

**A Declaration of Covenants, Conditions, and Restrictions**  
**OF**  
**THE GARDENS ON THE RIO GRANDE SUBDIVISION**  
**UNIT III**



Judy D. Woodward

Bern. Co. DEC

R 95.00

1999014291  
5174864

Page: 1 of 45  
02/02/1999 01:20P  
Bk-9902 Pg-4242

## TABLE OF CONTENTS

ARTICLE 1. <u>Definitions</u> .....	2
ARTICLE 2. <u>Property Subject to Subdivision Restrictions</u> .....	4
ARTICLE 3. <u>Permitted and Prohibited Uses of Property</u> .....	4
ARTICLE 4. <u>Membership in the Association Voting Rights</u> .....	11
ARTICLE 5. <u>Organization, Powers and Duties of the Association</u> .....	12
ARTICLE 6. <u>Funds, Assessments and Delinquency</u> .....	18
ARTICLE 7. <u>Duties and Responsibilities of Owners</u> .....	22
ARTICLE 8. <u>Construction and Architectural Control</u> .....	23
ARTICLE 9. <u>Protection of Security Interests</u> .....	28
ARTICLE 10. <u>Limitation of Subdivision Restrictions on Grantor</u> .....	29
ARTICLE 11. <u>Miscellaneous Provisions</u> .....	30



Judy D. Woodward

Bern. Co. DEC

R 95.00

1999014291

5174884

Page: 2 of 45

02/02/1999 01:20P

Bk-9992 Pg-4242

**A Declaration of Covenants, Conditions, and Restrictions**  
**THE GARDENS ON THE RIO GRANDE SUBDIVISION**

**UNIT III**

THIS DECLARATION is made as of December 31, 1998, by The Gardens, Inc., a New Mexico corporation ("Owner" or "Grantor"), with respect to that certain real property situate in Bernalillo County, New Mexico and more particularly described as follows:

Lots 1-11, Block 1; Lots 1 to 12, Block 2, The Gardens on the Rio Grande Subdivision, Unit III, in The City of Albuquerque, Bernalillo County, New Mexico (herein sometimes referred to as "The Gardens Subdivision").

1. Grantors are the owners of all real property shown and designated on the Plat entitled, The Gardens Subdivision, Unit III, located in Bernalillo County, New Mexico, and more particularly described on Exhibit "A" attached hereto and incorporated herein by reference, which Plat was filed in the Office of the County Clerk of Bernalillo County, New Mexico, on June 25, 1998, as Document Number 1998079265 in Vol. BK98C, Page 178.

2. It is the intent and desire of Grantors to develop The Gardens Subdivision as a single-family residential community.

3. It is the desire of Grantors that The Gardens Subdivision be designed in accordance with a common plan, design, and scheme, and that the values and amenities of the subdivision be preserved; to this end, the Grantors desire that The Gardens Subdivision be subject to the covenants, conditions, restrictions and easements, hereinafter set forth, each and all of which are for the benefit of the properties and the owners and residents thereof.

4. It is the intent of the Grantors that the covenants, conditions and restrictions herein be binding upon all property in The Gardens Subdivision, and that the benefits of such covenants, conditions, and restrictions inure to and be for the benefit of all property in The Gardens Subdivision; accordingly, all property owners of The Gardens Subdivision shall be entitled to and shall have standing in an appropriate court of law to enforce these covenants, conditions, and restrictions.



Judy D. Woodward Bern. Co. DEC R 95.00

1999014291  
5174864  
Page: 3 of 45  
02/02/1999 01:26P  
Bk-9902 Pg-4242

NOW, THEREFORE, the Grantors do hereby declare that the real property described above known as The Gardens Subdivision shall be subject to the covenants, conditions, restrictions, and easements described herein, and such property shall be held, transferred, sold, conveyed, and occupied subject to such covenants, conditions, restrictions, and easements.

## ARTICLE 1

### Definitions

Unless the context otherwise specifies or requires, the terms defined in this Article 1 shall have the meanings as defined in this Article for the purposes of these Restrictions.

#### Section 1.01:        Architectural Control Committee.

The terms "Architectural Control Committee" or "Committee" shall mean the architectural control committee created pursuant to Article 8.

#### Section 1.02:        Association.

The term "Association" shall mean THE GARDENS ON THE RIO GRANDE SUBDIVISION HOMEOWNERS' ASSOCIATION, INC., a New Mexico non-profit corporation described in the Article entitled "Organization, Powers and Duties of the Association", and any predecessor or successor unincorporated association.

#### Section 1.03:        Board.

The term "Board" shall mean the Board of Directors of the Association and the governing body of any predecessor or successor unincorporated association.

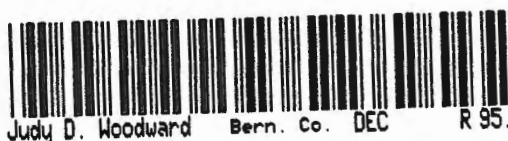
#### Section 1.04:        City.

The term "City" means the City of Albuquerque, a municipal corporation.

#### Section 1.05:        Common Area.

The term "Common Area" shall mean the portions of the Subdivision which will be conveyed to the Association for the benefit of the Lot Owners. The Common Area in this subdivision consists of the private streets known as Manhattan Place NW, adjoining Lots 9 -12 in Block 2 and Aloysia Lane NW, adjoining Lots 1-11 in Block 1 and Lots 1-9 in Block 2; the common area is designated as Tract "A" on the Plat.

#### Section 1.06:        Eligible Mortgagee.



Judy D. Woodward

Bern. Co. DEC

R 95.00

1999014291  
5174864  
Page: 4 of 45  
02/02/1999 01:20P  
Bk-9902 Pg-4242

The term "Eligible Mortgagee" means any holder of a first mortgage lien against any Lot provided that such mortgagee has given the Association written notice of its mortgage setting forth its name and address and identifying the Lot, by legal description and address, which is subject to such first mortgage.

Section 1.07:            Fiscal Year.

The term "Fiscal Year" shall be the calendar year; but, a different Fiscal Year may be adopted by the Association by By-Law or Board Resolution.

Section 1.08:            Grantor.

The term "Grantor" shall mean The Gardens, Inc., a New Mexico corporation, its successors and assigns, who are assigned, in writing, all or part of Grantor's powers and responsibilities for all or a specific area or portion of the Subdivision and who accept such powers and responsibilities in writing. All such assignments and agreements to accept the obligations of Grantor shall be recorded, filed with the Board and placed with the records of the Association.

Section 1.09:            Improvements.

The term "Improvements" shall include, without limitation, buildings, out-buildings, (including sheds and storage buildings), roads, driveways, parking areas, fences, retaining walls, privacy walls or fences, subdivision exterior walls or fences, stairs, decks, windbreaks, poles, antennas, signs, utility or communication installations (whether above or underground), irrigation wells, and any structure and excavation of any type or kind.

Section 1.10:            Lot.

The term "Lot" shall mean each of the Twenty-Three (23) lots, on the Plat together with the Improvements located on each such Lot.

Section 1.11:            Mortgage.

The term Mortgage shall mean a deed of trust, as well as a mortgage, and the term "Mortgagee" shall mean a beneficiary under or a holder of a deed of trust, as well as a Mortgagee.

Section 1.12:            Owner.

The term "Owner" shall mean the persons or entities, including Grantor, holding the beneficial ownership of the fee, including the purchaser under a real estate contract, and shall not include persons holding only a security interest or a seller under a real estate contract. For the purposes of the Article entitled, "Permitted and Prohibited Uses of Property", unless the



context otherwise requires, "Owner" shall include the family, invitees, licensees and tenants of any Owner.

Section 1.13:            Plat.

The term "Plat" shall mean all of the real property shown on the Plat and comprising the Subdivision Plat of Unit III, The Gardens on the Rio Grande Subdivision. as recorded in the Bernalillo County, New Mexico real estate records on June 25, 1998, as document no. 1998079265, in Book 98C, Page 178.

Section 1.14:            Private Street.

The term "Private Street" shall mean the private streets identified on the Plat as Aloysia Lane NW and Manhattan Place NW, providing access to the Lots in the Subdivision.

Section 1.15:            Subdivision.

The term "Subdivision" shall mean the Planned Residential Development subdivision created by and subject to this Declaration. Except where specific distinctions or differences are made, the term "Subdivision" shall include both Unit I and Unit III.

Section 1.16:            Subdivision Restrictions.

The term "Subdivision Restrictions" shall mean, with respect to all property within the Subdivision, the limitations, easements, restrictions, covenants, and conditions set forth in this Declaration, as this Declaration may from time to time be amended. The term "This Declaration" and the title to this Declaration shall have the same meaning as "Subdivision Restrictions".

ARTICLE 2

Property Subject to Subdivision Restrictions

All of the property shown on the Plat.

ARTICLE 3

Permitted and Prohibited Uses of Property

Section 3.01:            Permitted Uses of Property Within the Subdivision.

a. Improvements and development within the Subdivision shall be limited to residential single family dwellings, having a minimum of One Thousand Two Hundred (1,200) square feet of heated living area. In addition, improvements and development may include



Judy D. Woodward

Bern. Co. DEC

R 95.00

1999014291

5174864

Page: 6 of 45

02/02/1999 01:20P

Bk-9902 Pg-4242

associated parking, garages, roads and access ways, landscaped areas, and all public or private service and utility facilities related to such uses, including but limited to, drainage, sewer gas, water, electric and communication facilities.

b. Heights and Setbacks.

**MAXIMUM BUILDING HEIGHT:**

Twenty-Six (26) feet. (Subject to review and approval as provided in Article 8).

