

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
VINTAGE GARDENS HOMES II & III, INC.**

WHEREAS, the Amended and Restated Declaration of Covenants, Conditions, and Restrictions of Vintage Gardens II&III is on file within the Oklahoma County Clerk's office at book RE11601, pages 1084-1237 (the Declaration) for the Vintage Gardens II&III Addition located in the City of Oklahoma City, Oklahoma County, Oklahoma. (the Addition)

WHEREAS, the Declaration is, and this Amendment shall be pressed against each Lot in every Block to the Addition, having a legal description of:

ALL LOTS AND BLOCKS TO VINTAGE GARDENS II & VINTAGE GARDENS III ADDITIONS, EACH TO OKLAHOMA COUNTY, STATE OF OKLAHOMA ACCORDING TO THE RECORDED PLATS THERETO.

WHEREAS, the Declaration provides that the owners of lots within the addition may amend the declaration.

WHEREAS, owners of no less than 60% of all the interests in the lots adopted this amendment at a meeting after proper notice.

NOW THEREFORE, the following revision to the Declaration is 1) adopted by the Owners; 2) to run with the land and each Lot within the Addition; 3) for the protection of the property values, the health, the welfare, and safety of the Owners; 4) deemed reasonable in both procedure and substance by the Owners; 5) shall be binding on the Owners, their heirs, successors and those having any right, title, or interest to the lots and shall inure to the benefit of each owner, and 6) may be enforced by the Owners and the Homeowners Association of the Vintage Gardens Homes II&III, Inc.

ARTICLE I

DEFINITIONS

Section 1. "Assessment Schedule" shall mean the proportion of Common Area expenses assessed for each Lot which is set forth on Exhibit "B" attached hereto and made a part hereof.

Section 2. "Association" shall mean and refer to The Homeowners Association of The Vintage Gardens Homes II & III, Inc., a nonprofit Oklahoma corporation.

Section 3. "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Association, duly elected pursuant to the Bylaws of the Association.

Section 4. "Bylaws" shall mean the Bylaws adopted by the Board of Directors of the Association as amended from time to time.

Section 5. "Common Area" shall mean that property so described on the recorded plat of Vintage Gardens Homes II & III, and, in addition, all real property owned by the Association for the common use and enjoyment of the Owners. The Common Area owned by the Association is that reflected in said Plat,

together with all facilities and improvements placed thereon, and any and all interest which the Association may acquire in adjacent lands, any easements granted to the Association and the Owners and, in general, all apparatus and installations existing for common use, and all other parts of the properties necessary or convenient to its existence, maintenance and safety, but not including Lots or Residences as herein described.

Section 6. "Common Area Expenses" shall mean the prorata share of the general common expenses including, but not limited to, the Common Area maintenance, repairs, utilities, management costs, maintenance, and operation of Drainways, reserves, capital improvements, assessments, and all other charges which the Association may assess or levy upon the Owners in accordance with this Amended and Restated Declaration.

Section 7. "Declaration" shall mean the Declaration of Covenants, Conditions and Restrictions of Vintage Gardens Homes II & III, as same may be amended from time to time.

Section 8. "Detached Structure" shall mean any covered or enclosed structure on a Lot not attached to the main residence which it serves, and shall include, but not be limited to, carports, garages, outbuildings, tool sheds, kennels, cabanas, pergolas, greenhouses, and any temporary structures.

Section 9. "Drainway" shall mean and refer to all channels, watercourses, draws, depressions, and ditches, whether or not any of these shall constitute recognizable ravines or gorges of any size, and whether natural or artificial, over and in which surface water flows or is meant to flow.

Section 10. "Residence" shall mean and refer to the single family attached or detached residence constructed or to be constructed on each Lot and any replacement thereof, including any patio, fence and/or wall, along with the real property underlying the same, as described in the deed to such Residence.

Section 11 "Residence Exterior" shall mean and refer to the roof, foundation, steps, footings, patios, fences, retaining walls, drainways, and outer surface of exterior walls of the Residence, including, without limitation, those portions which serve more than one Residence.

Section 12. "Manager" shall mean any duly authorized property manager who may be employed or appointed by the Association to implement the duties and responsibilities incumbent upon the Association.

Section 13. "Owner" shall mean and refer to the record Owner of any Lot and/or Residence, whether one or more persons or entities,

Section 14. "Party Wall" shall mean the entire wall or fence, including the roof and foundations thereof which is built as a part of the original improvements on a Lot and is intended to be placed on the boundary line between adjoining Residences or Lots.

Section 15. "Person" shall mean an individual, corporation, partnership, association, trust or other legal entity or any combination thereof.

Section 16. "Properties" shall mean and refer to all Common Areas, Lots, Residences, and all improvements thereon and thereto which constitute or shall constitute the entire project herein created, known as Vintage Gardens Homes II & III, Inc.

Section 17. "Rules" shall mean the Rules and Regulations adopted by the Association as amended from time to time.

Section 18. "Amended and Restated Declaration" shall mean this document titled the Amended and Restated Amendment to Declaration of Covenants, Conditions and Restrictions of Vintage Gardens Homes II & III, Inc.

Section 19. "Front Yard" means any portion of the yard adjoining, adjacent to, and comprising the front building line and the front door of a Lot's Residence.

Section 20 "Lot" shall mean a parcel of land owned or meant to be owned by an owner. The lots are designated for the Association in the plats filed with the County of Oklahoma.

Section 21. "Street" shall mean any street, cul-de-sac, lane, drive, way, avenue, boulevard, court, circle, place, manor, terrace, or other road intended for automobile traffic (except driveways) as shown on any recorded subdivision plat of the Properties.

