

## BYLAWS

### OF

#### THE GARDENS, INC. HOMEOWNERS ASSOCIATION An Arizona Non-Profit Corporation

### ARTICLE I

#### General Provisions

**1.1 Purpose.** The nonprofit corporation has been formed for the purpose of serving as the Homeowners Association for **THE GARDENS** (hereinafter called the "Regime"), a horizontal property regime in accordance with the terms of a Declaration of Horizontal Property Regime and Declaration of Covenants, Conditions and Restrictions recorded with the County Recorder of Maricopa County, Arizona, at Docket 14727, page 0362 et seq. (such document as hereinafter amended and in effect from time to time being hereinafter called the "Declaration").

**1.2 Name.** The name of this non-profit corporation is "The Gardens, Inc. Homeowners Association" ("Association").

**1.3 Principal Office.** The principal office of this Association shall be located at 4015 N. 78<sup>th</sup> Street #144, Scottsdale, AZ 85251 or such other place as the Association may designate from time to time in accordance with the Arizona statutes governing nonprofit corporations, but meetings of members and directors may be held at such other place within the State of Arizona as may be designated by the Board of Directors.

**1.4 Definitions.** Terms used herein, which are defined in the Declaration, shall have the same meanings as in the Declaration.

**1.5 Conflicting Provisions.** In case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control. In case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

**1.6 Corporate Seal.** The Association may have a corporate seal in a form approved by the Board.

**1.7 Designation of Fiscal Year.** The fiscal year of the Association shall begin on the 1<sup>st</sup> day of January and end on the 31<sup>st</sup> day of December of every year.

**1.8 Books and Records.** The books and records of the Association shall be available for inspection by any member during reasonable business hours. Copies may be purchased at reasonable cost. The books and records may be withheld from

disclosure for any of the reasons specified in A.R.S. 33-1258, or any other applicable law.

**1.9 Amendment.** These Bylaws may be amended by a majority vote of the members present in person or by proxy at which a quorum is present, where notice of the proposed amendment was included in the notice of the meeting. No amendment may be contrary to the Declaration or the Articles of Incorporation.

**1.10 Indemnification.** To the extent it has the power to do so under the Arizona Nonprofit Corporation Act, A.R.S. 10-3101 et seq. or any other applicable provision, the Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of the Association, by reason of the fact that he/she is or was a member, director, officer, employee or agent of the Association against expenses, including attorney's fees and against judgments, fines and amounts paid in settlement actually and reasonably incurred by him/her in connection with such action, suit or proceeding if he/she acted in good faith and in a manner he/she reasonably believed to be in or not opposed to the best interest of the Association and had no reasonable cause to believe his/her conduct was unlawful. Indemnification of any person shall be made in accordance with the procedures set forth in the Arizona Nonprofit Corporation Act and shall be governed by A.R.S. 10-2305 C, as this statute may be amended from time to time.

**1.11 Open Meetings.** Except in those circumstances enumerated under A.R.S. 33-1248 or other applicable law, all meetings of the Association and the Board of Directors shall be open to all members to attend and listen. Members who are not part of the Board, however, shall not be permitted to participate in any deliberation or discussion unless expressly authorized by a vote of a majority of a quorum of the Board. There shall be time allotted in each meeting for member participation. Written notice of any regular or special meeting of the Board need not be given to each member before every meeting as long as notice of the meeting is provided.

## ARTICLE II

### Meetings of Members

**2.1 Annual Meeting.** An annual meeting of the members of the Association shall be held on the 1<sup>st</sup> Tuesday in March at such time and place as determined by the Board. If the day of the annual meeting of the members is a legal holiday, the meeting will be held on the subsequent day.

**2.2 Special Meetings.** Special meetings of the members may be called at any time by the President of the Board or upon written request signed by members having at least ten percent (10%) of the total authorized votes in the Association. A.R.S. 10-3702.