**BUILDING SETBACKS:**

Building setbacks, side yards and rear yards, shall conform to City of Albuquerque R-1 zoning requirements as follows:

1. There shall be a front yard setback of not less than 20 feet.
2. On a corner lot, the side-yard setback adjacent to the side of the street shall be as follows:
  - a. If the rear yard abuts the front yard of a residentially-zoned lot, not less than 20 feet.
  - b. If paragraph 2.a. does not apply, not less than 10 feet.
3. Side-yard setbacks which are interior, i.e., measured from side lot lines which are not adjacent to streets, shall be either:
  - a. Not less than five feet on each side if the lot width (see definition in Section 5) is 65 feet or less. The setback on one side shall increase one foot for every one foot incremental increase in lot width to a maximum side setback of 10 feet [feet] (thus, if lot width is 70 feet or more, the minimum side setbacks are 10 feet on one side and five feet on the other); or
  - b. There shall be one side-yard setback of not less than 10 feet on one side. (On a corner lot, the 10 foot side-yard setback shall be on the street side.) The other side-yard setback shall be at least five feet, except that it may be reduced or eliminated if the owner of the abutting lot agrees in writing to permanently bind his lot to not have a house closer than 10 feet to the areas allowed for a house on the subject lot, and the agreement is included with the application for a building permit. The agreement shall be filed by the owners with the Planning Director after being recorded with the County Clerk. In no case shall the distance between two residential buildings be less than ten feet; or



Judy D. Woodward

Bern. Co. DEC

R 95.00

1999014291

5174664

Page: 7 of 45

02/02/1999 01:20P

Bk-9902 Pg-4242

c. For lots where a common, interior side lot line is oriented more than 60 degrees from due north-south, the minimum side-yard setback on the northerly side of the common lot line shall be as follows:

(1) Not less than 15 feet if the immediately adjacent side yard setback is less than 5 feet, or

(2) Not less than 10 feet if the immediately adjacent side yard setback is 5 feet or more.

(3) For irregular shaped lots, the provisions of subparagraphs a or b of this paragraph shall apply if setback lines allow one side of the house on the irregularly shaped lot to be oriented 30 degrees or more from due north-south and which allow solar access equal to or greater than the provisions of 1 or 3 of this subparagraph.

(4) In no case shall the distance between two residential buildings be less than 15 feet.

(5) Setback lines shall be as indicated on the final plat (either by note, reference or dimension) not inconsistent with this subsection.

4. There shall be a rear-yard setback of not less than 15 feet.

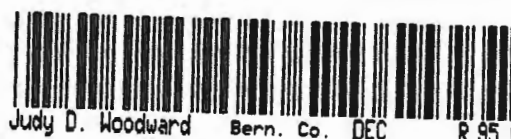
c. No dwelling shall be used as a boarding house or divided into apartments or rooms for rental purposes. This subsection does not prevent the rental or lease of the whole dwelling by the Owner thereof, but any such rental or lease must be by a written agreement which requires the tenant to observe these Restrictions. No dwelling may be leased or rented for a period of less than thirty (30) days.

d. Grantor shall, so long as Grantor is the owner of any Lot, have all of the rights of use set out in the Article entitled, "Limitation of Subdivision Restrictions on Grantor".

Section 3.02: Prohibited Uses of Subdivision.

a. In no event shall any Lot be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth, or be used in any other way inconsistent with the Subdivision Restrictions.

b. No illegal, noxious or offensive activity shall be carried on within the Subdivision. No light shall be emitted from any Lot which is unreasonably bright to cause unreasonable glare to any residences. No sound shall be emitted on or from any Lot which is unreasonably loud or annoying. No odor shall be emitted from any Lot which is noxious or offensive to others.



Judy D. Woodward

Bern. Co. DEC

R 95.00

1999014291

5174864

Page: 8 of 45

02/02/1999 01:20P

Bk-9902 Pg-4242



Nothing shall be done or placed which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to Owners in the enjoyment of their dwellings.

c. No signs whatsoever, including, but without limitation, commercial or similar signs, visible from other Lots, shall be erected or maintained upon any Lot, except (1) such signs as may be required by legal proceedings or are useful for such proceedings; (2) during the time of construction of any structure or other Improvement, job identification signs having a maximum face area of twelve (12) square feet per sign and of the type usually employed by contractors, subcontractors, and tradesmen; (3) appropriate safety, directional, and identification and safety signs installed by Grantor, the Association, or required by law; (4) customary "for sale" or "for rent" signs; and (5) such residential or commercial identification signs as Grantor has the right to maintain, or as are specifically approved by the Board in accordance with the rules adopted by the Board.

d. Except as provided otherwise by this Section, no mobile home, motor home, recreational vehicle, motorcycles, campers, trailers, boat, or similar facility, structure or recreational equipment shall be kept, placed, or maintained within the Subdivision at any time, unless enclosed within a standard size garage. Garage doors shall normally be kept in the fully closed position. No vehicles shall be placed on blocks and no vehicle shall be repaired or overhauled except when within an enclosed garage. Passenger vehicles (excluding trucks) owned by and regularly used by family members residing on the property may be parked on the driveway immediately in front of a garage bay if all garages are otherwise occupied by other passenger vehicles (not boats, trailers, campers, or recreational vehicles) regularly used by members of the household and not in storage. The provisions of this subsection shall not apply to (i) temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any work or improvement permitted by this Declaration, (ii) a recreational vehicle parked in the driveway or the street for a period not to exceed 24 hours, and (iii) a guest's use of a recreational vehicle for a period not to exceed one week per year.

e. Any outside clothes lines or other outside clothes drying or airing facilities shall be maintained exclusively within a fenced yard in such a way as not to be visible from streets and the ground floor of neighboring dwellings.

f. No garbage, clippings from trees, shrubs or lawns, trash, ashes or other refuse may be thrown, dumped or allowed to accumulate on any land within the Subdivision. There shall be no burning of refuse out of doors, except for the burning of natural materials in connection with land clearance or fire control. No incinerators or other device for the burning of refuse indoors shall be constructed, installed or used by any person except in conformity with law and approved by the Board.

g. No animals, livestock, horses, insects or poultry of any kind shall be kept, raised, or bred in the Subdivision. Dogs, cats and other household pets in reasonable numbers may be kept, providing they are not kept, raised or bred for commercial or hobby breeding purposes.



Such household pets, except cats, must be restrained on a leash or otherwise under the direct control of an individual when in the Subdivision. All lot owners shall comply with City of Albuquerque ordinances and state laws relating to domestic animals.

h. All exterior spot or directional lighting of any sort, the light source of which is visible from neighboring Lots, shall be approved, in writing, by the Board prior to installation.

i. No exterior antenna or satellite dishes, of any sort shall be installed or maintained on any Lot or within the Subdivision, except those devices which are erected, installed, placed or maintained and used entirely under the eaves or enclosed within a building or structure or are screened so as not to be visible from the ground level of other Lots. This provision shall remain enforceable even if enforcement action is not commenced within the time limitations otherwise provided by the Subdivision Restrictions.

j. No mechanical device shall be installed or maintained on the roof or exterior surface of any dwelling if such device is visible from the street which the dwelling faces, or visible from adjoining lots, unless screened or enclosed to the satisfaction of the Committee.

k. No vehicles of any type shall be permanently or semi-permanently parked in any portion of the Subdivision for purposes of repairs or reconstruction, or storage. A vehicle shall be deemed parked for storage if it is not driven out of the Subdivision for thirty (30) consecutive days.

l. No trucks other than pick-up trucks or other commercial vehicles shall be kept or maintained in the Subdivision, except within standard size garages, and except where customary or required for the limited purposes of building, repairing, refinishing, or maintaining the Subdivision or a dwelling, or for the purpose of moving household goods or other necessary or customary furnishings, equipment or supplies in or out of the Subdivision.

m. Except temporarily during a construction period, all utility lines, including, but not limited to, electrical, gas, telephone, cable television, and other communications systems shall be underground, except for access ports and aboveground transformers.

n. No portion of the Subdivision shall be used for any purpose or in any manner which would increase the rate at which insurance against loss or damage by fire and the perils covered by extended coverage, bodily injury, property damage liability insurance, covering any other dwelling may be obtained, or cause any other building to be uninsurable or have such insurance canceled or suspended.

o. Should minor variations between lot lines as shown on the Plat and actual physical lot boundaries (such as walls, including interior party walls, and fences) occur, either due to original construction, reconstruction, repair or due to the settling, shifting or movement of structures, a valid easement shall exist for the encroaching Improvements for so long as the encroachment exists.



Judy D. Woodward

Bern. Co. DEC

R 95.00

1999014291

5174864

Page: 18 of 45

02/02/1999 01:28P

Bk-9902 Pg-4242

Section 3.03: Party Wall, Fences, or Structures

a. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls, and liability for property damage due to negligent or willful acts or omissions shall apply to each party wall or party fence (including hedges) which are built upon the properties in The Gardens Subdivision.

b. The specifications and standards for construction of party walls are as follows:

1. No wall or fence shall be erected or allowed to remain nearer the street than the ~~front of dwelling~~. *front of dwelling*

2. All rear walls must extend the full length of the rear property line and all sidewalls must extend forward at least to the rear of the residence on both sides.

3. All walls shall be constructed of 6" x 8" x 16" concrete block, including solid top cap, with pilasters every 12', and (except as provided elsewhere herein or by decision of the Architectural Control Committee), shall be constructed to a height of 60' above the finish grade of the lot.

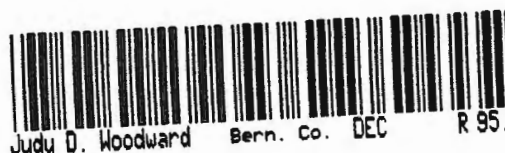
4. All wall surfaces shall be of the color and shall be finished as approved and required by the Architectural Control Committee.

