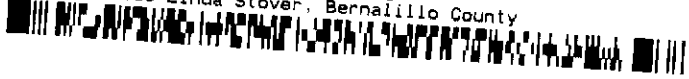


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AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS (CCR'S)
FOR
THE GARDENS HOMEOWNERS' ASSOCIATION, INC.

Also known as

The Gardens on the Rio Grande Subdivision

Adopted February 27, 2022

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THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE GARDENS HOMEOWNERS' ASSOCIATION, INC., (herein called the "Amended Declaration") is made as of February 26, 2022, by The Gardens Homeowners' Association, Inc, a New Mexico nonprofit corporation (herein referred to as "Association") with respect to that certain real property situate in Bernalillo County, New Mexico and more particularly described as follows:

Lots 1-36 Inclusive and Tracts C1, C2, C3, C4, C5, and C6-C, The Gardens on the Rio Grande Subdivision, Unit 1 and Lots 1-11, Block 1 and Lots 1-12, Block 2, and Tract A, The Gardens on the Rio Grande Subdivision, Unit III, Bernalillo County, New Mexico (herein sometimes referred to as the "Gardens Subdivision" or "Property").

Previous recorded documents for the Association include the following:

July 13, 1999, Document No 1999092212, Book 9910, page 1963 "Amended Declaration of Restrictions and Covenants and Conditions for The Gardens on the Rio Grande Subdivision, Unit 1" (herein Prior Amendment I)

May 24, 1999, Document No 1999068078, Book 9907, page 7922 "Restrictions of The Gardens on the Rio Grande Subdivision Unit 1, a Declaration of Restrictions, Covenants and Conditions for the Creation and Maintenance of a Private Commons Development" (herein called Original Unit I)

February 2, 1999, Document No. 1999014291, Book 9902, page 4242 "A Declaration of Restrictions, Covenants, and Conditions of The Gardens on the Rio Grande Subdivision, Unit III" (herein called Original Unit III)

The Association desires to make certain amendments to the above recorded documents. In order to implement such amendments, the Association does hereby amend and restate the covenants, conditions and restrictions for the Association. This Amended Declaration has been consented to by an 80% majority (47/59) of the Owners of the Association and amends and restates in its entirety those certain recorded documents listed above. In case of any conflict between previously recorded Declarations and Amended Declarations and this Amended Declaration, this Amended Declaration shall control.

IT IS HEREBY DECLARED that all of the described real property defined as The Gardens Subdivision is subject to this Amended Declaration which is for the purpose of creating and maintaining a commons development on the described real property and for the improvement and protection of the value, desirability, and attractiveness of the described real property, and to maintain those certain common elements of the Association for the benefit of all or some of the Owners within the Association.

It is the purpose of this Amended Declaration to amend those certain recorded documents that control the use and benefits of the Association consisting of that certain private commons development described above as The Gardens Subdivision for the benefit of all of the Lot Owners of the Association.

The effective date of this Amended Declaration is February 26, 2022; and on this date and at the time of the recording this Declaration. The Amended Declaration shall run with the described real property and shall be binding upon and inure to the benefit of the Association, each Owner of the described real property or any part of it, and each successor in interest of the Association, and any such Owner.

ARTICLE 1
DEFINITIONS

Unless the context otherwise specifies or requires, the terms defined in this Article I shall have the meanings as defined in this Article for the purposes of this Amended Declaration.

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: Assessment

The assessments levied on the Lots of Property subject to assessment under described in Article 6 and include Common Expenses assessments, Special Assessments and Specific Assessments.

Section 1.03: Association

The term "Association" shall mean THE GARDENS HOMEOWNERS' ASSOCIATION, INC., a New Mexico non-profit corporation.

Section 1.04: Board

The term "Board" shall mean the Board of Directors of the Association and the governing body of the Association.

Section 1.05: By-Laws

The By-Laws of the Gardens Homeowners' Association, Inc., incorporated by reference, as they may be amended.

Section 1.06: City

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

Section 1.07: Common Area

The term "Common Area" shall mean Tracts C1, C2, C3, C4, C5, and C6-C, of Unit I and Tract A of Unit III as shown on the Plat which includes common open space and private streets known as Manhattan Pl, Aloysia Ln, Cilantro Ln, and Laguna Seca Ln.