**2.3 Notice of Meetings.** Written notice of each meeting of the members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting by mailing a copy of each notice, postage prepaid, at least fourteen (14) days, but not more than fifty (50) days, prior to the meeting to each member entitled to vote at that meeting addressed to the member's address last appearing on the books of the Association. The notice shall specify the place, day and hour of the meeting and, in the case of a special meeting, the purpose of the meeting. By attending a meeting, a member waives any right he/she may have had to object to the meeting on the basis that the proper notice of the meeting was not given in accordance with these Bylaws or the laws of the State of Arizona.

**2.4 Quorum and Voting.** Except as otherwise provided in the Articles or the Declaration, the presence in person or by proxy of members entitled to cast fifty-one percent (51%) or more of the total number of eligible votes in the Association shall constitute a quorum at all duly called and noticed meetings of the members. If a quorum is not present at any meeting, the members eligible to vote at the meeting shall have the power to adjourn the meeting and to reschedule the meeting to another date and time, within 30 days, with notice to the members. At any subsequent meeting, the presence in person or by proxy of members entitled to cast at least fifty-one percent (51%) of the total number of eligible votes in the Association shall constitute a quorum for the subsequent meeting.

Except as otherwise provided in the Articles or the Declaration, any action that must have approval of the members of the Association before being undertaken shall require the vote of fifty-one percent (51%) or more of the members present (in person or proxy). Whenever the term "eligible" votes is used in these Bylaws or the other project documents, the term describes those members that are permitted to vote on the matter and whose voting privileges have not been suspended or revoked. Members

must be current in all assessments through the end of the preceding month before they are eligible to vote on such matters.

Members may cumulate their votes for directors, by multiplying the number of votes the members are entitled to cast by the number of directors for whom they are entitled to vote, and each member may cast the whole number of votes to which he/she is entitled for one candidate or distribute such votes in any manner he/she chooses among two or more candidates. However, cumulative voting for directors shall not be used unless the meeting notice states conspicuously that cumulative voting is authorized or a member gives notice during the meeting and before the vote is taken of the member's intent to cumulate votes during the meeting, and if one member gives this notice all other members participating in the election are entitled to cumulate their votes without giving further notice. A.R.S. 10-3725

**2.5 Proxies.** At all meetings of the members, a vote may be cast in person or by proxy. A proxy shall be duly executed in writing and filed with the Secretary prior to the commencement of the meeting for which the proxy was given. No proxy shall in any event be valid for a period in excess of three hundred sixty five (365) days after the execution of the proxy.

**2.6 Eligibility.** The membership of the Association shall consist of all owners of units. Membership in the Association shall be mandatory and no owner during his/her ownership of a unit shall have the right to relinquish or terminate his/her membership in the Association. By accepting a deed to the unit or otherwise becoming an owner, each owner enters into a contract with the Association and the other owners whereby the owner becomes a member of the Association and is bound by the terms of the Declaration, Articles of Incorporation and Bylaws, all as may from time to time be amended.

**2.7 Joint Ownership.** When more than one person is the owner of any unit, all such persons shall be members. The vote for such unit shall be exercised as they, among themselves, determine; however, in no event shall more than one (1) vote be cast with respect to any unit. The votes for each unit shall be cast as a whole unit and fractional votes shall not be allowed. In the event that joint owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any owner casts a ballot representing a certain lot, it will thereafter be conclusively presumed for all purposes that the owner was acting with the authority and consent of all other owners of the same lot. In the event more than one ballot is cast for a particular lot, none of the votes shall be counted and the votes shall be deemed void.

**2.8 Suspension of Voting Rights.** In the event any owner shall be in arrears in the payment of any assessments or other amounts due under any provisions

of the Declaration for a period of thirty (30) days, the owner's right to vote as a member of the Association shall be suspended and shall remain suspended until all payments, late charges and all attorney's fees incurred are brought current and kept current.

## ARTICLE III

### **Board of Directors**

**3.1 Number.** The affairs of this Association shall be managed by a Board of Directors composed of three (3) to five (5) persons, all of whom must be members of the Association.