5. Gates may be installed only in yard return walls. Any gate installed shall be architecturally compatible with the residence and shall not permit the rear yard to be visible from the street.

c. Cost of wall built as common walls on the common lot lines between Lots 1 and 2, Lots 2 and 3, Lots 3 and 4, Lots 4 and 5, Lots 5 and 6, Lots 6 and 7, Lots 8 and 9, Lots 10 and 11, Lots 11 and 12, Lots 12 and 13, Lots 13 and 14, Lots 14 and 15, and Lots 15 and 16, shall be prorated and shared equally by the owners of the adjoining Lots.

1. A Lot owner who constructs a residence prior to the construction of a residence upon an adjoining lot, shall be entitled to reimbursement from the adjacent lot owners of 1/2 of the cost of construction of the wall on their common lot line, and such reimbursement shall be due and payable within 30 days after the adjacent lot owner shall have commenced construction of a residence.

2. A Lot owner who constructs a residence adjacent to a lot upon which a residence has previously been constructed, including a party wall, shall within 30 days after commencement of construction of such lot owner's residence, reimburse the adjacent Lot owner for 1/2 of the cost of construction of the party wall on their common lot line.



Judy D. Woodward

Bern. Co. DEC

R 95.00

1999014291  
5174864  
Page: 11 of 45  
02/02/1999 01:20P  
Bk-9902 Pg-4242



3. The method of reimbursement shall be by the Lot owner, who has constructed the party wall, providing to the adjacent lot receipts, and/or other evidence of the construction cost.

4. Notwithstanding the above provisions, the Grantors may, at their option, and in accordance with written agreements with individual lot purchasers provide for the reimbursement for the reimbursable portion of wall costs to a lot owner that constructs a party wall, and provide for the collection of the reimbursement amount from the purchaser of a lot at the time of a sale of a lot which has constructed thereon a party wall.

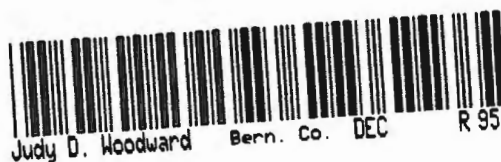
5. Any disputes or disagreements concerning the costs or pro-rata sharing of costs for party walls, shall be referred to the Architectural Control Committee described herein. The Architectural Control Committee shall attempt to mediate an agreement and solution between the disputing parties. In the event the Architectural Control Committee is unable to resolve the dispute by mediation, then such dispute shall be resolved by arbitration in accordance with the applicable rules of arbitration of American Arbitration Association.

d. The cost of reasonable repair and maintenance of party wall or party fence (including hedges) shall be shared equally by the owners who make use of the wall or fence in proportion to such use.

e. In the event that a party wall is damaged or destroyed (other than by reason of ordinary wear and tear), the cost and responsibility for repairing such damage and destruction shall be as follows:

1. In the event that the party wall is damaged or destroyed through the act of one of the adjoining property owners, or any guests, tenants, licensees, agents, members of the lot owner's family (whether or not such damage or destruction is a reason of negligence or is otherwise culpable), then such adjoining lot owner shall be responsible for the damage or destruction and shall forthwith proceed to cause the wall to be rebuilt and/or repaired to the same condition as existed prior to such damage or destruction at the sole cost and expense of said lot owner.

2. In the event that the party wall is damaged or destroyed by some causes other than acts of one of the adjoining owners as described in the foregoing paragraph (including ordinary wear and tear and deterioration from lapse of time), then in such event both of the adjoining lot owners shall proceed forthwith to rebuild or repair the party wall to as good condition as existed prior to the damage or destruction and the cost of repair or rebuilding the wall shall be shared equally by the adjoining lot owners.



Judy D. Woodward

Bern. Co. DEC

R 95.00

1999014291

5174864

Page: 12 of 45

02/02/1999 01:20P

Bk-9982 Pg-4242

ARTICLE 4  
Membership in the Association Voting Rights

Section 4.01:        Membership.

a.     The Grantor has created a Homeowner's Association for the purposes, and to undertake the powers, duties, and responsibilities described in this Declaration. The Homeowner's Association will function through a non-profit corporate entity known as The Gardens on Rio Grande Subdivision Homeowner's Association, Inc., a New Mexico Non-Profit Corporation.

The owners of all lots of The Gardens on Rio Grande Subdivision, Unit I (36 lots) and The Gardens on Rio Grande Subdivision, Unit III (23 lots), by nature of being an owner, and during the time as such owner remains an owner, shall be a member of the Association.

b.     The rights, duties, privileges and obligations of an Owner as a member of the Association or its preceding or succeeding unincorporated association shall be those set forth in, and shall be exercised and imposed in accordance with the provisions of this Declaration and the Association's Articles of Incorporation and By-Laws.

Section 4.02:        Voting Rights.

1000 / 67

Each Lot shall have one (1) vote and shall be entitled to cast such vote as provided in this Article on all matters properly submitted for vote to the membership of the Association. The voting right may be exercised by a person who has an ownership interest of record in the lot entitled to vote. Where lots are held in joint ownership, the owners shall designate one owner authorized to cast a vote on behalf of the lot. In no event shall any lot be entitled to cast more than one (1) vote. Every Owner entitled to vote at any election of members of the Board may cumulate his votes and give any one or more candidates a number of votes equal to the number of votes to which the Owner is entitled, multiplied by the number of Directors to be elected. The right to vote may not be severed or separated from any Lot, and any sale, transfer or conveyance of the beneficial interest of the fee of any Lot to a new Owner shall operate to transfer the appurtenant voting rights without the requirement of any express reference thereto. Voting may be by written proxy.

Section 4.03:        Voting Rules.

When any provision of the Subdivision Restrictions calls for the vote or the consent of the members in any stated percentage, the following rules apply, unless the specific language of the provision provides to the contrary (a) whenever a vote of the members is required, it is sufficient to obtain the written consent of the same percentage of members; (b) the percentage requirement shall be a percentage of the total voting power of the Association and not a percentage of the number of members of the Association, and © in any election held pursuant

to the requirements of this Declaration, ballots may be transmitted to Owners in the manner provided for the giving of notice.

## ARTICLE 5

### Organization, Powers and Duties of the Association

#### Section 5.01: Organization.

a. The Association shall be organized as a non-profit organization charged with the duties and empowered with the rights set forth herein. The Association's affairs shall be governed by this Declaration, the Articles of Incorporation and the By-Laws.

b. In the event that the Association, as a corporate entity, is not formed or after formation loses its corporate powers or is dissolved, a non-profit, unincorporated association shall forthwith and without further action or notice, be formed and shall succeed to all the rights and obligations of the Association hereunder until a qualified non-profit corporation is formed. Said unincorporated association's affairs shall be governed by the laws of the State of New Mexico, and to the extent not consistent therewith, by this Declaration, the Articles of Incorporation and the By-Laws, respectively, as if they were created for the purpose of governing the affairs of an unincorporated association.

c. The President and Secretary of the Association, or any three (3) members of the Board of Directors, may execute, seal, acknowledge and record a certificate of identity stating the names of all of the members of the then current Board and the then current Architectural Control Committee, if any. The most recently recorded affidavit shall be conclusive evidence of the identity of the persons then composing the Board and Architectural Control Committee in favor of any person relying thereon in good faith.

d. The affairs of the Association shall be managed by the Board of Directors, which shall exercise all of the rights and powers and perform all of the duties and responsibilities set out in this Declaration for the Association.

e. 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 decisions 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.

#### Section 5.02: Purpose.

The Association shall have the power to undertake and carry out the following purposes:

a. Take title to and own and operate the common areas described as follows:

Tracts C1 (2.1131 ac.), C2 (1.4573 ac.), C3 (.5539 ac.), C4 (2.5104 ac.), C5 (.5168 ac.) and C6 (.3168 ac.) in Unit I of the Subdivision and Tract A (.9363 ac.) in Unit III of the Subdivision.

b. Maintain and manage such common areas. Maintenance of such common areas shall consist of:

1. As to Tract C 1 and Tract A (private streets, including street lights): maintenance of surface, repair of cracks and potholes and general maintenance to keep the streets in a safe condition; creation of a reserve fund to provide for major repairs or replacement; signage and traffic control devices and maintenance, repair and replacement of such signs and traffic control devices; maintaining street lights, including cost of electricity.
2. As to Tracts C2, C3, C4, C5 and C6 (Private Common Area): grading, seeding, irrigation, fertilizing and mowing such area; landscaping of Tract C5 and maintenance of such landscaping.
3. Operate, maintain, and replace as necessary the private irrigation system serving the Private Commons Areas.

c. Maintain and/or replace the perimeter walls, fences, and gates including the electronic entry gates at Mountain Road and Manhattan Place, and including the landscaping adjoining Unit I along Mountain Road.

Section 5.03: Powers and Authority of the Association.