Section 1.08: Eligible Mortgagee

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 1.09: 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 1.10: Improvements

The term "Improvements" shall include, without limitation, buildings, outbuildings, (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 1.11: Lot

The term "Lot" shall mean each of the Fifty-nine (59) lots with a dwelling as shown on the Unit I and Unit III Plats together with the improvements located on each such Lot.

Section 1.12: 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 1.13: Owner

The term "Owner" shall mean the persons or entities holding record title and the beneficial ownership of the Lot, 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, if the real estate contract specifically so provides.

Section 1.14: Plat

The term "Plat" shall mean all of the real property shown on the Plat and comprising the Subdivision Plat of Units I and III, The Gardens on the Rio Grande Subdivision, as recorded in the Bernalillo County, New Mexico real estate records on June 25, 1998 for Unit III (Document

No. 1998079265, Book 98C, Pg 178) and May 20, 1999 for Unit I (Document No. 199906618, Book 99C, Pg 122).

Section 1.15: Common Area

The term "Common Area" shall mean the portions of the Gardens Subdivision to be owned by the Association for the common benefit of the Owners to be used for agriculture, landscaping, recreation, or streets any combination thereof as determined from time to time by the Association. The Common Areas are described as Tracts C1, C2, C3, C4, C5 and C6-C of Units I and Tract A in Unit III.

Section 1.16: Gardens Subdivision

The term "Gardens Subdivision" shall mean The Gardens on the Rio Grande Subdivision, Units I and III, created with the recording of the plats thereof described in Section 1.14.

Section 1.17: Subdivision Restrictions

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

ARTICLE 2

PROPERTY SUBJECT TO THIS AMENDED DECLARATION

All of the property described above and identified as the Gardens Subdivision, including all Lots with Dwellings, lots and Common Areas developed within the subdivision.

ARTICLE 3

PERMITTED AND PROHIBITED USES OF PROPERTY

Section 3.01: Permitted Uses of Property Within Units I and III of the Gardens Subdivision

- a. Improvements and development within the Gardens Subdivision shall be limited to residential single-family dwellings having a minimum of One Thousand Five Hundred (1500) square feet of heated living area, 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. 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. Any lease on any Lot shall provide that the lessee and all occupants of the leased Lot shall be bound by the terms of the Amended Declaration. No dwelling may be leased or rented for a period of less than thirty (30) days.

Section 3.02: Prohibited Uses of the Gardens 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 this Amended Declaration.
- b. No illegal, noxious or offensive activity shall be carried on within the Gardens 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. 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 the Association, or required by law; (4) customary "for sale" or "for rent" signs and (5) 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 Gardens 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 Owners or 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 Gardens 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 Gardens Subdivision. Dogs, cats and other household pets in reasonable numbers may be kept, provided 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 Gardens 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 Gardens 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 Amended Declaration.
- j. Mechanical devices shall be installed or maintained on the roof or exterior surface of any dwelling in such a way as to minimize the view from the street and adjoining lots, or screened/enclosed to the satisfaction of the ACC, defined below.
- k. No vehicles of any type shall be permanently or semi-permanently parked in any portion of the Gardens 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 Gardens Subdivision for thirty (30) consecutive days.
- l. No commercial vehicles shall be kept or maintained in the Gardens Subdivision, except within standard size garages, and except where customary or required for the limited purposes of building, repairing, refinishing, or maintaining the Gardens 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 Gardens 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 Gardens 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.

Section 3.03: Common Area

The Common Area shall be reserved by the Association for the benefit of all Owners pursuant to this Amended Declaration, to enhance the value, desirability and safety of the Gardens Subdivision. No improvements or structures may be constructed upon the Common Area except those which are necessary for the operation and maintenance of the Common Area. The use of the Common Area shall be limited to the agriculture, landscaping, recreation or any combination thereof, or any other uses permitted, from time to time, and approved by the Association. Individual lot owners and the members of the Homeowner's Association shall be jointly and severally liable for maintenance of the Common Area.

Section 3.04: Encroachment Easements.

There shall be reciprocal appurtenant encroachment easements, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an encroachment easement exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of any Owner, occupant, or the Association.