**3.2 Term of Office.** The term of office for each director shall be one (1) year.

**3.3 Removal and Resignation.** At any annual or special meeting of the members duly called, any one or more of the directors comprising the Board of Directors may be removed from the Board with or without cause by members having two-thirds (2/3) or more of the votes of the total members of the Association.

Any director may resign at any time by giving written notice to the Board, the President or the Secretary and the resignation shall be effective as of the date of receipt or at any later time specified in this notice.

Any director failing to attend three (3) consecutive regular or special meetings of the Board without notification to the President shall be removed from the Board of Directors. Vacancies on the Board other than directors removed by the membership shall be filled by a majority vote of the remaining directors at the first regular or special meeting of the Board held after the occurrence of the vacancy, even though the directors present at the meeting may constitute less than a quorum. Each person so appointed shall serve the unexpired portion of the prior director's term.

**3.4 Compensation.** No director shall receive compensation for any service he/she may render to the Association. However, any director may be reimbursed for his/her actual expenses incurred in the performance of his duties.

**3.5 Action Taken without a Meeting.** The directors shall have the right to take any reasonable action without holding a formal meeting by obtaining the written consent of all the directors. Any such written consent shall be filed with the minutes of the proceedings of the Board. Any homeowner(s) directly impacted by the action to be

taken without a formal meeting of the Board shall be contacted by a member of the Board prior to action being taken.

**3.6 Regular Meetings.** Regular meetings of the Board shall be held at the time and place determined from time to time by the Board. Regular meetings shall be held at least once during each fiscal year.

**3.7 Special Meetings.** Special meetings of the Board of Directors may be called by the President with three (3) business days notice to each director, given in writing, by hand delivery or telecopy except in case of emergency, in which case the members of the Board shall be given as much notice as is reasonably practical. This notice shall state the time, place and purpose of the special meeting. Special meetings of the Board shall be called by the President or Secretary in like manner and on like notice on the written request of at least two (2) directors. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting except when a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

**3.8 Quorum of Directors.** A majority of the directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as an act of the Board.

**3.9 Powers and Duties.** The Board shall have all of the powers and duties necessary for the administration of the affairs of the Association and may exercise all rights and powers granted to the Association under the Declaration and/or other project documents and may perform all acts and make all decisions that are not required by the project documents to be exercised or performed by the members. Specifically, but without limitation of the previous sentence, the Board shall have the following powers and duties:

Open bank accounts on behalf of the Association and designate the signatories of the Association;

In the exercise of its sole discretion, enforce by legal means the provisions of the project documents including, without limitation, the collection of any assessments;

Make, or contract for the making of repairs, additions to, improvements to or alterations of the common areas, in accordance with the project documents, after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings;

Designate, hire and dismiss the personnel necessary to complete the obligations of the Association and provide services for the members and, where appropriate, provide for the compensation of such personnel and for the purchase of equipment, supplies and material to be used by such personnel in the performance of their duties;

Provide for the operation, care, upkeep and maintenance of all areas within the project that the Association is required to maintain;

Prepare, amend and adopt an annual budget for the Association prior to the commencement of each fiscal year;

Adopt and publish rules and regulations governing the use of the common areas by the members and family members, guests, lessees and invitees within the project and establish penalties for infraction in accordance with the provisions of A.R.S. 33-1242 or other applicable law;

Suspend the voting rights of a member during any period in which the member is in default in the payment of any assessment or other amounts due under the terms of the Declaration and/or the other project documents for a period of thirty (30) days;

Declare the office of a member of the Board to be vacant in the event such member shall be absent from three (3) consecutive unexcused regular or special meetings of the Board;

Exercise, on behalf of the Association, all powers, duties and authority vested in or delegated to the Association and not reserved to the members by other provisions of the Declaration and/or other project documents;

Employ, hire and dismiss such employees as they deem necessary and to describe their duties and compensation;

Hire or employ a manager, whether as an independent contractor or as an employee, to perform all services and duties as the Board may direct, or dismiss or terminate such manager;

