

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.

EXTERIOR COLORS:

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

YARD WALLS:

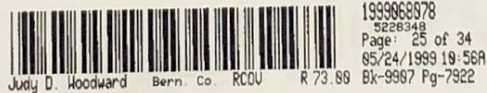
Yard walls shall consist of courtyard designs and shall be stucco surfaced in the same color as the house. There shall be no 'party line' walls (rear lot lines and side lot lines).

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:

Five (5) 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.

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 Mortgages.

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 mortgage 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.

Section 9.07: Mortgage Approval.

So long as the Grantor has more than a majority of the voting power of the Association, HUD or VA approval is required prior to (a) amendment of the Association's Articles of Incorporation, Bylaws or this Declaration; (b) annexation of property to the Association; (c) encumbering, conveying or dedicating Common Areas; or (d) dissolution of the Association.

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;

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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 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.

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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.



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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.

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

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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

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United States of America, the Stat 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.

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

THE GARDENS, INC.,
a New Mexico corporation

By *Richard L. Gonzales*
Richard L. Gonzales, President

By *William T. Caniglia*
William T. Caniglia, Vice-President
and Secretary

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

This instrument was acknowledged before me on this 17th day of May,
1999, by Richard L. Gonzales and William T. Caniglia.
WITNESS my hand and official seal.

My Commission Expires:

10-17-2002

Jud King
NOTARY PUBLIC


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