ARTICLE II

SCOPE OF DECLARATION

Section 1. PROPERTY SUBJECT TO DECLARATION.

The Owners by executing their respective consent to this Amended and Restated Declaration and the recording so such consent expressly intends to and by the recording of this Amended and Restated Declaration do hereby subject the Properties to the provisions of this Amended and Restated Declaration, together with certain variances granted by the City of Oklahoma City.

Section 2. CONVEYANCES SUBJECT TO DECLARATION; REFERENCES IN DEEDS, ETC.

All easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits and privileges which are granted, created reserved or declared by the Declaration and this Amended and Restated Declaration shall be deemed to be covenants appurtenant, running with the land, and shall at times inure to the benefit of and be binding upon any person having at any time an interest or estate in the Properties, and their respective heirs, successors, representatives or assigns. Reference in any deed of conveyance, lease, mortgage, deed of trust, other evidence of obligation or any other instrument to the provisions of the Declaration, or this Amended and Restated Declaration shall be sufficient to create and reserve all of the easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits and privileges which are granted, created, reserved or declared in the Declaration, or this Amended and Restated Declaration as though fully and completely set forth in their entirety in any such document.

Section 3. OWNERS' RIGHTS SUBJECT TO THIS AMENDED AND RESTATED DECLARATION.

Each Owner shall own his/her Lot and Residence in fee simple for use as a primary single-family residence, and shall have full and complete dominion thereof, subject to the provisions of this Amended and Restated Declaration.

ARTICLE III

PROPERTY RIGHTS

Section 1. OWNERS' NONEXCLUSIVE EASEMENT OF ENJOYMENT; LIMITATIONS.

Every Owner and his/her immediate family shall have a nonexclusive right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to the Lot of such Owner, subject to the following rights:

- a) Association Rights To Use and To Grant Easements. The nonexclusive right and easement of the Association to make such use of the Properties as may be necessary or appropriate for the performance of the duties and functions which it is obligated or permitted to perform under this Amended and Restated Declaration. The Association, in its sole discretion, may from time-to-time grant easements and rights-of-way on, across, under and over the Common Area to any municipal corporation or public utility company, or other entity providing water, sewer, gas, electricity, telephone, cable television or other similar service to the Properties.
- b) Association Right To Make Rules. The Association shall have the right to make such reasonable Rules regarding the use of the Common Area and facilities located thereon by members and other persons entitled to such use, including, but not limited to, the following:
 - i. Number of Guests. To limit the number of guests of Owners permitted to use any recreational facilities.
 - ii. Admission. To fix reasonable admission or other fees for the use of any recreational facility by the guests of the Owners.
 - iii. Voting and Use Rights Suspension. To suspend the voting rights and the rights of an Owner to use the recreational facilities for any period during which any assessment against his/her Lot and Residence remains unpaid for thirty (30) days, and for any infraction of the Rules.
- c) Borrow Money. The right of the Association, with the prior consent of two thirds (2/3) of the Owners and in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area; provided, however, any mortgage associated with such borrowing shall provide that in the event of a default, the mortgagee's rights thereunder as to any of such Common Area shall be limited to a right, after taking possession thereof, and without changing the character thereof, to charge admission and other fees as a condition to continued enjoyment by the Owners and, if necessary, to open the enjoyment of such properties to a wider public until the mortgage debt is satisfied, whereupon the possession of such properties shall be returned to the Association and all rights of the Owners shall be fully restored.
- d) Protect Property. The right of the Association to take such steps as are reasonably necessary to protect the Properties against foreclosure; and,
- e) Other Reserved Rights. The rights reserved in this Amended and Restated Declaration to the Owners, other persons, and the Association.

Section 2. DELEGATION OF USE; NONRESIDENT OWNER.

Any Owner may delegate his/her right of enjoyment of the Common Area to the members of his/her family, tenants, guests, or contract purchasers who may reside in the Residence. All such persons shall be subject to the Rules concerning such use. Any Owner not residing in his/her Residence may not use the recreational facilities except as may be provided otherwise by the Rules.

Section 3. LEASE OF RESIDENCE; LEASES IN WRITING AND SUBJECT TO DECLARATION; BREACH HEREIN A LEASE DEFAULT.

The Vintage Gardens Homes II & III, Inc. community is designed as and the Lot Owners intend it to be an owner-occupied community. One purpose of this amended Declaration is to provide reasonable covenants and restrictions relative to the owner-occupancy nature of the Properties. Accordingly, subsequent to the filing date of this amended Declaration all Lots shall be only used as Owner-occupied Lots for the first twelve (12) consecutive months after each transfer of title to such Lot. "Owner-occupied" shall mean a Lot whose occupants are the Owner, the Owner's family by blood, marriage, or adoption within the second degree of consanguinity (e.g., parents, children, grandchildren, or spouse) who occupy the Lot without the payment of rent. This Section shall not apply to a purchase money lender taking title to a Lot due to foreclosure.

Unless otherwise provided, as required by the operation of law, or as may be required by any so-called secondary mortgage market source for the purposes of obtaining purchase money financing for a Lot, no Lot may be rented, leased, let or licensed for less than twelve (12) consecutive months subsequent to the recording date of this Amendment. All leases and rentals shall be in writing, with copies provided to the Association, and shall provide that the lease/rental and tenants are subject to the terms of the Declaration, as amended, the Association's Articles of Incorporation, Bylaws, and the Rules. Only an entire Lot may be leased or rented, not any portions thereof. Any failure of a lessee or renter to comply with the terms of the Declaration, as amended, the Association's Articles of Incorporation, the Bylaws, or the Rules, shall be a default under the lease, enforceable by the Association.