Keep or cause to be kept a complete record of all its acts and corporate affairs and to present a statement of all corporate affairs to the members at the annual meeting of the members or at any special meeting when the statement is requested in writing sufficiently in advance of the meeting by any member entitled to vote;

Fix the amount of the annual and special assessments against each unit and send written notice of each assessment to every owner subject to an assessment. Assess late charges for any late payments, record a notice and claim of lien against any

unit for which assessments are not paid and enforce through foreclosure or any other permitted action, the Association's lien or the personal obligation of the owner to pay assessments;

Issue or cause an appropriate officer to issue, upon demand, to any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board of Directors for the issuance of these certificates. If a certificate states an assessment has been paid, the certificate shall be conclusive evidence of payment;

Procure and maintain commercial general liability, hazard, directors and officers, fidelity bond and other insurance coverage in the amounts as required by the Declaration or as determined by the Board of Directors;

Institute, defend and intervene in any litigation or administrative proceedings in its own name or on behalf of the owners;

With the approval of eighty percent (80%) of the votes in the association, borrow money, mortgage, pledge, deed in trust or grant a security interest in the common areas provided that the provisions of A.R.S. 33-1252 and any other applicable law are met within its entirety;

Enter into and perform contracts of any kind incidental to the performance of the Association's duties under the project documents;

Own, operate and maintain all other property of the Association.

**3.10 Managing Agent.** The Board may employ for the Association and the project a "Managing Agent" at a compensation established by the Board. The Managing Agent shall perform such duties and services as the Board shall authorize, including, but not limited to, all of the duties listed in the project documents. The Board may delegate to the Managing Agent all of the powers granted to the Board or the officers of the Association by the project documents other than the power to (I) adopt the annual budget or to levy assessment (II) to adopt, repeal or amend Association Rules (III) to designate signatories on Association bank accounts (IV) to borrow money, mortgage or pledge the property on behalf of the Association (V) to acquire real property. Any such agreement for professional management of the Association shall provide for termination by either party without cause and without payment of a termination fee upon thirty (30) days written notice. Any agreement for professional management of the Association shall not exceed a one (1) year term; however, this agreement can be renewed annually.



## ARTICLE IV

### Officers and their Duties

**4.1 Enumeration of Officers.** The principal officers of the Association shall be the President, Vice-President, Secretary and Treasurer all of whom shall be elected by the Board. All officers must be members of the Board.

**4.2 Election of Officers.** The election of officers shall take place on or before the first meeting of the Board following each annual meeting of the members.

**4.3 Term.** The officers of the Association shall be elected annually by the Board and each shall hold office for one (1) year unless he/she shall sooner resign, or shall be removed or otherwise be disqualified to serve.

**4.4 Special Appointments.** The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as the Board may, from time to time, determine.

**4.5 Resignation and Removal.** Any officer may be removed from office with or without cause by a majority vote of the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later date specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**4.6 Vacancies.** A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he/she replaces.

**4.7 Multiple Offices.** Any two or more offices may be held simultaneously by the same person except the offices of President and Secretary.

**4.8 Powers and Duties.** To the extent such powers and duties are not assigned or delegated to a Managing Agent pursuant to these Bylaws, the powers and duties of the officers shall be as follows:

**President.** The President shall be the chief executive officer of the Association; shall preside at all meetings of the Board or the members; shall see that orders and resolutions of the Board are carried into effect; and have general and active management of the business of the Association;

**Vice-President.** The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act and shall exercise and discharge such other duties as may be required of him by the Board;

**Secretary.** The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses and shall perform such other duties as required by the Board. The duties of the Secretary can be assigned to the Managing Agent if so directed by the Board;

**Treasurer.** The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds for appropriate Association purposes as set forth in the project documents; keep proper books of accounts; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting; and deliver a copy of each to the members and, in general, perform all the duties incident to the office of Treasurer. The duties of the Treasurer can be assigned to the Managing Agent if so directed by the Board.