Section 3.05 Wall, Fence, Street and Sidewalk Easement.

There is hereby created an easement in favor of the Association, their employees and agents, upon, over and across each Lot affected for reasonable ingress, egress, installation, replacement, maintenance and repair of perimeter walls, fences, streets and sidewalks or other boundary controls which are the responsibility of the Association.

Section 3.06 Board Power for Use.

Subject to the terms of this Article and to its duty of care and undivided loyalty to the Association and its Members, the Board may amend the Use Restrictions (and, through such amendments, may modify, cancel, limit, create exceptions to, or expand the Use Restrictions). Prior to amending the Use Restrictions, the Board shall publish notice of the proposed amendments to each Owner at the address listed on the Bernalillo County Treasurer's website, or at an address (either physical address or email address) requested for such notice by the Owner in writing, no less than 30

days prior to the Board meeting at which such action is to be considered. Voting Members shall have a reasonable opportunity to be heard at a Board meeting prior to action being taken.

The Board shall send a copy of any proposed amendment to the Use Restrictions to each Owner at least 30 days prior to its effective date. The amendment shall become effective upon approval by Voting Members representing at least seventy-five percent (75%) majority of the total votes in the Association.

The Board shall provide, without cost, a copy of the Use Restrictions and rules then in effect to any requesting Member or Mortgagee.

ARTICLE 4
**MEMBERSHIP IN THE ASSOCIATION VOTING
RIGHTS**

Section 4.01: Membership

- a. The Association shall be the entity responsible for management, maintenance, operation, and control of the Common Area within the Gardens Subdivision. The Association shall be the primary entity responsible for enforcement of this Amended Declaration and such reasonable rules regulating use of the Gardens Subdivision as the Board may adopt.
- b. The owners of all lots with dwellings in The Gardens Subdivision, by nature of being an owner, and during the time as such owner remains an owner, shall be a member of the Association.
- c. The rights, duties, privileges and obligations of an Owner as a member of the Association shall be those set forth in, and shall be exercised and imposed in accordance with the provisions of this Amended Declaration and the Association's Articles of Incorporation and By-Laws.

Section 4.02: Voting Rights.

Subject to the requirements of membership, each Owner shall have one (1) vote per Lot with a dwelling and shall be entitled to cast such vote as provided in this Amended Declaration on all matters properly submitted for vote to the membership of the Association. Every Owner entitled to vote at any election of members of the Board may accumulate 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.

Each Owner, by virtue of being an Owner of a Lot with a dwelling, covered by this Amended Declaration and during such time as such Owner remains an Owner, shall be a Member of the Association. The rights, duties, privileges, terms and obligations of an Owner as a Member of the Association shall be those set forth herein and in the By-Laws and shall be exercised and imposed in accordance with the provisions of this Amended Declaration and the Association's

By-Laws, incorporated herein by reference. The ownership of a Lot with a dwelling will entitle its Owner(s) one vote. Notwithstanding the foregoing, Ownership of Tract C6-A, Tract C6-B and Tract A does not entitle the owner of said tract to a vote.

In addition to the ownership requirement as set forth in this Article, the right for a Member to exercise the Member's right to vote also requires that the Member be a Member in good standing. The requirements to be a Member in good standing are as follows: (a) Full payment of any and all assessments levied by the Association against the Member's Lot which are due and payable as of the date of the vote; and, (b) full compliance with the Amended Declaration, By-Laws and any rules and regulations promulgated by the Association, and if the Member is not in full compliance with the Amended Declaration, By-Laws or rules and regulation, then the Member is within the appeal process time period for the violation and a final decision concerning the violation is still pending and member and Lot is in full compliance in all other aspects of the Association's Amended Declaration, By-Laws and rules and regulations.

Section 4.03 Exercise of Voting Rights.

Except as otherwise specified in the Amended Declaration or the By-Laws, the vote for each Lot owned by a Member shall be exercised by the Owner. In any situation in which a Member is entitled personally to exercise the vote for his or her or their Lot, and there is more than one Owner of a particular Lot, the one Vote for such a Lot shall be exercised as such co-Owners determines among themselves and advise the Secretary of the Association in writing prior to any meeting or vote. Absent such advice, the Lot's vote shall be suspended if more than one Persons seeks to exercise it.