Section 4. HOUSING FOR OLDER PERSONS ACT RESTRICTION.

In addition to the owner-occupancy intent of the Lot Owners and design of the Properties, the Lot Owners intend for the Properties to qualify under applicable law as housing for older persons. 42 U.S.C. § 3607(b)(2)(C) (1988), as *amended*. Therefore, the following shall apply to the Properties:

1. Residences are intended and operated for occupancy by at least one person 55 years of age or older per Residence;
2. At least 80 percent of the occupied Residences shall be occupied by at least one person who is 55 years of age or older;
3. The Association shall publish and adheres to policies and procedures that demonstrate the intent under this Section 4 to operate the Properties as housing for older persons, including the Association's policy for management of the percentages applicable under this Section 4; and

4. The Association shall comply with rules issued by the United States Secretary of Housing and Urban Development for verification of occupancy.

ARTICLE IV

EASEMENTS

Section 1. BLANKET EASEMENTS FOR UTILITIES; FOR POLICE FIRE, ETC.; FOR MAINTENANCE AND REPAIR TO COMMON AREA.

There is hereby created a blanket easement in, on, through, upon, across, over and under all of the Common Area for ingress and egress, installation, replacement, repair and maintenance of all utilities, including, but not limited to, water, sewer, gas, telephone and electricity. By virtue of this easement, it shall be expressly permissible for the electrical and/or telephone company providing service to erect and maintain the necessary poles and other necessary equipment on said Common Area and to affix and maintain electrical and/or telephone wires, circuits, and conditions on, above, across and under the roof and exterior walls of the buildings upon the Common Area. An easement is further granted to all police, fire protection and ambulance personnel, and all similar persons to enter upon the Common Area in the performance of their duties. Further, an easement is hereby granted to the Association to enter in, onto, above, across or under the Common Area and any Lot or Residence to perform the duties of maintenance and repair to the Common Area. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on said Common Area except as approved by the Association. Should any utility furnishing a service covered by the general easement herein provided request a specific easement, the Association may grant such an easement to the Common Area by a separate recorded instrument without conflicting with the terms hereof and without consent of the Owners being required. The easements provided for in this Article shall in no way affect any other recorded easement to said Common Area.

Section 2. EASEMENTS FOR ENCROACHMENTS.

If any part of the Common Area encroaches or shall hereafter encroach upon a Lot adjacent thereto, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Residence unintentionally encroaches or shall hereafter (whether because of reconstruction, settling, shifting or otherwise) encroach upon the Common Area, or upon another Lot, the Owner of that encroaching Residence shall and does have a perpetual easement for such encroachment and for the maintenance of the same- until such time as the encroachment can be eliminated by required repairs, replacement, reconstruction or otherwise.

Section 3. EASEMENTS FOR DRAINAGE.

The Association is hereby granted an easement and right of access in on and through any Lot and Residence for the purposes of maintenance, repair, replacement, or construction of Drainways as it deems necessary in order to promote the best and most reasonable flow of surface water across the Properties. Pursuant to said easement, the Association shall have the right to divert, accentuate or otherwise alter any drainways across any of the Properties.

Section 4. ZERO LOT LINE.

Zero Lot Line shall mean that line where the building limit line, side set back and/or rear set back lines are

the same as Lot lines. Zero Lot Lines are permissible within the Property as long as a distance of at least ten (10) feet exists between buildings.

Section 5. CONSTRUCTION OVERHANG EASEMENT.

Any Owner shall have an easement for maintenance, construction rights and access to the property which adjoins his/hers on the Zero Lot Line side for five (5) feet on the adjoining property, to be exercised only during reasonable hours, unless an emergency exists.

Section 6. ENCROACHMENTS.

With respect to the encroachments which are inherent in planned developments, there are reserved for the benefit of each lot, and Owner thereof, the following easements:

- a) A reciprocal easement appurtenant to and over each contiguous lot, for the purpose of accommodating any encroachment of any Party Wall, Party Fence or overhanging structures.
- b) A reciprocal easement appurtenant to and over each contiguous lot, for the purpose of accommodating any natural settlement of any structures located on any of said lots.

Section 7. EASEMENT DEEMED APPURTENANT.

The easements and rights herein created for an Owner shall be appurtenant to the Lot and Residence of that Owner, and all conveyances and instruments affecting title to a Lot and Residence shall be deemed to grant and reserve the easements and rights as provided herein, as though set forth in said document in full, even though no specific reference to such easements or restrictions appears.

ARTICLE V

USE AND OTHER RESTRICTIONS

Section 1. USE; RESIDENTIAL; NEW CONSTRUCTION.

All of the Properties shall be used for residential purposes and for services, activities and recreational facilities in conjunction with said residential use; for Residences; and for the maintenance and administration of the aforementioned. All structures erected upon the Properties shall be of new construction and none shall be moved from other locations onto the Properties.

Section 2. PROHIBITIONS; WASTE; ALTERATIONS OF COMMON AREA OR RESIDENCE EXTERIOR.

All use and occupancy of the Common Area shall be subject to and governed by the Bylaws and the Rules. No damage or waste shall be committed to the Properties. No Owner shall alter any of the Common Area or any Residence exterior without the prior written consent of the Architectural Control Committee. Nothing shall be done within the Properties which would impair the structural integrity of any improvement located on the Properties.

Section 3. NO IMPERILING OF INSURANCE.

Nothing shall be done within the Properties which might result in an increase in the premiums of insurance obtained for any portion of the Properties or which might cause cancellation of such insurance, except with the prior written consent of the Board of Directors of the Association.