## **ARTICLE V**

### **Deposits**

**5.1 Deposits.** Each owner shall pay to the Association at the time such owner purchases a unit a sum equal to three (3) times the then established and existing monthly common element assessments for such unit. Said sum may be used by the Association as working capital and shall be refunded to the owner upon the sale or transfer of their unit, less any amounts then due from said owner to the Association.

## ARTICLE VI

### Architectural Control

**6.1 Architectural Committee.** The Board shall appoint the members of the Architectural Committee. No member of the Architectural Committee is required to be an architect or to meet any other particular qualifications. Members of the Architectural Committee need not be, but may be, a member of the Board, an officer of the Association or a member. The Board may determine the number of persons on the Architectural Committee, but the number of persons must always be an odd number. The Board has the power to remove the members of the Architectural Committee, with a majority vote, at any time.

**6.2 Liability.** So long as he/she had acted in good faith on the basis of information actually possessed, neither the Architectural Committee nor any member of the Architectural Committee nor the Board of Directors nor any member of the Board nor any officer of the Association shall be liable to the Association, any owner or to any other party for any damage, loss or prejudice suffered or claimed on account of: (I) the approval or disapproval of any plans, drawings or specifications, whether or not defective; (II) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; (III) the execution and filing of any estoppel certificate, whether or not the facts in the estoppel certificate are correct or (IV) any act or failure to act by the Association, Board or Architectural Committee.

**6.3 Terms of Office.** The term of office for members of the Architectural Committee shall be a period of one (1) year or until the appointment of a successor. Any new member appointed to replace a member who has resigned or been removed shall serve the member's unexpired term. Any members who have resigned, been removed or whose terms have expired may be reappointed.

**6.4 Resignations.** Any member of the Architectural Committee may resign at any time upon written notice to the Board.

**6.5 Vacancies.** The Board shall fill vacancies on the Architectural Committee, however caused. A vacancy or vacancies on the Architectural Committee shall be deemed to exist in case of death, resignation or removal by the Board of Directors.

**6.6 Duties.** It shall be the duty of the Architectural Committee to consider and act upon any and all proposals or plans submitted to it pursuant to the terms of the Declaration, to adopt Architectural Committee rules, to perform other duties delegated to it by the Board and to carry out all other duties imposed upon it by the Declaration.

**6.7 Meetings and Compensation.** The Architectural Committee shall meet from time to time as necessary to perform its duties. The vote or written consent of a majority of the members of the Architectural Committee, at a meeting or otherwise, shall constitute the act of the Architectural Committee. Members of the Architectural Committee shall not be entitled to compensation for their services.

**6.8 Time of Approval.** In the event the Architectural Committee fails to approve or disapprove any application for approval by a member within thirty (30) days after its receipt of the application, the application shall be deemed approved and further approval will not be required.

I certify that the foregoing Bylaws were duly adopted by the members of the Gardens Homeowners Association on October 4, 1999.