Wherever a vote of the Owner and Member is required, it is sufficient to obtain the written consent of the same percentage of Owners needed to act on the matter.

Section 4.04: Voting Rules.

When any provision of the Amended Declaration 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 Amended 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 is 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 Amended 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 Board shall be elected by the members at annual meetings of the Association, pursuant to the By-Laws.
- d. The Association shall have all of the powers 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 this Amended Declaration and the By-Laws 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 or for the peace, health, comfort, safety, and general welfare of the Owners.

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-C in Unit 1 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 C-6-C (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 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.
 - d. Any and all other powers expressly provided for in this Amended Declaration, including the power to assess.

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 Amended 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 Amended Declaration 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 and activities stated in this Amended Declaration and the Association's Articles of Incorporation. Undertakings, activities and purposes beyond those specifically stated herein may be undertaken only when approved by a 75% majority vote of the entire membership, in person or by signed proxy, at a special meeting of the members called for the specific purpose of reviewing and considering such additional undertakings or purposes; and, the 75% majority vote shall include 100% of the owners of property adjoining the Common Area proposed for such additional undertaking, activity, 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 Common Area, 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 Amended Declaration, 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; To obtain, maintain, and pay for such insurance policies or bonds, whether or not required by this Amended Declaration, as the Association shall deem to be appropriate for the protection or benefit of the Gardens Subdivision, the Association, the members of the Board, and the Owners;
 2. 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;
 3. 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;
 4. 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;
 5. 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;
 6. 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;
 7. To lease or contract for the use of land and Improvements for recreation or other purposes of the extent the Association deems necessary; and
 8. To place and maintain upon the Common Area such signs as the Association may deem necessary for the identification of the Gardens 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, officers and directors insurance, 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 this Amended Declaration. 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, 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.
 - 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 subdivisions, to jointly hire a manager, or jointly to engage in other activities not inconsistent with the Amended Declaration.
 - 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 Amended Declaration and to enforce, by mandatory injunction or otherwise, all of the provisions of this Amended 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 persons, 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 Amended Declaration, 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 Gardens 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.
- 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 Amended Declaration. 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, maintain, and pay for such insurance policies or bonds, whether or not required by this Amended Declaration, as the Association shall deem to be appropriate for the protection or benefit of the Gardens Subdivision, the Association, the members of the Board, and the Owners. The Association shall, as a Common Expense, obtain and maintain in-force adequate general liability and officers' and directors' liability insurance to the extent policies with the required provisions are available at a commercially reasonable cost. Evidence of the existence and effectiveness of said insurance policies shall be provided at least annually by the Association to the Owners, by certificate of insurance or otherwise.
- h. 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 cost of any such additional insurance shall constitute a Common Expense of the Gardens Subdivision.
- i. 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.

- j. The Association shall take such action, whether or not expressly authorized by the Amended Declaration, as may reasonably be necessary to enforce or carry out purposes of the amended Declaration, the Association's By-Laws and rule and regulations.

ARTICLE 6
FUNDS, ASSESSMENTS AND DELINQUENCY

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

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 assessments as the Board may specifically authorize from time to time for the common expenses ("Common Expenses") of the Association, which shall include maintenance assessments for maintaining the Common Areas, legal expenses, insurance for the Association, and other expenses that the Association Board deems appropriate and Special Assessments and Specific Assessments, 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 and which includes (a) Common Expenses assessments, (b) delinquency assessments, (c) Specific Assessments, (d) Special Assessments and (e) all other fees or other moneys due to the Association from such Owner. The Owner's personal obligation to pay assessments shall not pass to successors in title of each Lot 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, Special Drainage Maintenance Fund Assessments, and from which the Association shall make disbursements in performing the functions for which the foregoing assessments are levied.

Section 6.03: Common 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 sum or net estimate so determined shall be assessed to all Owners as provided in Paragraph f. ("Common Assessments") of this Section 6.03.

- b. If, at any time and from time to time, during any fiscal year, the Common 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 Common 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. Common 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.
- f. Common Assessments shall be equally allocated to all Lots with dwellings of Unit I and Unit III.