The Association shall have all of the powers set forth in its Articles of Incorporation, together with its general powers as a non-profit corporation, subject only to the limitations upon the exercise of such powers as are expressly set forth in its Articles of Incorporation, its By-Laws and in this Declaration, to do any and all lawful things which may be authorized, required, or permitted to be done by the Association under and by virtue of the Subdivision Restrictions and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association. It is the intent that the powers of the Association are limited to those acts necessary or incidental to undertake and carry out the purposes stated above in Section 5.02. Undertakings, activities and purposes beyond those specifically stated in Section 5.02 may be undertaken only when approved by a 75% majority vote of the membership at a special meeting of the members called for the specific purpose of reviewing and considering such additional undertakings or purposes.



a. Any of the following actions by the Board shall require a majority vote or written assent of the members:

1. Entering into a contract of the furnishings of goods or services for Easement Area or the Association for a term longer than three (3) years with the exception of prepaid casualty or liability policies or not to exceed three (3) years duration provided that the policy permits short rate cancellation by the insured; and

2. Paying compensation to members of the Board or officers for services performed in the conduct of the Association's business provided that the Board may cause a member or officer to be reimbursed for expenses incurred in carrying on the business of the Association.

b. In fulfilling any of its obligations or duties under the Subdivision Restrictions, including, without limitation, its obligations or duties of the maintenance, repair, operation, or administration of the Common Areas and/or Easement Areas, the Association shall have the power and authority:

1. To contract and pay for, or otherwise provide for, the improvement, maintenance, restoration, and repair of the Common Area and all Improvements located thereon;

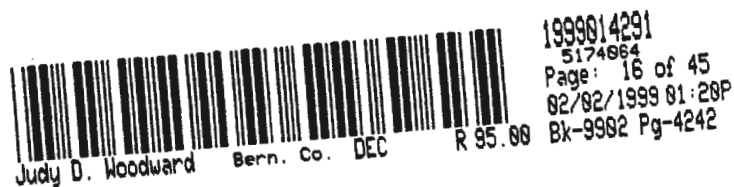
2. To obtain, maintain, and pay for such insurance policies or bonds, whether or not required by this Declaration, as the Association shall deem to be appropriate for the protection or benefit of the Subdivision, the Association, the members of the Board, and the Owners;

3. To incur indebtedness; but any indebtedness in excess of the Association's estimate of its estimated gross revenue for the year incurred or any indebtedness to be repaid over a period longer than one (1) year must be approved by a two-thirds (2/3) vote of the Members;

4. To contract and pay for, or otherwise provide for, such utility services, including, but without limitation, water and electrical services, as may from time to time be required;

5. To contract and pay for, or otherwise provide for, the services of architects, engineers, attorneys, bookkeepers and certified public accountants, and such other professional and non-professional services as the Association deems necessary;

6. To contract and pay for, and otherwise provide for, such materials, supplies, furniture, equipment, and labor as and to the extent the Association deems necessary;





7. To pay and to discharge any and all liens from time to time placed or imposed upon any Common Area, or on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation, or administration;

8. To lease or contract for the use of land and Improvements for recreation or other purposes of the extent the Association deems necessary; and

9. To place and maintain upon the Common Area such signs as the Association may deem necessary for the identification of the Subdivision and/or roads, the regulation of traffic, including parking, for the health, welfare and safety of owners and other persons.

c. In fulfilling any of its obligations or in exercising any of its rights with respect to the development, construction, installation or acquisition of a capital improvement, the Association shall have the power and authority:

1. To contract and pay for such Improvements upon such terms and conditions as the Association shall deem appropriate;

2. To obtain, maintain, and pay for such insurance policies or bonds as the Association may deem appropriate for the protection and benefit of the Association, the members of the Board, and Owners, including, but without limitation, builder's risk insurance, additional comprehensive liability insurance, workman's compensation insurance, and performance and fidelity bonds;

3. To incur indebtedness under terms and conditions as provided by this Article; and

4. To contract and pay for the services of architects, engineers, attorneys, and certified public accountants, and other professional and non-professional services.

d. With respect to the Common Area, the Association shall exercise control over the Common Area, but only for the purpose of carrying out the purposes of these Restrictions. The Association shall have no authority to mortgage, sell or convey the Common Area or any part thereof, unless approved by unanimous vote of the Members except that the Association shall have the power and authority from time to time without a vote of the members to grant and convey easements or rights of way, in, on, over, or under any Common Area, for the purpose of constructing, erecting, operating and maintaining thereon, therein, and thereunder wires, conduits and other equipment for the transmission of electricity and signals for lighting, heating, power, communication, cable television and other purposes, and for the necessary attachments in connection therewith; and public and private sewers, storm water ponding areas, storm water drains, storm water ponding areas, land drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any and all equipment in connection with the



foregoing. Any sale of the Private Common Area shall be subject to the PCA Regulations unless released by the City.

e. The Association may, from time to time and upon such terms and conditions as it may deem appropriate, agree with the Governing Body of any other subdivision to jointly manage the affairs of the Subdivision, to jointly hire a manager, or jointly to engage in other activities not inconsistent with the Subdivision Restrictions.

f. The Association shall have the right from time to time to pay, compromise, or contest any and all taxes and assessments levied against all or any part of the Common Area any income of or addressed to the Association, and upon any personal property belonging to or assessed to the Association.

g. The Association shall have the power and authority from time to time, in its own name, on its own behalf, and on behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Subdivision Restrictions and to enforce, by mandatory injunction or otherwise, all of the provisions of this Declaration.

h. The Association shall have the power, but not the duty, to enter upon and maintain, provide for the maintenance of, any Lot or Improvements which is not maintained by the Owner thereof in accordance with the requirements of these Restrictions, at the expense of any such Owner.

Section 5.04                      Liability of Members of Board.

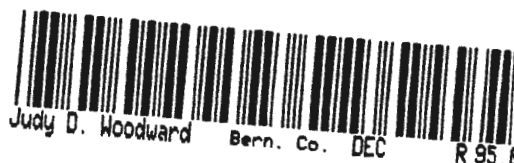
No member of the Board shall be personally liable to any Owner, or to any other person, including Grantor, for any error or omission of the Association, its representatives and employees, or the manager; provided, however, that such member has, with the actual knowledge possessed by him, acted in good faith.

Section 5.05                      Duties and Obligations of the Association.

a. The Association shall have the obligation and duty, subject to the Subdivision Restrictions, to do and perform each and everything set out in this Section, for the benefit of the Owners and for the maintenance and improvement of the Subdivision.

b. The Association shall accept all Owners as members of the Association.

c. The Association shall accept from Grantor the Common Areas and maintenance responsibilities in all Common Areas subject to the reservations of all easements, licenses and rights to use and the rights of Grantor.



1999014291  
5174864  
Page: 18 of 45  
02/02/1999 01:20P  
BK-9902 Pg-4242

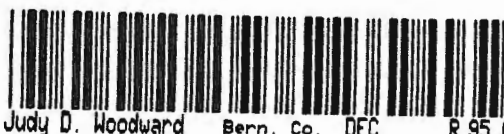
d. The Association shall maintain, or provide for the maintenance of, the Common Areas and all Improvements thereon.

e. The Association shall maintain or provide for the maintenance of all landscaping and vegetation (including without limitation, grass, mass plantings, shrubs and trees) on Common Areas and shall keep such vegetation properly trimmed, mowed, cut, watered, fertilized, planted and replaced so that it provides an attractive appearance.

f. The Association may employ the services of a corporate or individual manager to manage the affairs of the Association and, upon such conditions as are otherwise advisable by the Association, the Association may delegate to the manager any of its powers under the Subdivision Restrictions. No management agreement entered into between the Association and any professional management company (whether or not such professional management company is owned or controlled by the Grantor) shall provide for a term in excess of two (2) years and all such agreement shall permit the Association to terminate for cause upon not more than thirty (30) days' prior written notice and all such agreements shall provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

g. The Association shall obtain and maintain in force the following policies of insurance:

1. Fidelity Bond: The Association shall procure and maintain a fidelity bond naming the Association as obligee in an amount equal to the estimated maximum amount of funds to be in the custody or control of the Association or its professional management company, including reserves for replacement and working capital, at any given time during the term of such bond, but in any event in an amount at least equal to three (3) months' aggregate monthly assessments on all Lots plus the sum of all reserve funds. Such fidelity bond shall cover all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association, including the officers, directors, employees and agents of the professional management company employed by the Association pursuant to these Restrictions. Provided, however, that the fidelity bond to be procured by the Association need not cover the professional management company and its officers, directors, employees and agents if such professional management company provides a sufficient fidelity bond naming the Association as an additional obligee or loss payee. Such bond shall contain a waiver of any defense or exclusion based upon the exclusion of persons serving without compensation from the definition of "employees" or other similar terms or expressions. Such bond shall require at least ten (10) days' prior written notice to the Association of cancellation or substantial modification (including cancellation for non-payment of premiums). The cost of such fidelity bond (except for premiums on any fidelity bond provided by the professional management company which the Board determines to be satisfactory and in compliance with the provisions of this Section) shall constitute a common expense of the Subdivision.



2. **Liability Insurance:** The Association shall procure and maintain comprehensive public liability insurance in the amount of at least one million dollars (\$1,000,000) per single occurrence for bodily injury, death and property damage suffered by the public or any Owner and his family, guests, agents, employees or invitees occurring in, on or about the Common Areas. Such policy shall insure the Owners and the Association and its officers, directors, employees and agents, including expressly the professional management company and its officers, directors, employees, agents and the City, and shall further expressly cover legal liability arising from lawsuits related to: (i) the Drainage Easement and the Drainage Covenant, and (ii) employment contracts of every nature to which the Association ins a party. Such policy shall be issued by insurers of recognized responsibility authorized to do business within the State of New Mexico and shall require at least ten (10) days' prior written notice of cancellation or substantial modification (including cancellation for non-payment of premiums) to the Association and to any Mortgagee having a first lien against any Lot which is listed as a scheduled holder of such a first mortgage in the policy and to the City. The cost of such policy shall constitute a common expense of the Subdivision. Such insurance must not provide for contribution with retard to any policies of liability insurance carried individually by any Owner.

