**AMENDMENT TO DECLARATION OF COVENANTS,**

**CONDITIONS AND RESTRICTIONS**

At the Annual Meeting of The Gardens Homeowners’ Association, Inc., a New Mexico corporation (the “Association”) duly held on February 23, 2019, at least two-thirds (2/3) of the current Members of the Association owning the properties located in The Gardens on the Rio Grande Subdivision, Units I and III, Bernalillo County, New Mexico described in **Exhibit “A”** hereto, approved the following:

RECITALS

1. The properties described in Exhibit A constitute all of the properties that are benefited by the Amended Declaration of Restrictions, Covenants, and Conditions for The Gardens on the Rio Grande Subdivision Unit I, recorded as Document #1999092212 on July 13, 1999, in Book 9910, Page 1963 records of the County Clerk of Bernalillo County, New Mexico (“Unit I Declaration”).
2. The properties described in Exhibit A further constitute all of the properties that are benefited by the Declaration of Covenants, Conditions, and Restrictions of The Gardens on the Rio Grande Subdivision Unit III, recorded as Document #1999014291 on February 2, 1999, in Book 9902, Page 4242 records of the County Clerk of Bernalillo County, New Mexico (“Unit III Declaration”).
3. The Association duly adopted Amended Bylaws dated May 11, 2015 (“Amended Bylaws”).
4. Unit I Declaration, Article 5, Section 5.01.d. provides: “The Board shall be appointed by the Grantor, and shall serve at the Grantor’s pleasure until December 31, 2000. Thereafter, the Board shall be elected by the members at annual meetings of the Association.”
5. Unit III Declaration, Article 5, Section 5.01.e. provides:

The Board shall be appointed by the Grantor, and shall serve at the Grantor’s pleasure until December 31, 2001. Thereafter, the Board shall be elected by the members at annual meetings of the Association. Each board member shall serve for one year. Procedures for election of board members and the operations and decision of the Board shall be conducted and carried out in accordance with the Articles of Incorporation of the Association and the By-Laws adopted by the Association.

1. Amended Bylaws, Article V provides:

Section 1. Initial Board of Directors. The initial Board of Directors has been established by the Articles of Incorporation of the Association, as required by law.

Section 2. Number of Directors, Term, Election, Qualifications. Director positions shall be subject to election by the members. The composition, term and election of the board shall be as follows:

(a) The Board shall consist of five (5) Directors.

(b) Election for each expired board position shall be held at the annual meeting of the membership.

(c) The terms of the Directors shall be two years and shall be staggered as follows:

1. In odd numbered years three (3) Directors shall be elected; and

2. In even numbered years two (2) Directors shall be elected.

(d) In odd numbered years, the three candidates receiving the highest number of votes cast shall be the newly elected Directors. In even numbered years, the two candidates receiving the highest number of votes cast shall be the newly elected Directors.

(e) Notwithstanding Article V, Section 2(c) hereof, at the annual meeting of members held in 2005, all five Directors shall be elected, with three (3) positions elected for two-year terms, an two (2) positions elected to one-year terms. The three candidates receiving the highest number of votes cast shall serve terms of two years. The two candidates receiving the fourth and fifth highest number of votes cast shall serve terms of one year.

(f) No person may serve as a Director unless that person is a Resident and a Member in good standing. If during a Director’s term, he or she fails to meet any qualification required of a Director, the Board of Directors shall declare the position vacant and replace such Director as set forth below in Section 5.

1. Amended Bylaws, Article XI, Section 3 provides “In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles of Incorporation shall control, and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.”
2. The Members of the Association believe it is in the best interest of the Association to amend the Unit I Declaration and the Unit III Declaration to conform as applicable to Amended Bylaws, Article V and are recording this Amendment for that purpose.

AMENDMENT

The Unit I Declaration and the Unit III Declaration are hereby amended as follows:

1. Unit I Declaration Article 5, Section 5.01d. shall be deleted in its entirety and the following substituted therefor:

d. Directors shall be elected as follows:

1. The initial Board of Directors has been established by the Articles of Incorporation of the Association, as required by law.