Section 6.04 Special Assessments.

In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses, or against the Lots within the Association if such Special Assessment is for particular Lot or Lots constituting less than all Lots of the Association. Except as otherwise specifically provided in this Amended Declaration, any such Special Assessment shall require the affirmative vote or written consent of Voting Members (if a Common Expense) or Owners (if an expense for only certain Lots) representing at least two-thirds (2/3) of the total votes allocated to Lots which will be subject to such Special Assessment. Any such Special Assessment shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

Section 6.05 Specific Assessments.

The Board shall have the power to levy Specific Assessments against a particular Lot as follows:

- a. To cover the costs, including overhead and administrative costs, or providing benefits, items, or services to the Lot or occupants thereof upon request of the Owner including without limitation, request for accounting of the Board, production of needed documents for the sale/purchase of lots within the Gardens Subdivision, additional disclosures requested by an Owner over and above the normal disclosures required by this

Amended Declaration, the By-Laws and rules, certifications requested by Owners, etc.

- b. To cover the costs incurred in bringing Lots into compliance with the terms of this Amended Declaration, any applicable supplemental or amended Declaration, the By-Laws or Rules, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their licensees, invitees, or guests; provided, the Board give the Lot Owner prior written notice and an opportunity for a hearing before levying Specific Assessments under this subsection (b).

Section 6.06 Delinquency.

Each assessment under this Article shall be separate, distinct and personal debt and obligation of the Owner against whom it is assessed and shall be a charge and continuing lien upon each Lot against which the assessment is made until paid. 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 Board may, at its election, require the Owner to pay a sum (late charge) to be determined by the Board, 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 due date, the assessment shall bear interest from the due date at a rate set from time to time by the Association or at the highest rate allowable by law whichever is greater, however not greater than twenty percent (20%). The Association may, at its option, bring an action at law against the Owner or Owners personally obligated to pay the assessment, and upon compliance with the provisions of this Article, to foreclose the lien against the Lot. 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 the cost of prosecuting such action including reasonable attorneys' fees and costs, and if 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 vests in the Association, or its assigns, the right and power to bring all actions at law and for lien foreclosure against such Owner or 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 copy thereof is recorded by the Association in the office of the Bernalillo County Clerk; said notice of claim of lien must recite a good and sufficient legal description of any such Lot, the record owner or reported owner thereof, the amount claimed and the name and addresses 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 recorded by the Association, the officers of the Association are hereby authorized to record an appropriate release of such lien, upon payment by the defaulting owner of a fee, to be determined by the Board, to cover the costs of preparing and recording such release, together with the payment for such other costs, interest or fees as the Association shall have incurred.

Section 6.10 Cumulative Remedies.

The assessment lien and the rights to foreclosure and sale hereunder 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.

Section 6.11 Commencement of Annual Assessments.

The Common Expenses assessments provided for in this Article shall commence as to each Lot upon each January 1.

Section 6.12 Failure to Assess.

Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such an event, each Owner shall continue to pay Common Expenses Assessments on the same basis as the last year for which an assessment was made until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

Section 6.13 Exempt Property.

The following property shall be exempt from payment of Assessments:

- a. All Common Area;
- b. Tract C6-A and C6-B;
- c. All private roadways in the Gardens Subdivision and used as Common Area.
- d. Any property dedicated to and accepted by any governmental authority or public utility.

Section 6.14 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 6.15 **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.

ARTICLE 7
DUTIES AND RESPONSIBILITIES OF OWNERS

Section 7.01: **Owner's Responsibility to Repair.**

Each Owner shall be responsible for the maintenance and repair of his dwelling, their Lot, their landscaping and all courtyard 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.

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 **Driveways, Walks and Fencing/walls.**

Each Owner shall improve, repair and maintain their Lot's driveway and pathways/walks at their expense with paving or exposed aggregate as determined and approved by the ACC. Public sidewalks will be maintained by the Association. Each Owner shall improve, repair and maintain their Lot's walls and fences, as determined and approved by the ACC.

Section 7.05 **Observance of Amended Declaration.**

Each Owner shall comply with the Amended Declaration 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 7.06 **Rights of Action.**

Each Owner and the Association shall have a right of action against Owners for failure to comply with the provisions of this Article 7 of the Amended Declaration.