3. **Additional Insurance:** The Board shall have the authority to obtain such other insurance, including the authority to increase the scope or amount of any insurance required by this Article 5, as the Board shall determine to be necessary or advisable. The cost of any such additional insurance shall constitute a common expense of the Subdivision.

h. The Association shall prepare an annual operating statement reflecting the money received by the Association and the expenditures of the Association for each fiscal year and distribute such statement to each member and each Eligible Mortgagee upon request.

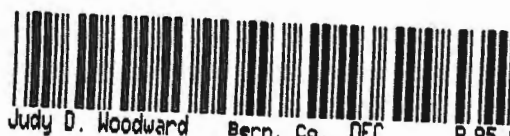
i. The Association shall take such action, whether or not expressly authorized by the Subdivision Restrictions, as may reasonably be necessary to enforces or carry out the purposes of the Subdivision Restrictions.

## ARTICLE 6

### Funds, Assessments and Delinquency

#### Section 6.01: Creation of Lien and Personal Obligation for Assessments.

Grantor for each Lot owned by it hereby agrees to pay, and each Owner of any Lot by the acceptance of a deed or contract of sale therefor, whether or not so expressed in any such deed or contract or other conveyance, is deemed to agree to pay to the Association (a) maintenance assessments, (b) delinquency assessments; and (c) all other fees or other moneys due to the Association from such Owner.



Judy D. Woodward

Bern. Co. DEC

R 95.00

1999014291

5174864

Page: 28 of 45

02/02/1999 01:20P

Bk-9902 Pg-4242

The maintenance assessment, delinquency assessment, plus interest, late charges, costs and attorney's fees, shall be a charge against the Lot and shall be a continuing lien upon the Lot against which each assessment is made, and shall also be the personal obligation of the Owner or Owners of such property on the assessment date. The personal obligation to pay assessments shall not pass to successors in title unless expressly assumed by them.

Section 6.02:      Operating Fund.

There shall be an operating fund, into which the Association shall deposit all monies paid to it, and from which the Association shall make disbursements in performing the functions for which the assessments are levied.

Section 6.03:      Maintenance Assessment.

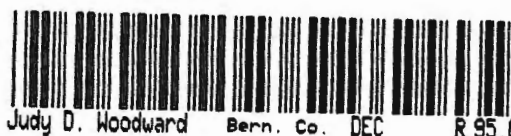
a. Within thirty (30) days prior to the commencement of each fiscal year the Association shall estimate the costs and expenses to be incurred by the Association during such year, including a reasonable provision for contingencies, and reserves for major repair and replacement, and shall subtract from such estimate an amount equal to the anticipated balance, exclusive of any reserves for contingencies and reserves for major repair and replacement, in the operating fund at the start of such year. The budget shall include the estimated costs of maintaining the Drainage Easement improvements. The sum or net estimate so determined shall be assessed to all Owners in shares: one (1) share for each Lot owned.

b. If, at any time and from time to time, during any fiscal year, the maintenance assessment proves or appears likely to prove inadequate for any reason, including non-payment of any Owner's share thereof, the Association may levy a further maintenance assessment in the amount of such actual or estimated inadequacy, which shall be assessed to all Owners apportioned as provided in subsection a, if approved by a two-thirds (2/3) vote of the members.

c. Maintenance assessments shall be due and payable to the Association when levied or in such installments during the year, and on such due dates as the Board shall designate.

d. The Board shall not levy assessments to defray the costs of any action or undertaking on behalf of the Association which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year and which are not part of such budgeted gross expenses without the vote or written consent of the Members.

e. From and after the December 31st immediately following the conveyance of the first Lot by Grantor, the maximum maintenance assessment may be increased each year not more than ten percent (10%) from the previous year without a vote of two-thirds (2/3) of the Members unless cumulative from year to year so that an increase not used in one year may be used in a subsequent year without a vote of the members.



Judy D. Woodward

Bern. Co. DEC

R 95.00

1999014291

5174964

Page: 21 of 45

02/02/1999 01:28P

BK-9902 Pg-4242



f. All maintenance assessments shall be allocated to all lots in Unit I and Unit III as follows:

Unit I lots:	2.1053% to each lot x 36 lots =	75.79%
Unit III lots:	1.0526% to each lot x 23 lots =	24.21%
	Total	100%

*\$50 per month  
billed quarterly*

Section 6.05:      Reserves as Trust Funds.

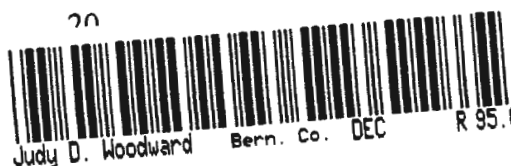
Reserves for major repairs and replacements and for capital improvements to be built or acquired shall be kept segregated from the other monies held by the Association as trust funds in an account or accounts labeled "Reserve Trust Fund" and shall be withdrawn and used only for the purposes of major repairs and replacements or for capital improvements respectively, unless a different or other use is authorized by the vote of the members.

Section 6.06:      Delinquency.

Each assessment under this Article shall be the separate, distinct and personal debt and obligation of the Owner against whom it is assessed. Any assessment provided for in this Article, which is not paid when due, shall be delinquent. With respect to each assessment not paid within ten (10) days after its due date, the Association may, at its election, require the Owner to pay a sum (late charge) to be determined by the Association, to pay the costs of handling the delinquent sum. Such a charge shall be considered an additional assessment and collectible with the assessment for which it was charged. If any such assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at a rate set from time to time by the Association, however not greater than twenty percent (20%), and the Association may, at its option, bring an action at law against the Owner or Owners personally obligated to pay the same, and upon compliance with the provisions of this Article to foreclose the lien against the Lot, and there shall be added to the amount of such assessment the late charge, the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest at the rate provided herein and a reasonable attorney's fee, together with the costs of action. Each Owner vest in the Association, or its assigns, the right and power to bring all actions at law or lien foreclosure against such Owner or other Owners for the collection of such delinquent assessments.

Section 6.07:      Notice of Lien.

No action shall be brought to foreclose an assessment lien less than thirty (30) days after the date a notice of claim of lien is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of said Lot, and a copy thereof is recorded by the Association in the office of the Bernalillo County Clerk; said notice of claim must recite a good and sufficient legal description of any such Lot, the record owner or reputed owner thereof, the amount



1999014291  
5174864  
Page: 22 of 45  
02/02/1999 01:20P  
BX-9902 Pg-4242

claimed (which shall include the interest charges, costs and attorney's fees recoverable by an action at law and the name and address of the Association.

Section 6.08:            Foreclosure Sale.

Any such sale provided for above is to be conducted in accordance with the customary practice of the court of the State of New Mexico, applicable to the foreclosure of Mortgages, or in any other manner permitted or provided by law. The Association, through its duly authorized agents, shall have the power to bid on the Lot at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

Section 6.09:            Curing a Default.

Upon the timely curing of any default for which a notice of claim of lien was filed by the Association, the officers of the Association are hereby authorized to file or record, as the case may be, an appropriate release of such notice, upon payment by the defaulting owner of a fee, to be determined by the Association, to cover the costs of preparing and filing or recording such release, together with the payment of such other costs, interest or fees as shall have been incurred.

Section 6.10:            Cumulative Remedies.

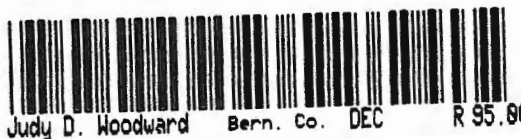
The assessment lien and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

Section 6.11:            Certificate of Payment.

The Association shall, upon demand, furnish to any Owner liable for assessments, a certificate in writing signed by an officer of the Association, setting forth whether the assessments on a specified Lot have been paid, and the amount of the delinquency, if any. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 6.12:            Commencement of Annual Assessments.

The maintenance assessments provided for in this Article shall commence s to each Lot upon the sooner of (I) the first day of the month following completion of construction of the Improvements on the Lot or (ii) the first day of the first month following the second anniversary date of the recording of this Declaration. Construction shall be deemed completed upon the dwelling's successful completion of its final inspection by the City of Albuquerque. The first such annual assessment shall be prorated for each Lot for the period from the commencement



as provided in this section to the start of the next fiscal year following such commencement. Until the second anniversary date of the recording of this Declaration, the Grantor shall make up the shortfall necessary to meet the Association's obligations.

Section 6.13:            Special Assessments/Rights of City.

In the event that the Association fails to maintain the Private Common Area in accordance with City Ordinances (the "Maintenance Default"), then the City shall have the following rights:

a.     The City may give the Association, and all Owners, written notice of the Maintenance Default (the "Notice");

b.     In the event that the Association, or the owners fail to cure the Maintenance Default within thirty (30) days of giving of the Notice, the City shall have the right to enter upon the Private Common Area and perform the maintenance necessary to cure the Maintenance Default (the "City Self Help");

c.     The Association, and each Owner, shall be jointly and severally liable to the City for the cost of the City Self Help, together with any other penalties or costs allowed by laws (the "City Reimbursement"). As between the Owners and the Association, the Association shall be primarily liable for the Reimbursement and the City Lien so that the Association can allocate this expense to the individual Lot Owners in accordance with this Article 6. The Association shall indemnify and hold each Lot Owner harmless from the liability for the City Reimbursement and the City Lien in excess of the Lot Owner's share.

d.     In the event that the City Reimbursement is not paid within thirty (30) days of being billed by the City, the City shall have the right to impose a municipal lien against each of the Lots for the City Reimbursement (the "City Lien").

ARTICLE 7

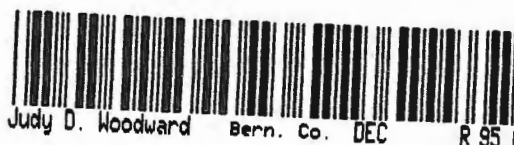
Duties and Responsibilities of All Lot Owners

Section 7.01:            Owner's Responsibility to Repair.

