhibit "B" annexed hereto).

10. There shall be no sidewalks in the Subdivision.

11. On-Street Parking. There shall be no overnight on-street parking of any vehicle. Short-term (up to six-hour) guest parking will be allowed, but not on regular basis.

12. Animals. The keeping of ordinary household pets shall be permitted. When off the property owner's premises, such pets must be kept on a leash and shall not be permitted

to run at large. The Alto Estates III Neighborhood Council may enforce this provision by whatever means may be legally available to it.

13. Club Membership. Upon actual occupancy of a Lot owner's completed residence, the owner shall be required to join Picacho Hills Country Club and to maintain at least a social-level membership. This requirement shall pass with ownership of the Lot.

14. Easements Reserved. The Declarant hereby reserves to itself and to other applicable parties and its successors in interest perpetual easements as recorded on the final plat of the Alto Estates III Subdivision, for the purpose of pedestrian use, golf cart use, drainage control, and entry signage, as well as constructing, maintaining, operating, replacing, enlarging, and repairing electric, telephone, water, irrigation, sewer, gas, and similar lines, pipes, wires, poles, ditches, and conduits. The Declarant may convey or grant by license, lease, deed, lien, deed of trust, mortgage, or otherwise any right, title, or interest in or to any and all easements and reservations contained within documents of conveyance, these Covenants, or the plat of Alto Estates III Subdivision to public utilities and governmental entities as may be reasonably necessary to effect the developmental and residential intentions as set forth in the plat and these Covenants.

ARTICLE VI

RESTRICTIONS ON RESIDENTIAL LOTS

1. Number of Buildings. No buildings or structures shall be placed, erected, altered, or permitted to remain on any residential Lot other than one detached single-family dwelling house with attached or detached garage and/or quarters for housekeepers or guests.

2. Trees and Landscaping. No trees or bushes growing on any residential Lot shall be felled, nor shall any natural areas be cleared, or formal lawn areas constructed, or landscaping performed on any residential Lot without the prior written permission of the Design Control Committee.

3. Commercial Vehicles, Campers, or Trailers. No campers, recreational vehicles, boats, trailers, commercial-type vehicles, or trucks shall be stored or parked on any Lot except in a closed garage, nor parked on any street, road, or easement except while engaged in transport to or from a dwelling. For the purposes of this restriction, a truck having a three-quarter-ton manufacturer's rated capacity, commonly known as a pick-up truck, shall not be deemed to be a commercial vehicle or a truck.

ARTICLE VII

ENFORCEMENT

1. Enforcement Actions. The Design Control Committee shall have the right to prosecute any action to enforce the provisions of all of these Covenants by injunctive relief, on behalf of itself and all or part of the owners of lands within the Alto Estates III Subdivision. In addition, each owner of a Lot within the Alto Estates III Subdivision, as well as the Alto Estates III Neighborhood Council, shall have the right to prosecute any action for injunctive relief and for damages by reason of any violation of these Covenants. Any owner of a Lot determined to be in violation of these Covenants by a court of appropriate jurisdiction agrees to pay the reasonable attorneys' fees incurred by the person or entity bringing such successful action.

ARTICLE VIII

GENERAL PROVISIONS

1. Covenants to Run. All of the Covenants contained in this instrument shall be a burden on the title to all of the lands in the Alto Estates III Subdivision, and the benefits thereof shall inure to the owners of all of the Lots in the Alto Estates III Subdivision, and the benefits and burdens of all said Covenants shall run with the title to all of the lands in the Alto Estates III Subdivision.

2. Termination of Covenants. The Covenants contained in this instrument shall remain in full force and effect for thirty years after the date of execution of this instrument and shall thereafter automatically be renewed for successive ten-year periods without limitation. Except for the provisions dealing with maintenance and repair of open areas and easements, these Covenants may be amended by a vote of two-thirds of the votes entitled to be cast by the Members of the Alto Estates III Neighborhood Council at annual or special meetings thereof, said vote to be cast at any meeting of the members duly held in accordance with the Articles of Incorporation and the By-laws of the Alto Estates III Neighborhood Council, provided a properly certified copy of the resolution of amendment be placed on record in Dona Ana County, New Mexico, upon adoption.

3. Severability. Should any part or parts of these Covenants be declared invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining Covenants.

4. Paragraph Headings. The paragraph headings in this instrument are for convenience only and shall not be construed to be a part of the Covenants contained herein.

IN WITNESS WHEREOF, the Declarant, the owner of all of the lands described and subdivided as the Alto Estates III Subdivision, has executed this instrument this 19th day of January, 1994.

BRIGHT VIEW LAND COMPANY

by John T. Moscato, President
John T. Moscato, President