Section 7.07 **Joint Maintenance by Owners.**

- a. Each wall which is built as part of the original construction of the Gardens Subdivision

and placed on the dividing line between Lots shall constitute a party wall. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omission shall apply.

- b. The cost of reasonable repair, maintenance, and replacement of a party wall, common structure, or joint utility shall be shared by the Owners whose Lots are adjacent to the wall.
- c. Notwithstanding any other provision of this Section, an Owner who, by the Owner's negligent or willful act, causes a party wall or common structure to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.
- d. The right of any Owner under this Section to obtain contribution from any other Owner for maintenance of a common structure shall be appurtenant to the Lot and shall pass to such Owner's successors in title.
- e. In the event of any dispute arising under the provisions of this Section, the Board shall arbitrate the dispute and its decision shall be final.

Section 7.08 Garbage Containers.

No trash, garbage, rubbish, debris, waste materials, or other refuse shall be deposited or allowed to accumulate or remain on any Lot, unless otherwise approved by the Board. All garbage containers, recycle bins, rubbish, and other waste materials shall be stored inside the garage of the home, in the backyard, or in the side yard or driveway, minimizing view from the street, except within the 24-hour period preceding regularly scheduled collection times, during which such items may be placed neatly at the curb for pick-up. All rubbish and recycles shall be secured at all times so that they will not be blown about by the wind.

Section 7.09 Notice of Sale or Transfer of Title.

Any Owner desiring to sell or otherwise transfer title to his or her or their Lot shall give the Board at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner and the Lot, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

ARTICLE 8
CONSTRUCTION AND ARCHITECTURAL CONTROL

Section 8.01 **Architectural Control Committee.**

An Architectural Control Committee ("ACC") for the Gardens Subdivision shall be established by the Board, as needed. The ACC shall serve at the pleasure of the Board. A majority of the members of the ACC may appoint one member of the ACC to act on and for the ACC.

Section 8.02 **Construction of Improvements**

- a. Before anyone shall commence on any Lot within the Gardens Subdivision the installation of construction of, remodeling of, addition to, or alteration of any Improvement of whatsoever nature; and before anyone shall paint, texture, repaint or retexture the exterior surfaces of any Improvement, there shall be submitted to the ACC plans and specifications as follows:
1. 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 ACC to evaluate whether the proposed construction, alteration, installation, etc., complies with this Amended Declaration, and will harmonize with the motif and style of the Gardens Subdivision; and be compatible with surrounding homes; and
 2. (2) After approving preliminary or tentative plans, the Lot owner shall provide the ACC with one set of final plans and specifications; and
 3. (3) Upon completion of the stem wall for the home, the ACC shall be provided a stem wall survey to enable the ACC to ascertain if the home is located upon the Lot in conformance with the approved plans and with this Declaration. No further construction can take place on the Lot until the ACC has given written approval of the survey. The ACC shall have three business days to approve the stem wall survey, otherwise it shall be deemed approved.
- b. No Improvement of any kind, installations, painting or texturing, shall ever be, or allowed to be or permitted to be, erected, constructed, installed, placed or maintained on any Lot within the Gardens Subdivision, unless and until the final plans, including specifications and elevations therefore, shall have received written approval of the ACC. 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 ACC shall approve or disapprove within thirty (30) working days after receipt thereof plans and specifications which have been submitted to it. One set of plans and

specifications, with the ACC'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 ACC's files.

In the event that the ACC shall fail to approve or disapprove the plans, specifications and other information within thirty days after receipt thereof by the ACC, 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 this Amended Covenants.

The ACC shall have the right and power to disapprove any plans, specification or details submitted to it, if the ACC shall find that the plans and specifications are not in accord with all provisions of this Amended Declaration, or if a design or color scheme submitted is not in harmony and accord with the Gardens Subdivision, or surrounding homes, or if the plans and specifications are incomplete. The ACC shall have the right to consider the impact of proposed Improvements upon the views from other Lots, but the ACC 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 the 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 ACC will not constitute a waiver of the Amended Declaration if they violate the Amended Declaration upon the completion of construction.
- f. Each Owner acknowledges that the members of the ACC will change from time to time and that interpretation, application, and enforcement may vary accordingly. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the rights to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.
- g. This Article shall not apply to improvements to the Common Area by or on behalf of the Association.