Each Owner shall be responsible for the maintenance and repair of his dwelling, his Lot, his landscaping and all property line walls.

Section 7.02:            Parking Areas, Vehicles.

For overnight parking, each Owner shall park his vehicle in his garage, except that when there are more vehicles used by the Owner than his garage will accommodate.



Judy D. Woodward

Bern. Co. DEC

R 95.00

1999014291

5174864

Page: 24 of 45

02/02/1999 01:20P

Bk-9902 Pg-4242



Section 7.03:        Maintenance of Landscaping.

Each Owner shall maintain the landscaping on his lot in a neat and attractive manner. All grass, mass plantings and other plantings shall be mowed, trimmed and cut as necessary at regular intervals.

Section 7.04:        Observance of Subdivision Restrictions.

Each Owner shall comply with the Subdivision Restrictions and will cause and be responsible for Owner's family, agents, guests, contractors, employees and any person renting or leasing Owner's dwelling to do likewise.

Section 7.05:        Rights of Action.

Each Owner and the Association shall have a right of action against Owners for failure to comply with the provisions of these Subdivision Restrictions.

ARTICLE 8

Construction and Architectural Control

Section 8.01:        Architectural Control Committee. (ACC)

An Architectural Control Committee for the Subdivision is hereby established consisting of the following two persons:

William T. Caniglia  
2642 Aloysia Lane NW  
Albuquerque, NM 87104

Richard L. Gonzales  
12005 San Antonio Drive NE  
Albuquerque, NM 87122

The Committee shall serve at the pleasure of the Grantor who shall have the right to appoint, reappoint and discharge members of the Committee at will so long as the Grantor owns any lots within the Subdivision. Thereafter, the Committee shall serve at the pleasure of the Board. A majority of the members of the Committee may appoint one member of the Committee to act on and for the Committee.

Section 8.02:        Construction of Improvements.

(a) Before anyone shall commence on any Lot within the Subdivision the installation of construction of, remodeling of, addition to, or alteration of any Improvement of whatsoever



Judy D. Woodward

Bern. Co. DEC

R 95.00

1999014291

5174864

Page: 25 of 45

02/02/1999 01:20P

Bk-9902 Pg-4242

nature; and before anyone shall paint, texture, repaint or retexture the exterior surfaces of any Improvement, there shall be submitted to the Committee plans and specifications as follows:

(i) Preliminary or tentative plans and specifications which shall clearly show the nature of the work or installation proposed and the location thereof, on the Lot, which such preliminary or tentative plans shall include sufficient description of materials, colors, textures, etc., together with a landscaping plan (including all planting materials and landscape areas) as shall enable the Committee to evaluate whether the proposed construction, alteration, installation, etc., complies with these restrictions, and will harmonize with the motif and style of the Subdivision; and be compatible with surrounding homes; and

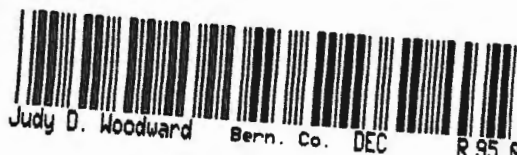
(ii) After approving preliminary or tentative plans, the lot owner shall provide the Committee with one set of final plans and specifications.

(iii) Upon completion of the stem wall for the home, the Committee shall be provided a stem wall survey to enable the Committee to ascertain if the home is located upon the Lot in conformance with the approved plans and with these Restrictions. No further construction can take place on the Lot until the Committee has given written approval of the survey. The Committee shall have 24 hours to approve the survey, otherwise it shall be deemed approved.

(b) No Improvement of any kind, installations, painting or texturing, shall ever be, or permitted to be, erected, constructed, installed, placed or maintained on any Lot within the Subdivision, unless and until the final plans, specifications and elevations therefor shall have received written approval of the Committee. All such final plans shall include plot plans showing the location on the Lot of all Improvements proposed to be constructed and/or installed, planted, placed or maintained on the Lot and shall further include elevations, together with the proposed color scheme and textures for roofs and exteriors thereof, indicating the materials for same.

c The Committee shall approve or disapprove within five (5) working days after receipt thereof plans and specifications which have been submitted to it. One set of plans and specifications, with the Committee's approval or disapproval and requirements endorsed thereon, shall be returned to the applicant and the other copy thereof, with a duplicate endorsement thereon corresponding to the first set, shall be retained in the Committee's files.

In the event that the Committee shall fail to approve or disapprove the plans, specifications and other information within thirty days after receipt thereof by the Committee, then such approval shall not be required, provided that no structure, building or other improvement shall be installed, erected, painted, textured, altered or modified which violates any of the Restrictions.



1999014291  
5174864  
Page: 26 of 45  
02/02/1999 01:20P  
Bk-9902 Pg-4242

The Committee shall have the right and power to disapprove any plans, specification or details submitted to it, if the Committee shall find that the plans and specifications are not in accord with all provisions of this Declaration, or if a design or color scheme submitted is not in harmony and accord with the Subdivision, or surrounding homes, or if the plans and specifications are incomplete. The Committee shall have the right to consider the impact of proposed Improvements upon the views from other Lots, but the Committee shall be under no obligation to preserve views, or to deny approval of plans for Improvements which will, or may, impair views.

(d) If any Improvement or work is completed or done without compliance with this Article, such Improvement or work shall be deemed to have been done in compliance with this Article if no action has been commenced to enforce the provisions of this Article against such Improvement or work within one (1) year of its completion.

(e) Approval of building plans and/or specifications by the Committee will not constitute a waiver of the Restrictions if they violate the Restrictions upon the completion of construction.

Section 8.03: Design Guidelines.

The purpose of design guidelines is to establish a criteria for designing and creating a harmonious neighborhood consistent with the subdivision location in the West Old Town and North Valley community, and to preserve the visual harmony of the Subdivision so that no house, by its design, should disrupt or detract from such visual harmony.

The Committee may from time to time adopt design guidelines for approval of Improvements. These guidelines may be modified, amended or supplemented from time to time, but shall be consistent with the purpose stated herein. The Committee may grant variances from its Design Guidelines for good cause shown. In the event of conflict between the design guidelines and the provisions of this Declaration, the provisions of this Declaration shall prevail. The Design Guidelines for initial construction in the Subdivision are as follows:

ARCHITECTURAL STYLE:

Homes shall be constructed in a Southwestern architectural (modern pueblo, territorial, or Northern New Mexico) style to blend with the North Valley environment. Architectural Control Committee shall review all plans and specs prior to construction.

BUILDING SURFACE MATERIAL:

Except for accents and trim, all homes shall have stucco or stabilized adobe walls. All exterior materials shall be specified on construction drawings. All stucco shall be elastomeric or similar synthetic material designed to be uniform in color, water and stain resistant, and crack resistant.



### **HOME COLORS:**

The Architectural Control Committee shall establish a color palette which shall be limited to subtle earth tones of tan or brown.

### **ROOF MATERIALS:**

Predominate roof styles shall be flat with parapet walls high enough to conceal roof surfaces. Slate or tile materials shall, upon acceptance of the Architectural Control Committee, consist of less than 15 % of the total roof surface. Metal roofs shall be permitted upon acceptance of the Architectural Control Committee.

### **DRIVEWAY COLOR AND MATERIALS:**

Driveways may be constructed of "crusher fines" materials with colors of natural grey or light brown, as well as concrete, brick, stone, or other hard surface materials approved by the Committee. Asphalt or "black top" driveways shall not be permitted.

### **ROOFTOP MECHANICAL EQUIPMENT:**

Except for mechanical equipment located on flat roofs, no mechanical equipment shall be located other than at ground level. For flat roof houses, mechanical equipment may be located on the roof only if the house structure prevents visibility of the equipment from the abutting street or adjoining property.

### **LANDSCAPING REQUIREMENTS:**

Landscaping shall conform to City of Albuquerque Ordinance entitled, "Water Conservation Landscaping and Water Waste" (Ordinance No. 6-1-1-1 through 6-1-1-99), and any other laws, regulations, or ordinances relative to landscaping and use of water. Front yard landscaping shall be installed within 60 days after completion of the house. Front yard landscaping shall include at least one ornamental tree of 2" thickness in diameter planted within the private street right-of-way. The location of such tree shall be shown on the landscape plan presented to the ACC.

### **OFF-STREET PARKING:**

Four (4) off-street parking spaces shall be provided, including the parking spaces in the enclosed garage and parking spaces located on the driveway apron in front of the garage.



Judy D. Woodward

Bern. Co. DEC

R 95.00

1999014291

5174864

Page: 28 of 45

02/02/1999 01:20P

Bk-9902 Pg-4242

Section 8.04:            Estoppel Certificate.

Within ten (10) days after written demand is delivered to the Committee by any Owner, and upon payment therewith to the Association of a reasonable fee to cover costs from time to time to be fixed by the Association, the Committee shall provide Owner with an estoppel certificate executed by an officer of the Association and acknowledged, certifying with respect to any Lot owned by said Owner, that as of the date thereof either (1) all Improvements and other work made or done upon or within said House by the Owner, or otherwise, comply with this Declaration, or (2) such Improvements or work do not so comply, in which event the certificate shall also (a) identify the non-complying Improvements and work and (b) set forth with particularity the cause or causes for such noncompliance. Any purchaser from the Owner, or mortgagee or other encumbrancer shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between Grantor, the Association, and all Owners and such purchaser, and mortgagee.

Section 8.05:            Liability.