Section 4. NO VIOLATION OF LAW.

Nothing shall be done within the Properties which would be in violation of any statute, rule, ordinance, regulation, permit or validly imposed requirement of any governmental body.

Section 5. NUISANCES; OFFENSIVE ACTIVITY; HAZARDOUS ACTIVITY; DUMPING GROUND; GARBAGE STORAGE AND DISPOSAL.

No noxious or offensive activity shall be carried on upon the Common Area, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood or the Properties. No activity shall be conducted on any part of the Properties which is or might be unsafe or hazardous to any person. No part of the Common Area may be used for a dumping ground for garbage, trash, or other waste, and the same shall be disposed of in a sanitary manner. All equipment for the storage or disposal of garbage, trash, and waste shall be kept in a clean and sanitary condition. Garbage, trash, or waste disposal shall be made in such a manner as may be established by the Association, and the burning of garbage, trash or waste in outside incinerators, barbecue pits or the like is strictly prohibited.

Section 6. SIGNS.

No signs, billboards, or advertising devices of any nature, except "for sale" signs conforming to the rules of the association shall be erected or maintained on any part of the Properties. The Association may erect signs or notices for identification purposes in accordance with the applicable state and municipal laws or codes.

Section 7. PETS.

No animals, livestock or poultry of any kind shall be raised, bred, or kept on any of the Properties except that dogs, cats, or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose and shall be subject to the rules of any governmental ordinance or law. Dogs must be leashed at all times when outside a Residence and the removal of any and all excrement of such dogs shall be the immediate responsibility of the dog's owner, or the Owner of the Residence where the dog resides or is visiting. Pets constituting a nuisance may be ordered by the Board to be kept within the Residence of the Owner or ordered expelled from the Properties. A nuisance may include, but is not limited to, excrement not removed from Common Area, excessive noise, damage to Common Areas, damage to the Properties, or perceived danger on the part of any resident. Any Owner who causes any animal to be brought or kept within the Properties shall indemnify and hold harmless the Association for any loss, damage, or liability which the Association may sustain as a result of the presence of such animal on the premises, whether or not the Association has given its permission.

Section 8. TRASH AND UNSIGHTLY USES; ASSOCIATION RIGHT TO ENTER AND REMOVE; VIEW FROM COMMON AREA OR RESIDENCE.

Refuse piles or other unsightly objects and materials shall not be placed or remain upon the Common Area or any Residence exterior. The Association shall have the right to enter upon any Lot and Residence exterior

and to remove such refuse piles or other unsightly objects and materials at the expense of the Owner upon due notice to any Owner and failure of such Owner to comply with this Section. Such entry by the Association or its representatives shall not be deemed a trespass. The Association shall make Rules concerning storage and collection of trash. All garbage cans, equipment, coolers, or storage piles shall be located so as not to be visible from the streets and/or Common Area or any Residence within the Properties.

Section 9. MINERAL EXPLORATION.

No portion of the Properties shall be used to explore for or to remove any water, soil, hydrocarbons, or other materials of any sort except for the benefit of the Association and with the majority consent of the Owners.

Section 10. TREES, SHRUBS AND WATER; ALTERATION OR OBSTRUCTION OR DRAINWAYS.

The removal of trees, shrubs and other improvements from the Common Area shall be prohibited without the express written approval of the Board. No person other than the Association shall alter any drainways anywhere on the Properties or permit the same, by act or omission, to become obstructed in any manner, but nothing herein shall relieve any Owner of his/her duty to maintain drainways as otherwise provided.

Section 11. PARKING.

No vehicle of any type shall be parked for more than three (3) days anywhere on the streets or on any designated fire lane within the Properties. At no time shall street parking interfere with any resident's ability to maneuver the streets or have easy egress or ingress to driveways. No commercial type of vehicle, truck or recreational vehicle shall be parked on the driveways, streets, or Common Area for more than three days in the Properties. For purposes of this provision, a Recreational Vehicle shall include boats, motor homes, motor coaches, buses, pick-up trucks with camper tops or similar accessories, camping trailers or trailers of any type. Except as hereinafter provided, no unused vehicle shall be stored or parked on the driveways, streets, Lots and/or Common Area except in areas as may be designated by the Association. "Unused vehicle" shall be defined as any vehicle which has not been driven under its own propulsion for a period of one (1) week or longer. A written notice describing the Unused Vehicle and requesting removal thereof may be personally served upon the Owner of the Unused Vehicle, and if such vehicle has not been removed within seventy-two (72) hours thereafter, the Board shall have the right to remove the same without liability, and the expense thereof shall be charged against the Owner of the Unused Vehicle, or the Owner of the Residence where the owner of the Unused Vehicle resides. If such Owner shall be a member of the Association, the cost thereof may be added to his/her monthly dues or any other assessment.

Section 12. MECHANIC'S LIENS.

No labor performed or materials furnished with the consent or at the request of an Owner, his/her agent, contractor, or subcontractor shall create any right to file a mechanic's lien against the Lot and Residence of any other Owner who does not consent to or request the same or against any interest in the Common Area. Each contracting or consenting Owner shall indemnify, defend, and hold harmless the Association and each of the other Owners from and against liability arising from the claim of any lien or against the Lots and Residences for labor performed or for materials furnished at the request of the contracting or consenting Owner. At the written request of any Owner, the Association shall enforce such indemnity by collecting from the contracting or consenting Owner the amount necessary to discharge any such lien and all costs incidental thereto, including attorney's fees and expenses. Said expenses shall be added to the Owner's monthly dues or any other assessment.