2. Director positions shall be subject to election by the members. The composition, term and election of the board shall be as follows:

(a) The Board shall consist of five (5) Directors.

(b) Election for each expired board position shall be held at the annual meeting of the membership.

(c) The terms of the Directors shall be two years and shall be staggered as follows:

1. In odd numbered years three (3) Directors shall be elected; and

2. In even numbered years two (2) Directors shall be elected.

(d) In odd numbered years, the three candidates receiving the highest number of votes cast shall be the newly elected Directors. In even numbered years, the two candidates receiving the highest number of votes cast shall be the newly elected Directors.

(e) No person may serve as a Director unless that person is a Resident and a Member in good standing. If during a Director’s term, he or she fails to meet any qualification required of a Director, the Board of Directors shall declare the position vacant and replace such Director as set forth in Amended Bylaws, Article V, Section 5.

2. Unit III Declaration Article 5, Section 5.01.e shall be deleted in its entirety and the following substituted therefor:

e. Directors shall be elected as follows:

1. The initial Board of Directors has been established by the Articles of Incorporation of the Association, as required by law.

2. Director positions shall be subject to election by the members. The composition, term and election of the board shall be as follows:

(a) The Board shall consist of five (5) Directors.

(b) Election for each expired board position shall be held at the annual meeting of the membership.

(c) The terms of the Directors shall be two years and shall be staggered as follows:

(1.) In odd numbered years three (3) Directors shall be elected; and

(2.) In even numbered years two (2) Directors shall be elected.

(d) In odd numbered years, the three candidates receiving the highest number of votes cast shall be the newly elected Directors. In even numbered years, the two candidates receiving the highest number of votes cast shall be the newly elected Directors.

(f) No person may serve as a Director unless that person is a Resident and a Member in good standing. If during a Director’s term, he or she fails to meet any qualification required of a Director, the Board of Directors shall declare the position vacant and replace such Director as set forth in Amended Bylaws, Article V, Section 5.

3. These Amendments to the Unit I Declaration and the Unit III Declaration shall run with the land and shall be binding on all parties claiming under them until further amended or terminated by the unanimous consent of all benefited property owners.

4 If the parties to these Amendments or their successors in interest shall violate or attempt to violate any of the amended covenants, any property owner benefited by these covenants may initiate legal proceedings at law or in equity against the person violating the amended covenants, either to prevent a violation or to recover damages for such violation.

5. Invalidation of any portion of these Amendments shall not affect any other provision which shall remain in full force and effect.

6. This document shall be recorded in the real property records of Bernalillo County, New Mexico. The Unit I Declaration and the Unit III Declaration are amended effective upon the recording of this document.

7. This document supersedes and replaces the applicable portions of the Unit I Declaration and the Unit III Declaration. All other portions of the Unit I Declaration and Unit III Declaration shall remain in full force and effect.

The Gardens Homeowners’ Association, Inc.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Gilbert B. Clarke

Its: President

STATE OF NEW MEXICO }

}ss.

COUNTY OF BERNALILLO }

SUBSCRIBED AND SWORN TO before me on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2019, by Gilbert B. Clarke, President of The Gardens Homeowners’ Association, Inc., a New Mexico corporation.

My commission \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

expires \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. NOTARY PUBLIC

**EXHIBIT “A”**

Unit I

Lots 1-36, Unit I as the same are shown and designated on the Plat for Unit I, The Gardens on the Rio Grande Subdivision dated April, 1998 and recorded with the County Clerk of Bernalillo County, New Mexico on May 20, 1999, as Document #1999066618 in Book 99C, Page 122.

Unit III

Lots 1-11, Block 1 and Lots 1 – 12, Block 2 as the same are shown and designated on the Plat entitled The Gardens Subdivision Unit III recorded with the County Clerk of Bernalillo County, New Mexico on June 25, 1998 as Document #1998079265 in Book 98C, Page 170.