Neither the Committee, the Board, nor any member thereof shall be liable to the Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of:

- a.        The approval of any plans, drawings, and specifications, whether or not defective,
- b.        The construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications,
- c.        The development or manner of development of any property within the Subdivision, or,
- d.        The execution and recording of an estoppel certificate whether or not the facts therein are correct; provided, however, that the officer executing the certificate, with the actual knowledge possessed by him, has acted in good faith.

Without in any way limiting the generality of the foregoing, the Committee, Board, or any member thereof, may, but is not required to, consult with or hear any Owner with respect to any plans, drawings, or specifications, or any other proposal submitted to it.



ARTICLE 9  
Protection of Security Interests

Section 9.01:            Application of Assessments to Mortgagees.

The liens created under the Subdivision Restrictions upon any Lot shall be subject and subordinate to, and shall not affect the rights of a mortgagee under any recorded first mortgage upon a Lot made in good faith and for value, provided that after the foreclosure of any such mortgage the amount of all maintenance and special assessments, and all delinquent assessments to the extent such delinquent assessments relate to expenses incurred after such foreclosure, assessed hereunder to the purchaser at foreclosure sale, shall become a lien upon such lot upon recordation of a notice thereof with the County Recorder.

Section 9.02:            Right to Notice.

The Association shall provide all Eligible Mortgagees with timely written notice of any delinquency in the payment of monthly assessments, special assessments or other charges due the Association by the Owner of a Lot which is subject to a first mortgage held, by any Eligible Mortgagee and which delinquency remains uncured for a period of sixty (60) days or more.

Section 9.03:            Limitation of Enforcement Against Mortgagee.

No violation by an Owner of the Subdivision Restrictions or enforcement of the Subdivision Restriction against an Owner shall defeat or render invalid the lien of any mortgagee made in good faith and for value against the property of such Owner, but, the Subdivision Restrictions shall be effective against any Owner whose title is acquired by foreclosure, trustee's sale, voluntary conveyance, or otherwise.

Section 9.04:            Rights of Mortgagee to Information.

A mortgagee shall, upon written request, be entitled to inspect the Declaration, By-Laws, Subdivision Rules, books and records of the Association on the same basis as a Member. If a mortgagee furnishes the Association, in writing, with its address, it shall be entitled to receive within a reasonable time, financial statement for the immediately preceding fiscal year, free of charge, and shall receive notice of meetings on the same basis as members.

Section 9.05:            Application of Subdivision Restrictions.

Except as provided in this Article or specifically provided elsewhere in the Subdivision Restrictions, all mortgages and mortgagees are bound by the provisions of the Subdivision Restrictions.





Section 9.06:            Collection of Assessments.

The Mortgagees shall be under no obligation to collect assessments.

ARTICLE 10  
Limitation of Subdivision Restrictions on Grantor

Section 10.01:            Limitation of Subdivision Restrictions on Grantor.

Grantor is undertaking the work of constructing the Subdivision. The completion of that work and the sale, rental and other disposition of the Lots is essential to the establishment of the Subdivision. In order that the work may be completed and the property be established and fully occupied as rapidly as possible, nothing in this Declaration shall be understood or construed to:

- a.     Prevent Grantor or its agents, employees, and contractors from doing on the properties whatever is reasonably necessary or advisable in connection with the completion of the work; or
- b.     Prevent Grantor or its agents, employees, and contractors or homebuilders with Grantor's approval, from erecting, constructing and maintaining on any part of parts of the Subdivision, such structures as may be reasonably necessary for the conduct of its business of completing the work and establishing the Subdivision, including, without limitation, sales offices, model units, general business offices for its staff, employees and contractor, and storage and parking facilities for materials and equipment, and disposing of the Subdivision in parcels by sale, lease or otherwise; or
- c.     Prevent Grantor from conducting on any part of the properties its business of completing the work, and of establishing and disposing of the Subdivision;
- d.     Prevent Grantor or homebuilders with Grantor's approval, from maintaining such sign or signs on the Subdivision as may be necessary for its sale, lease, or disposition, or the sale, lease or disposition of any Lot.

Section 10.02:            Use of Subdivision Name.

Grantor may use the name of the Subdivision and the Subdivision Restrictions in other subdivisions or projects, whether located adjacent to the Subdivision or not, provided such names have a distinctive number or other designation so that they are not identical with the names of the Subdivision and Association. Consent is hereby given to Grantor and Grantor's assigns to use such names of a Corporation and upon request of Grantor, the Association agrees to execute a written consent authorizing Grantor to use the same or similar name which Consent will be filed with the State Corporation Commission.



Section 10.03:                      Architectural Control.

Improvements by Grantor and declarants to the Subdivision do not require approval of the Committee.

Section 10.04:                      No Amendment or Repeal.

The provision of this Article may not be amended or repealed without the consent of Grantor.

ARTICLE 11  
Miscellaneous Provisions

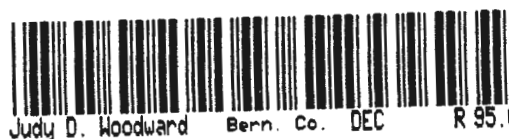
Section 11.01:                      Amendment or Repeal; Duration.

a.        These Restrictions and any provisions thereof which are in effect with respect to all or part of the Subdivision, may be amended or repealed in the following manner:

1.        The approval by two-thirds (2/3) vote or written consent of the voting power of the membership in the Association; and
2.        The recordation of a certificate of the Secretary or an Assistant Secretary of the Association setting forth, in full, the amendment or amendments so approved, including any portion or portions of this Declaration repealed, and certifying that such amendment or amendments have been approved by the required vote or consent of the Owners, and if necessary, by the required percentage of Owners of a particular class of property or Lots.

At any time during which Grantor is the only owner of property within the Subdivision, Grantor may amend or correct these Restrictions by a recorded instrument of amendment or correction.

b.        All of the provisions of these Restrictions shall continue and remain in full force and effect at all times with respect to all property, and each part thereof, included within the Subdivision, to the Owner and to the Association subject, however, to the right to amend and terminate as provided for in this Article, through December 31, 2045; provided that these Restrictions shall terminate if, within one (1) year prior to December 31, 2045, there shall be recorded an instrument directing the termination of these Restrictions signed by two-thirds (2/3) of the Owners of record title. These Restrictions in effect immediately prior to the expiration date shall, subject to the provisions of Section 11.01a., be continued automatically without any further notice, for an additional period of ten (10) years unless within one (1) year prior to expiration of such period these Restrictions are terminated as set forth in this Section. The right of access to the Lots over the Private Street shall be in perpetuity.





c. No amendment may be made to these Subdivision Restrictions without the written consent of the City which would impair the rights of the City or would limit the obligations of the Association or the individual Lot Owners to meet the maintenance obligations of these Subdivision Restrictions or the PCD Regulations.

d. The right of access to the Lots may not be amended or terminated without the unanimous consent of the Lot Owners.

Section 11.02:                      Enforcement; Non-Waiver; No Forfeiture.

a. The Gardens on Rio Grande Subdivision is a single subdivision developed in two phases, Unit I, containing 23 lots and Unit III, containing 36 lots. All lots in the Subdivision are served by private streets and access to the Subdivision. It is the desire of the Grantors that The Gardens Subdivision be designed in accordance with a common plan, design, and scheme, therefore, although a separate Declaration has been prepared and filed for, Unit I and Unit II, such Declarations should be construed and interpreted so as to enforce the common plan, design, and scheme created by both Declarations.

b. Except to the extent otherwise expressly provided herein, the Association or any Owner or Owners of either Unit I or Unit III shall have the right to enforce any and all of the provisions now or hereafter imposed by the Subdivision Restrictions upon other Owners, or upon any property within the Subdivision.

c. The City shall have the right to enforce these Restrictions to the extent that the Private Common Area is restricted pursuant to the terms of the Private Commons Development Regulations.

d. Except to the extent otherwise expressly provided herein, any Owner or Owners shall have the right to enforce any and all of the provisions now or hereafter imposed by the Subdivision Restrictions upon the Association.

e. Every act or omission whereby any restriction, condition, or covenant of the Subdivision Restrictions is violated, in whole or in part, is hereby declared to be and to constitute a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by the Association or by an Owner or Owners, as provided for in this Section. Any provisions to the contrary notwithstanding, only the Association or its duly authorized agents may enforce by self-help any limitation, restriction, covenant, condition, or obligation herein set forth.

f. Each remedy provided for in the Subdivision Restrictions is cumulative and not exclusive.



g. The failure to enforce the provisions of any limitation, restriction, covenant, condition, obligation, lien, or charge of the Subdivision Restrictions shall not constitute a waiver of any right to enforce any such provision or any other provision of the Subdivision Restrictions.

h. No breach of any of the provisions of the Subdivision Restriction shall cause any forfeiture of title or reversion or bestow any rights of re-entry whatsoever.

i. Reasonable attorney's fees and costs may be awarded in any action brought to enforce the provisions of the Subdivision Restrictions.

Section 11.03: Construction; Compliance with Laws; Severability; Singular and Plural; Titles.

a. All of the limitations, restrictions, covenants, and conditions of the Subdivision Restrictions shall be liberally construed, together, to promote and effectuate the beneficial operation of the Subdivision.

b. No provision of the Subdivision Restrictions shall be construed to excuse any person from observing any law or regulation of any governmental body having jurisdiction over such person or the Subdivision.

c. Notwithstanding other provisions in this Section, the limitations, restrictions, covenants, and conditions of the Subdivision Restrictions shall be deemed independent and severable, and the invalidity or partial invalidity of any provision, or portion thereof, of any of such limitations, restrictions, covenants, or conditions shall not affect the validity or enforceability of any other provision.