Section 13. RULES.

Every Owner, his/her guests, members of his/her family, servants, employees, invitees, lessees, and licensees, shall adhere strictly to the Rules of the Association.

Section 14. UTILITIES.

The Owner of each Lot shall provide the required facilities to receive electric service and telephone service leading from the sources of supply to any improvements erected on such Lot by means of underground service conductors installed, owned, and maintained by the Owner in accordance with plans and specifications furnished by the suppliers of such services. No Owner shall demand or require the furnishing of such services through or from overhead wiring facilities so long as underground distribution systems are available.

Section 15. FENCES, MASONRY WALLS, DRIVES AND YARD MAINTENANCE.

Fencing shall comply with the rules established by the Architectural Control Committee and only with its written consent. All masonry walls and fences initially erected by the builder must be maintained in the same condition and of the same quality as originally built or replaced in compliance with the current rules, and maintenance and/or repair of such masonry walls and fences shall be the responsibility of the adjacent Lot Owner. The majority of all driveways are within individual Owner's Lots and are for the benefit of the Owner of the Lot. Maintenance and repair of driveways will be the responsibility of the Owner. Each Owner shall be responsible for mowing, trimming and otherwise caring for any landscaping, including but not limited to, care for lawns, shrubbery, and trees, within the courtyard walls on their Lot. No landscaping may be placed on Common Area by Owners without prior written approval from the Grounds and Maintenance Committee. Any subsequently approved landscaping by Owners on Common Area will be at the expense of the Owner and the maintenance and upkeep will be the responsibility of the Owner. Failure to maintain such in a manner consistent with Association maintained landscaping may result in the landscaping being removed by the Association or the maintenance cost of the landscaping being assessed to the responsible Owner.

Section 16. FORBIDDEN USES.

No gainful occupation, profession, trade or other nonresidential use which results in excessive additional traffic of any kind within the Properties shall be conducted on any Lots or Residences in the Properties.

Section 17. MINIMUM SIZE OF RESIDENCES.

Each residential unit in each building constructed, altered, or erected in the Property shall contain not less than one thousand six hundred twenty (1,620) square feet, exclusive of basements, one story of open porches, breezeways and attached garages.

Section 18. SET BACK RESTRICTIONS.

No building, or any part thereof, shall ever be located nearer to the street lot line or side lot line than the building set back lines shown on the recorded Plat of Vintage Gardens Homes II & III, Inc.

Section 19. MATERIALS.

The exterior of any Residence and additions thereto shall be consistent with and of materials and design consistent with that of the original Residences. No asbestos siding of any type shall be used as siding on exterior walls. Roofs are to be of composition materials. Any other roofing materials to be used shall be subject to the approval, in writing, and in advance of their use by the Architectural Control Committee.

Section 20. ANTENNAS, RECEPTION DISHES AND TOWERS.

All satellite dishes more than 39 inches in diameter are prohibited. Satellite dishes less than 39 inches in diameter shall be installed in a location so as to 1) provide reception as provided by law, and 2) in such a fashion so as to meet reasonable safety standards due to Oklahoma weather.

No radio towers, windmills or energy-generating devices shall be erected, used or maintained within the Property without permission of the Architectural Control Committee.

Section 21. DISEASES AND INSECTS.

No Owner shall permit any thing or condition to exist upon his/her Lot which shall induce, breed or harbor infectious plant diseases or noxious insects.

Section 22. RESTRICTION ON FURTHER SUBDIVISION.

No lot in Vintage Gardens Homes II & III, Inc. shall be further subdivided, rearranged or re-plated, nor shall less than all of any such lot be conveyed or any easement or other interest given therein without the prior written approval of the Association.

ARTICLE VI

ARCHITECTURAL CONTROL

Section 1. ORGANIZATION

The Architectural Control Committee shall consist of three (3) persons appointed by and serve at the pleasure of the Board of Directors.

Section 2. APPROVAL OF PLANS AND SPECIFICATIONS BY ARCHITECTURAL CONTROL COMMITTEE: FEES.

No Residence, building, structure, wall, exterior lighting fixtures, awning or fence shall be commenced, erected, placed or altered (including the color thereof) on any Lot until the plans and specifications showing the nature, kind, shape, height, color, materials and location of such have been submitted to and approved in writing as to quality of workmanship and materials, and conformity and harmony of exterior design with existing structures, and location with respect to existing buildings, topography and finished ground elevation, by the Architectural Control Committee nor shall interior changes in a Residence of a structural nature be permitted prior to the approval of the Architectural Control Committee. Procedures for an Owner's application for approval of proposed improvements and approval thereof will be established by the Architectural Control Committee and communicated to the Owners. The Association, through the Architectural Control Committee or otherwise, in its sole discretion, may request a reasonable fee for review of said plans.

Section 3. LANDSCAPING.

The Architectural Control Committee may recommend to the Board the removal, transplanting or restriction of any landscaping of any Owner determined to be or determined to become a nuisance to other Owners or a threat to the structural integrity of any improvement on the Properties.

Section 4. COMMITTEE ADDRESS.

All applications, plans and specifications which must be submitted in writing for approval hereunder shall be submitted to the Architectural Control Committee at the following address:

Architectural Control Committee
The Homeowners Association of Vintage Gardens Homes II & III, Inc.
16116 Napa Ridge
Edmond, Oklahoma 73013

or to such other address as may hereafter be given in writing to the Owners by the Association or by the Architectural Control Committee.