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 Nori valley community, and to preserve the visual harmony of the Gardens 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 me, but shall be consistent with the purpose stated herein. The ACC 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 Amended Declaration, the provisions of this Amended Declaration shall prevail. The Design Guidelines for initial construction in the Gardens Subdivision are as follows:

- a. **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. The ACC shall review all plans and specs prior to construction.
- b. **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.
- c. **Exterior Colors:** The ACC shall establish a color palette which shall be limited to subtle earth tones.
- d. **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 ACC, consist of less than 15% of the total roof surface. Metal roofs shall be permitted upon acceptance of the ACC.
- e. **Yard Walls:** Yard walls shall consist of courtyard designs and shall be stucco surfaced in the same color as the house.
- f. **Driveway Color and Materials:** Driveways may be constructed of "crusher fines" materials with colors of natural gray or light brown, as well as concrete, brick, stone, or other hard surface materials approved by the ACC. Asphalt or "black top" driveways shall not be permitted.
- g. **Rooftop Mechanical Equipment:** Rooftop and ground mechanical equipment should be placed to minimize view from the streets and neighbors.
- h. **Landscaping Requirements:** Landscaping shall conform to City of Albuquerque Ordinance entitled, "Water Conservation Landscaping and Water Waste", as amended, 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.
- i. **Off-Street Parking:** Four (4) or 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 Liability

Neither the ACC, the Board, nor any member thereof shall be liable to the Association or to any Owner or potential 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; or
- c. The development or manner of development of any property within the Gardens Subdivision..

Without in any way limiting the generality of the foregoing, the ACC, 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.

Section 8.05 Enforcement.

Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board, Owner(s) shall, at their own cost and expense, remove such structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board or its designees shall have the right to enter the Lot, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefited Lot, along with any attorneys' fees and costs, may be assessed against the benefited Lot and collected as a Specific Assessment.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded by the Board for the Gardens Subdivision, subject to the notice and hearing procedure contained in the By-Laws. In such event, neither the Association, its officers, nor directors shall be held liable to any Person for exercising the rights granted by this paragraph.

In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the ACC.

ARTICLE 9 PROTECTION OF SECURITY INTERESTS

Section 9.01 Application of Assessments to Mortgagees.

The liens created under the Amended Declaration 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.

Upon notice of an Eligible Mortgagee's identity and address, the Association may 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. Should Eligible Mortgagee not give notice of identity and address for said Notice to the Association, the Association is released from its responsibility to give notice of any delinquency.

Section 9.03 Limitation of Enforcement Against Mortgagee.

No violation by an Owner of the Amended Declaration or enforcement of the Amended Declaration 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 Amended Declaration shall be effective against any Owner whose title is acquired by foreclosure sale, sale, deed upon death sale, voluntary conveyance, or otherwise.

Section 9.04 Rights of Mortgagee to Information

A mortgagee shall, upon written request, be entitled to inspect the Amended 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 Amended Declaration.

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

Section 9.06 Collection of Assessments.

The Mortgagees shall be under no obligation to collect assessments.

ARTICLE 10
MISCELLANEOUS PROVISIONS

Section 10.01 Amendment or Repeal: Duration

- a. The Amended Declaration and any provisions thereof which are in effect with respect to all or part of the Gardens 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 Amended 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.

- b. All of the provisions of this Amended Declaration shall continue and remain in full force and effect at all times with respect to all property, and each part thereof, included within the Gardens 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 this Amended Declaration shall terminate if, within one (1) year prior to December 31, 2045, there shall be recorded an instrument directing the termination of this Amended Declaration signed by two-thirds (2/3) of the Owners of record title. This Amended Declaration and any modifications thereto in effect immediately prior to the expiration date shall, subject to the provisions of Section 10.01a., 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 this Amended Declaration is terminated as set forth in this Section. The right of access to the Lots over the private Street shall be in perpetuity.
- c. The right of access to the Lots may not be amended or terminated without the unanimous consent of the Lot Owners.