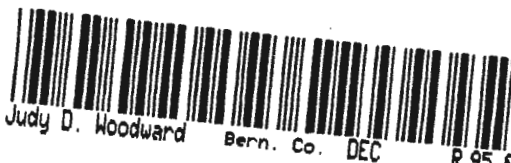
d. The singular shall include the plural and the plural, the singular, unless the context requires the contrary, and the masculine, feminine and neuter, as the context requires.

e. The table of contents and all titles used in the Subdivision Restrictions, including those of Articles and Sections, are intended solely for convenience of reference and the same shall not, nor shall any of them affect that which is set forth in such Articles, Sections, nor any of the terms or provisions of the Subdivision Restrictions. Any numbered or lettered subdivision of a Section is referred to as "subsection" or "subsections" and any indented portion of this Declaration which is unnumbered and unlettered shall be referred to as "Paragraph".

Section 11.04: Lot Splitting; Consolidation.

a. No Lot within the Subdivision shall be split unless the Board shall have given its written consent.

b. No two or more lots within the Subdivision shall be consolidated into one Lot unless the Board shall have given its written consent.



1999014291  
5174861  
Page: 34 of 45  
02/02/1999 01:20P  
Bk-9902 Pg-4242

c. Nothing contained in this Section shall apply to the splitting of any Lots by Grantor or the consolidation of two or more Lots into one Lot by Grantor.

d. The Association can require a change in the voting rights and assessment obligation in any Lot split or consolidation to keep the assessment and voting rights the same after the split or consolidation as they were before.

Section 11.05:                      Obligations of Owners; Avoidance; Termination.

a. No Owner, through the abandonment of his Lot, may avoid the burdens or obligations imposed on him by the Subdivision Restrictions by virtue of his being an Owner.

b. Upon the conveyance, sale, assignment or other transfer of a Lot to a new Owner, the transferring Owner shall not be liable for any assessments levied with respect to such Lot after the date such transfer is recorded, provided such transferring Owner notifies the Association of the transfer as provided by the Subdivision Restrictions, and no person, after the termination of his status as an Owner and prior to his again becoming an Owner, shall incur any of the obligations or enjoy any of the benefits of an Owner under the Subdivision Restrictions following the date of such termination.

Section 11.06:                      No Partition or Severance of Interests.

There shall be no partition or severance of any Lot, from the Subdivision and the Grantor, Board, Association and Owners shall not seek to partition or sever any part of a Lot from the Subdivision, nor shall they have any right to maintain an action for judicial partition in connection with the Subdivision unless such right is expressly given by the Subdivision Restrictions. This provision shall not prevent the partition of any Lot or Lots held in joint ownership as long as no physical partition takes place and there is no severance from any incident of the Subdivision Restrictions. No owner shall sever his Lot from its interest in the Association.

Section 11.07:                      Notices, Documents; Delivery.

Any notice or other document permitted or required by the Subdivision Restrictions to be delivered may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed as follows:

If to an Owner: At any Lot within the Subdivision owned by the Owner or at such other address given by Owner to the Association, in writing.

Any such address may be changed from time to time by any Owner, or by Grantor by notice in writing, delivered to the Association, by notice in writing, delivered to all Owners.



Section 11.08:

Ownership of Property.

All funds and facilities provided for by the Subdivision Restrictions and all property of any kind held by the Association and derived from assessments of members, proceeds of insurance carried or obtained by the Association, proceeds of bonds payable to the Association or payment received for damages to the Subdivision, and any right or interest in any such property shall belong to the Owners in proportion to each Owner's share of the maintenance assessment, and no assessment or the proceeds of any assessment shall be considered income to the Association. No person has any right to appropriate or make use of such property, except as provided by the Subdivision Restrictions until and unless there has been a partition or distribution of such property. All such property shall be appurtenant to each Lot in proportion to each Lot's share of the maintenance assessment and may not be severed or separated from any Lot, and any sale, transfer, or conveyance of the beneficial interest of the fee of any Lot shall operate to transfer the Owner's rights in such property without the requirement of any express reference thereto.

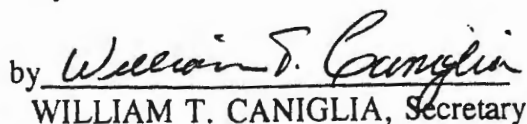
Section 11.09:

Transfer of Common Area.

Grantor shall transfer and convey to the Association, and the Association shall accept, the Common Areas. The Common Areas may be subject to any or all of the following exceptions, liens, and encumbrances: (a) the lien of real property taxes and assessments not delinquent; (b) such easements and rights of way as may have been offered for dedication to a political subdivision or public organization, or public utility corporation; c) such easements and rights of way, licenses or rights of use on, over, or under all or any part of any such property or structures or Improvements thereon as may be reserved to Grantor or granted to any Owner for the use thereof in accordance with the provisions of these Restrictions; obligations imposed, directly or indirectly, by virtue of any statute, law, ordinance, resolution, or regulation of the United States of America, the State of New Mexico, or any other political subdivision or public organization having jurisdiction over such property, or by virtue of any organization or body politic created pursuant to any such statute, law, ordinance or regulation; and (e) any other lien, encumbrance, or defect of title of any kind whatsoever (other than of the type which would, at any time, or from time to time, create alien upon such property to secure an obligation to pay money) which would not materially and actually prejudice Owners in their use and enjoyment of such property.

THE GARDENS, INC.,  
a New Mexico corporation

by   
RICHARD E. GONZALES, President

by   
WILLIAM T. CANIGLIA, Secretary



Judy D. Woodward

Bern. Co. DEC

R 95.00

1999014291  
5174064

Page: 36 of 45  
02/02/1999 01:28P  
Bk-9902

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

STATE OF NEW MEXICO       )  
  )ss.  
COUNTY OF BERNALILLO    )

This instrument was acknowledged before me on this 1<sup>st</sup> day of February, 1999, by Richard L. Gonzales and William T. Caniglia.

WITNESS my hand and official seal.

My Commission Expires:

4/13/99

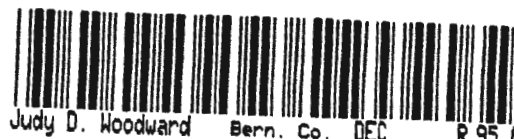
Donathey Maddox  
NOTARY PUBLIC

**CONSENTS OF INDIVIDUAL LOT OWNERS**

William T. Caniglia, a single person, owner of Lot 1, Block 2 of The Gardens on the Rio Grande Subdivision, Unit III, does hereby consent to and approve the above Declaration of Covenants, Conditions, and Restrictions and does hereby submit the above Lot 1, Block 2 to, and does agree to be bound by all provisions of the above Declaration of Covenants, Conditions and Restrictions.

Dated this 1<sup>st</sup> day of February, 1999.

William T. Caniglia  
WILLIAM T. CANIGLIA, a single person



STATE OF NEW MEXICO )  
 )ss.  
COUNTY OF BERNALILLO )

The foregoing Consent of Individual Lot Owners was acknowledged before me by William T. Caniglia, a single person, on this 1<sup>st</sup> day of February, 1999.

My Commission Expires:

4/13/99

Dorothy Madley  
NOTARY PUBLIC

SANDRA S. GONZALES, a single person, owner of Lot 9, Block 2 of The Gardens on the Rio Grande Subdivision, Unit III, does hereby consent to and approve the above Declaration of Covenants, Conditions, and Restrictions and does hereby submit the above Lot 9, Block 2 to and does agree to be bound by all provisions of the above Declaration of Covenants, Conditions and Restrictions.

Dated this 1<sup>st</sup> day of February, 1999.

Sandra S. Gonzales  
SANDRA S. GONZALES

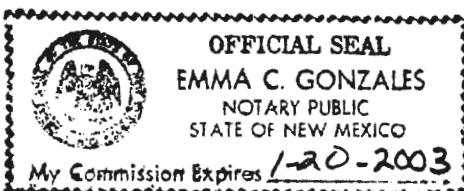
STATE OF NEW MEXICO )  
 )ss.  
COUNTY OF BERNALILLO )

The foregoing Consent of Individual Lot owners was Acknowledged before me by Sandra S. Gonzales on this 1<sup>st</sup> day of February, 1999.

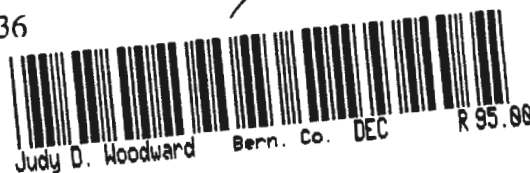
My Commission Expires:

1-20-2003

Emma C. Gonzales  
NOTARY PUBLIC



36



1999014291  
5174864  
Page: 38 of 45  
02/02/1999 01:20P  
Bk-9902 Pg-4242

CATHERINE GONZALES, a single person, JENNIFER GONZALES, a single person, CHRIS COMPTON, a single person, owners of Lot 11, Block 1 of The Gardens on the Rio Grande Subdivision, Unit III, does hereby consent to and approve the above Declaration of Covenants, Conditions, and Restrictions and do hereby submit the above Lot 11, Block 1 to and do agree to be bound by all provisions of the above Declaration of Covenants, Conditions and Restrictions.

Dated this 1 day of February, 1999.

Catherine Gonzales  
CATHERINE GONZALES

Jennifer R Gonzales  
JENNIFER GONZALES

Chris Compton  
CHRIS COMPTON

STATE OF NEW MEXICO       )  
  )ss.  
COUNTY OF BERNALILLO    )

The foregoing Consent of Individual Lot Owners was acknowledged before me by CATHERINE GONZALES JENNIFER GONZALES on this 1st day of February, 1999.  
CHRIS COMPTON

My Commission Expires:

1-20-2003

Emma C. Gonzales  
NOTARY PUBLIC