**ARTICLE VII
THE ASSOCIATION**

Section 1. DUTIES AND RESPONSIBILITIES OF THE ASSOCIATION, OWNER AND MANAGER OF COMMON AREAS.

Declarant caused to be incorporated as a non-profit corporation The Homeowners Association of Vintage Gardens Homes II & III, Inc., a non-profit Oklahoma Corporation., the Bylaws of which are attached as Exhibit "C" to this Amended and Restated Declaration. Ownership of said Association, its real property, and its responsibilities was subsequently transferred by the Declarant to the Owners. Upon consent hereto, each Owner of a Lot and/or Residence shall be deemed to have assented to, ratified, and approved the designation of such corporation as manager, and the Bylaws of such Association. The Association shall have the following duties, rights, and powers:

- a) **Assessment Collection.** To collect monthly dues and special periodic assessments, equitably prorated, from Owners to collect delinquent assessments by suit or otherwise, and to collect such other assessments as are herein authorized.
- b) **Meet Expenses.** From funds collected, to provide for maintenance, management, insurance, and such other expenses as are enumerated herein.
- c) **Property Dwelling.** To lease, acquire and sell real or personal property in pursuance of its obligations.
- d) **Entry Into Residences.** To enter to and upon the Lots and Residences when necessary and with as little inconvenience as possible to the occupants concerned in connection with the duties outlined herein.
- e) **Violation Enforcement.** To enjoin or seek damages including monetary penalties/individual assessments from the Owners for violation of the Amended and Restated Declaration, the Articles

of Incorporation of the Association, the Bylaws, or such rules as adopted and published by the Association.

- f) **Property Manager Duties; Management Agreement.** To employ workmen, and others; to contract for services to be performed, including those of a Manager; to purchase supplies and equipment; to enter into contracts; and generally to have the powers of a property manager in connection with the matters herein set forth, except that the Association may not encumber or dispose of the fee title of any Owner except to satisfy a lien, award or judgment against such Owner for violation of the Owner's covenants imposed by this Amended and Restated Declaration. The Association shall not enter into any contract or management agreement for furnishing of services (other than utility services), materials or supplies, in excess of one year; and further provided, that any contract or management agreement entered into (excluding utilities) by the Association shall be terminable by the Association with or without cause upon thirty (30) days written notice.
- g) **Protect Properties.** To reasonably protect and defend the Properties from loss and damage from suit or otherwise.
- h) **Employ Professionals; Audit; Inspection Rights.** To employ counsel, attorneys, and auditors in connection with legal matters of the Association and in connection with the audit of its books and records.
- i) **Deposit Funds.** To deposit funds in the hands of the Board which are not necessary for immediate disbursements in savings accounts of National or State Banks or Savings and Loans institutions earning a reasonable rate of interest the terms of which are
- j) **File Zoning or Variance Protests.** To file legal protests, formal or informal, with authorities against the granting by authorities of zoning ordinances or variances as to any property within reasonable proximity of the Properties which might affect the value of any Owner's interest in the Properties.
- k) **Maintenance of a Portion of the Exterior of Residences.** To mow and trim all grass (except within courtyard walls), to maintain the sprinkler system (except within courtyard walls) if applicable.

Section 2. THE BOARD OF DIRECTORS; NUMBER; ELECTION AT ANNUAL MEETING.

The Board of Directors shall consist of five (5) individuals, each of whom shall be a voting member of the Association and an Owner. Said Directors shall be elected for two (2) year terms. Elections shall be conducted at each annual meeting of the Owners with three (3) Directors to be elected in even numbered calendar years and two (2) Directors to be elected in odd numbered calendar years. Vacancies on the Board occurring between annual meetings shall be filled by majority vote of the remaining Board members. Any Board member elected by the Board to fill such a vacancy shall serve only until the next annual meeting of the Owners at which meeting the Owners shall elect a member to serve the remainder of the office so vacated. Board members shall provide the Owners reasonable representation.

Section 3. MEMBERSHIP; AUTOMATIC AND MANDATORY; EFFECTIVE DATE OF MEMBERSHIP.

Any person acquiring a fee simple record ownership interest in a Lot and Residence shall automatically become a member of the Association. Such ownership interest shall be the sole qualification for

membership. Upon the sale or transfer of a Lot or Residence by an Owner, that person's membership shall terminate and shall be automatically transferred to the purchaser or transferee. Membership shall be appurtenant to and may not be separated from ownership. The membership of each Owner shall become effective for all purposes upon the Owner's occupancy of his/her Residence; provided, however, that any Owner may, prior to occupancy, voluntarily commence payment of assessments hereunder and thereupon become a member as fully, as of such first payment, as if occupancy has occurred.

Section 4. VOTING; ONE VOTE PER RESIDENCE; DESIGNATION; BOARD MEMBERSHIP.

The Association shall have one class of voting membership. All Owners shall be members of such voting membership. Each Owner shall be entitled to one (1) vote for each Residence owned. When more than one (1) person holds an interest in any Residence, all persons shall be members. The vote for such Residence shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Residence.

Section 5. INDEMNIFICATION OF MANAGER, EMPLOYEES, DIRECTORS AND OFFICERS; MISFEASANCE OR MALFEASANCE.

The Manager, if any, employees of the Association and each director and officer of the Association shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon them in connection with any proceeding to which they may be a party, or in which they may become involved by reason of being or having acted as such on behalf of the Association; provided, that this indemnification shall not apply if the said person is adjudged guilty of willful misfeasance or malfeasance in the performance of his/her duties; provided further, that in the event of a settlement, the indemnification herein shall apply only when the Board approves such settlement and reimbursement as being for the best interest of the Association. The foregoing rights of indemnification shall be in addition to, and not exclusive of, all other rights to which such person may be entitled.