Section 10.02 Enforcement: Non-Waiver: No Forfeiture

- a. The Gardens Subdivision is a single subdivision, and this Amended Declaration combines Units I and Units III into one Property for the purposes of this Amended Declaration. All Lots in the Gardens Subdivision are served by private streets and access to the Gardens Subdivision. It is the desire of the Association that The Gardens Subdivision be developed in accordance with a common plan, design, and scheme. This Amended-Declaration should be construed and interpreted so as to enforce the common plan, design, and scheme for the entire Gardens Subdivision.
- 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 Amended Declaration upon other Owners, or upon any property within the Gardens Subdivision.
- c. 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 Amended Declaration upon the Association.
- d. Every act or omission whereby any restriction, condition, or covenant of the Amended Declaration 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 10. 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.

- e.
- f. Each remedy provided for in the Amended Declaration is cumulative and not exclusive.
- g. The failure to enforce the provisions of any limitation, restriction, covenant, condition, obligation, lien, or charge of the Amended Declaration shall not constitute a waiver of any right to enforce any such provision or any other provision of the Amended Declaration.
- h. No breach of any of the provisions of the Amended Declaration shall cause a 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 provisions of the Amended Declaration.

Section 10.03 Construction: Compliance with Laws: Severability: Singular and Plural: Titles

- a. All of the limitations, restrictions, covenants, and conditions of the Amended Declaration shall be liberally construed, together, to promote and effectuate the beneficial operation of the Gardens Subdivision,
- b. No provision of the Amended Declaration shall be construed to excuse any person from observing any law or regulation of any governmental body having jurisdiction over such person or the Gardens Subdivision.
- c. Notwithstanding other provisions in this Section, the limitations, restrictions, covenants, and conditions of the Amended Declaration 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 Amended Declaration, 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 Amended Declaration. Any numbered or lettered subdivision of a Section is referred to as "subsection" or "subsections" and any indented portion of this Amended Declaration which is unnumbered and unlettered shall be referred to as "Paragraph".

Section 10.04 Lot Splitting: Consolidation

- a. No Lot within the Gardens Subdivision shall be split unless the Board shall have given its

written consent.

- b. No two or more lots within the Gardens 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 Association or the consolidation of two or more Lots into one Lot by Association.
- 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 10.05 Obligations of Owners: Avoidance: Termination

- a. No Owner, through the abandonment of his Lot, may avoid the burdens or obligations imposed on him by this Amended Declaration 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 this Amended Declaration, 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 Amended Declaration following the date of such termination.

Section 10.06 No Partition or Severance of Interests

There shall be no partition or severance of any Lot, from the Gardens Subdivision, the Board, and the Association and Owners shall not seek to partition or sever any part of a Lot from the Gardens Subdivision, nor shall they have any right to maintain an action for judicial partition in connection with the Gardens Subdivision unless such right is expressly given by the Amended Declaration. 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 Amended Declaration. No owner shall sever his Lot from its interest in the Association. No Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Garden Subdivision without the Board's review and written consent. Any attempted recordation without each such consent shall result in such instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the President of the Association.

Section 10.07 Notices, Documents: Delivery

Any notice or other document permitted or required by the Amended Declaration to be delivered may be delivered either personally, by email, 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 to the address as it appears in the Bernalillo County Assessor's office.

Section 10.08 Ownership of Property

All funds and facilities provided for by the Amended Declaration 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 Gardens 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 this Amended Declaration 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 Common Expense assessments 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 10.09 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 this Amended Declaration; 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.

Certified on this date, April 1, 2022 by

Debbie Smith

Debbie Smith

President, Gardens HOA, INC

Shirley Hosler

Shirley Hosler

Secretary, Gardens HOA, INC

STATE OF NEW MEXICO, COUNTY OF BERNALILLO

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME
ON ^{11TH} ~~2ND~~ DAY OF APRIL, 2022, BY DEBBIE
SMITH & SHIRLEY HOSLER.

LINDA M ROE

MY COMMISSION EXPIRES 12/28/2025

NAME OF NOTARY

[Signature]

STATE OF NEW MEXICO
NOTARY PUBLIC
LINDA M ROE
Commission Number 1072338
My Commission Expires December 28, 2025