William Boyde  
President

Recordation Date: October 11, 1999

Attested to: Darin M. Switzer  
Secretary



224-42

ADDRESS  
4000 N. 1ST  
SCOTTSDALE, ARIZONA

7-27-68

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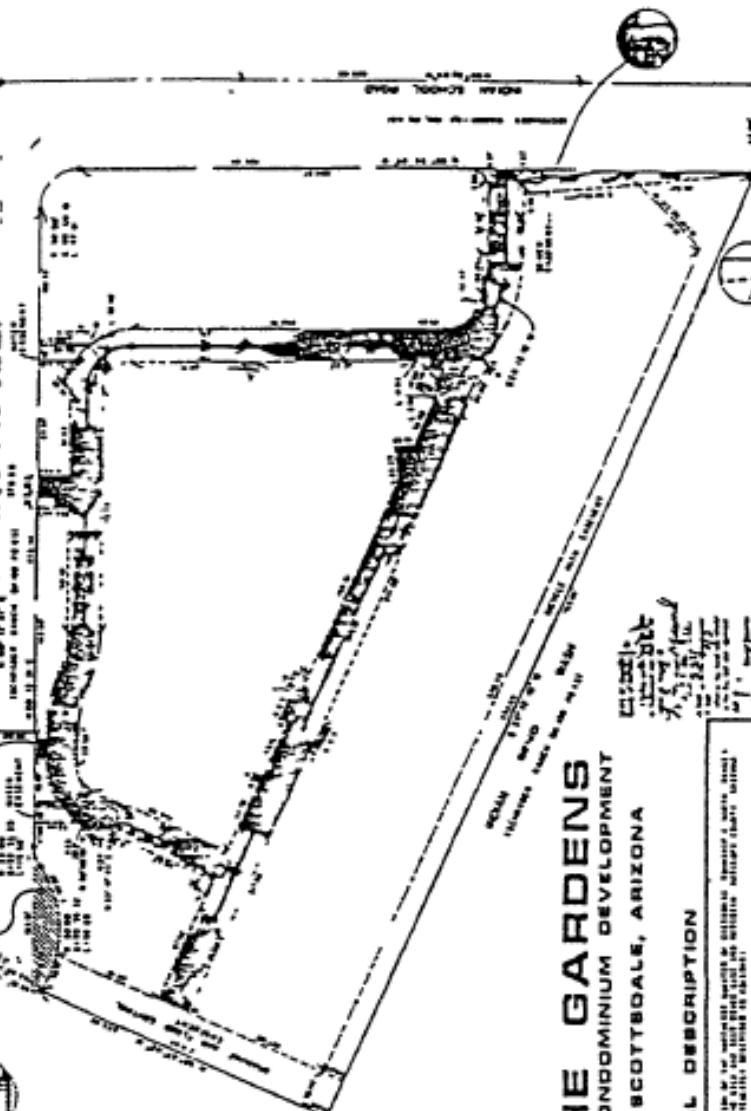
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# THE GARDENS A CONDOMINIUM DEVELOPMENT SCOTTSDALE, ARIZONA

**LEGAL DESCRIPTION**

That portion of the unincorporated territory of Scottsdale, Arizona, known as "THE GARDENS", being more particularly described as follows: ...

**LEGEND**

- 1. EASEMENT FOR THE WATER MAIN
- 2. EASEMENT FOR THE GAS MAIN
- 3. EASEMENT FOR THE SEWER MAIN
- 4. EASEMENT FOR THE ELECTRIC MAIN
- 5. EASEMENT FOR THE TELEPHONE MAIN
- 6. EASEMENT FOR THE CABLE MAIN
- 7. EASEMENT FOR THE FLOOD CONTROL
- 8. EASEMENT FOR THE FLOOD CONTROL
- 9. EASEMENT FOR THE FLOOD CONTROL
- 10. EASEMENT FOR THE FLOOD CONTROL

**CURVE DATA**

NO.	CHORD	ANGLE	ARC	AREA	PERCENT
1	100.00	90.00	157.08	15.71	1.57
2	100.00	90.00	157.08	15.71	1.57
3	100.00	90.00	157.08	15.71	1.57
4	100.00	90.00	157.08	15.71	1.57
5	100.00	90.00	157.08	15.71	1.57
6	100.00	90.00	157.08	15.71	1.57
7	100.00	90.00	157.08	15.71	1.57
8	100.00	90.00	157.08	15.71	1.57
9	100.00	90.00	157.08	15.71	1.57
10	100.00	90.00	157.08	15.71	1.57

**DEDICATION**

I, the undersigned, do hereby dedicate to the public use of the City of Scottsdale, Arizona, the following described property: ...

**MORTGAGEE**

THE CITY OF SCOTTSDALE, ARIZONA

**ACKNOWLEDGMENT**

I, the undersigned, do hereby acknowledge the foregoing mortgage as my own free act and deed.

**CERTIFICATE**

I, the undersigned, do hereby certify that the foregoing is a true and correct copy of the original as recorded in the public records of the County of Maricopa, Arizona.

**APPROVAL**

By: *[Signature]*  
City Clerk

**THE GARDENS**

MAP OF REVISION

DATE: 7-27-68

SCALE: 1" = 100'

BY: [Signature]