Section 6. LIMITATION UPON LIABILITY OF ASSOCIATION.

Notwithstanding the duty of the Association to maintain and repair parts of the Properties, the Association shall not be liable for injury or damage, other than the normal costs of the maintenance and repair, caused by the conduct of other Owners or persons or by casualties for which insurance is not provided by the Association.

ARTICLE VIII

ASSESSMENTS

Section 1. ASSESSMENTS; REGULAR DUES AND SPECIAL; INDIVIDUAL ASSESSMENTS; PERSONAL OBLIGATION; DUE DATES; PRO-RATA SHARE.

Each Owner agrees to pay the Association regular assessments (dues) or charges, special assessments, and individual assessments, each to be fixed, established, and collected from time to time as herein provided. Such assessments, together with interest and the cost of collection in the event of delinquency in payment as allowed in Section 5 of this Article, shall be the personal obligation of the person or persons who was/were the Owner(s), jointly and severally at the time when the assessment was made. Payment of the assessments made shall be paid by the owners to the Association as of the date of closing the original purchase of an Owner's Residence and prorated if upon a date other than the due date of an assessment,

and thereafter in monthly or other periodic installments commencing on the first day of each month or period following the closing.

Section 2. PURPOSE OF ASSESSMENTS; MANAGEMENT AND MAINTENANCE RESERVES; REPAIRS RESULTING FROM NEGLIGENT ACTS.

The assessments levied by the Association shall be used exclusively for the management and maintenance of the Common Area, and for the performance of all other duties and obligations incurred by the Association pursuant to the Amended and Restated Declaration, including, but not limited to: the provision of services and facilities related to the use and enjoyment of the Common Area; the maintenance, repair and replacement of underground utilities except those utilities and services provided by and dedicated to the City, Drainways, lighting, walkways and Residence Exteriors (only as herein provided); provision for snow removal, grounds upkeep, sprinkler systems, landscaping, water and sewer maintenance, recreational programs; the operation and maintenance of recreational facilities, including personnel necessary for implementation, administration expenses, working capital, rental and acquisition of real or personal property; and such expenses as the Association, in its opinion, shall determine to be necessary and desirable, including the establishment and maintenance of a cash reserve and a sinking fund for all of the foregoing purposes, including, but not limited to, an adequate reserve fund for the maintenance, replacement and repair of those elements of the Common Area and those elements of the Residences which must be replaced on a periodic basis, to be charged against the Owners as part of their regular assessment. In the event repairs are required resulting from negligent acts of an Owner, or the Owner's family, guests, employees, invitees or lessees, the Association shall be reimbursed forthwith by such Owner thereof, and such amounts may be added to the responsible Owner's assessments.

Section 3. BASIS OF ASSESSMENTS.

- a) Utility Charges. Water, sewer, electricity, and all other public utility charges incurred in operating and maintaining the Common Area based upon actual charges levied by respective public utility or municipality.
- b) Common Area Expenses; Special Fees. Maintenance, repair, replacement (including lawns, trees and shrubbery), administration and operation of the Common Area, including recreational facilities, all of which expense may take into account any sinking fund established for future expected expenditures. A separate fee may be levied by the Association for participants in a special program, for functions, or other activities, all of which activities are to be voluntary only. Such separate fee is not to be considered a Common Area Expense.
- c) Residence Exterior Maintenance. Maintenance, repair, and replacement of the Residence Exteriors, but only as herein provided.
- d) Individual Assessments. The Association shall have the right to add to any Owner's assessment as provided in this Article those amounts expended by the Association for the benefit of any individual Residence and the Owner thereof, for repairs and replacements caused by the negligent or acts any Owner, his/her family, guests, employees, licensees, invitees or lessees, for costs incurred by the Association as a result of the act or omission of an Owner, their family, guests, employees, licensee, invitee or lessee, or for reasonable monetary penalties according to a schedule adopted by the Board of Directors after reasonable notice.
- e) Levy of Assessments; Estimation of Assessments; Adjustment; Actual Overage and Shortage. During the last month of each fiscal year, the Board shall determine the estimated annual assessment payable periodically during the following year by each Owner; provided, however,

that said assessments may be adjusted upon a finding of necessity by the Board, but no more than twice in any year.

- f) Non-Exemption. No Owner shall be relieved from payment of any assessment or charge by waiver or suspension of the use of any of the Common Area or by the abandonment or leaving of a Residence.
- g) Insurance Premium and Cost of Operation. The insurance premium costs incurred in providing the replacements cost coverage required hereby for Residences and common areas shall be based upon actual charges levied by the insurance provider selected.

Section 4. SPECIAL ASSESSMENTS; ASSENT OF OWNERS AND MORTGAGEES.

In addition to the assessments authorized above, the Board may levy special assessments for the purpose of defraying the cost of any construction or reconstruction, unexpected structural repairs or replacement or capital improvements, including the necessary fixtures and personal property related thereto. Such assessment must have the assent of a simple majority of the Owners voting in person or by proxy at a meeting duly called for such purpose or at the annual meeting. Written notice shall be sent to all Owners of record not less than fifteen (15) days nor more than thirty (30) days in advance of the meeting, setting forth the purpose of the meeting.

Section 5. NON-PAYMENT OF ASSESSMENTS.

- a) Late Charge; Interest; Acceleration; Costs; Attorney Fees; Voluntary Payment by Mortgagee. Assessments and fees shall be due and payable on the first day of each quarter or the first day of the period fixed for payment of the assessment or fees and shall become delinquent unless paid within ten (10) days thereafter. All unpaid assessments and fees shall be subject to a late charge for non-payment as may be determined from time to time by the Board. If such fees or assessments are not paid within thirty (30) days after the due date, they shall bear interest from the date of delinquency at the rate of fifteen per cent (15%) per annum or other reasonable rate fixed by the Board and uniformly applied. Failure to make payment within thirty (30) days of the due date thereof shall also cause the full amount of such Owner's estimated annual assessment for the remainder of that year to become due and owing at once, at the option of the Board. In the event it shall become necessary for the Board to collect any delinquent assessments or fees, whether by foreclosure of a lien hereinafter created or otherwise, the delinquent Owner shall pay, in addition to the assessment and late charge and interest hereinabove provided, all cost of collection, lien filing fees, including reasonable attorney's fees and costs, incurred by the Board in enforcing payment. Any mortgagee holding a lien on a Residence may pay, but shall not be required to pay, any unpaid common expenses payable with respect to such Residence, and such payment shall not be deemed a waiver by the Association of default by the Owner.
- b) Lien; Recording; Foreclosure Subordinate to Recorded First Mortgage; Rental; Possession By Association. The Association is hereby granted a lien against the Owner's Lot and Residence for any payment or payments which the Owner fails to make within thirty (30) days after the due date; provided, however, that:
 - i. such lien shall be effective only upon recordation of a notice thereof in the office of the Clerk and Registrar of Deeds of Oklahoma County, State of Oklahoma, and each Owner, by accepting a Deed to his/her Lot and Residence, designates any one of the officers of the Association or its duly appointed Manager as agent with

full irrevocable power and right to record a notice of said lien in favor of the Association.

- ii. a lien accruing hereunder shall be foreclosed in the same manner as provided by the laws of the State of Oklahoma for the foreclosure of mortgages on real property; and
 - iii. such lien shall be subject and subordinate to and shall not affect the right of a holder of any record first mortgage now or hereafter placed on the Lot and Residence in good faith for value. The lien hereby given shall also be a lien upon all of the rents and profits of the encumbered Lot and Residence, In the event of foreclosure, the Owner shall be required to pay reasonable rental to the Association for occupying the same during the period of the foreclosure and, if after the filing of a foreclosure action the Owner's Residence is left vacant, the Board may take possession and rent said Residence or apply for the appointment of a receiver for the Residence. In addition to the lien herein granted, the Board shall have the right to bring action at law against any Owner who fails to pay any amounts assessed against his/her Lot and Residence and obtain a judgement for the amount of the assessments due plus costs as herein provided. The Board shall have the power to bid at the foreclosure sale, and if title is obtained, hold, lease, mortgage and encumber or convey the same.
- c) Payment By Board of Encumbrance Obligations; In the event an Owner is in default on any obligation secured by an encumbrance on his/her Lot and Residence, the Board, at its option, may pay the amount due on said obligation and file a lien against the Lot and Residence in the manner as provided for unpaid assessments or fees.
 - d) Sale Does Not Release Lien. Sale or transfer of any interest by an Owner shall not affect or release any lien granted the Association herein.
 - e) Foreclosure Conveyance Extinguishes Lien; Unpaid Amounts Common Expense; Mortgagee Obtaining Title. In the case of the conveyance of a Lot and Residence pursuant to foreclosure proceedings or by deed in lieu of foreclosure, such transfer of title shall extinguish the lien for all unpaid assessments made by the Association becoming due before the date of transfer of title or date of first possession, whichever comes first. The amount remaining unpaid with respect to which the lien is extinguished shall be deemed to be a Common Area Expense collectible from all the Owners as such, without prejudice to the right of the Association to recover such amount from the delinquent Owner. Where the holder of a first mortgage of record or the purchaser obtains title to the Lot and Residence as a result of foreclosure of the first mortgage, such acquirer of title shall not be liable for the share of the common expenses or assessments chargeable to such Lot and Residence which became due prior to acquisition of title to such Lot and Residence by such acquirer.

Section 6. REGISTRATION OF MAILING ADDRESS OF RESIDENCE OWNERS; ASSOCIATION ADDRESS; SERVICE AGENT.

Each Owner shall register his/her mailing address with the Association and notices or demands intended to be served upon an Owner shall be hand delivered to the Residence or sent by mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices, demands or other notices intended to be served upon the Board of Directors of the Association or to the Association shall be sent certified mail, postage prepaid, to the Homeowners' Association of Vintage Gardens Homes II & III,

Inc. at 16116 Napa Ridge, Edmond, Oklahoma 73013, or such other address of which the Board may furnish from time to time.

ARTICLE IX

MAINTENANCE

Section 1. MAINTENANCE OF THE COMMON AREA.

The Association shall provide for the care, operation, management, and repair of the Common Area. Without limiting the generality of the foregoing and by way of illustration, the Association shall keep the Common Area water, sewer, electricity, gas and all other necessary utility services; may maintain and replace all or any portion of the landscaping; may provide for rubbish collection; may remove snow, ice and other materials from the streets and walkways; shall keep the Properties reasonably safe, attractive and desirable; and may make necessary or desirable alterations or improvements to the Common Area. Nothing herein shall be construed as a waiver of any right by the Association to recover for any damage or expense incurred as the result of the willful or negligent action or omission of any person.

Section 2. MAINTENANCE OF RESIDENCE; FAILURE OF OWNER TO MAINTAIN.

The Association shall provide for the painting and repainting of the Residence exteriors in keeping with the specifications of the Architectural Control Committee. The Association shall mow and trim all grass (except within courtyard walls as they are originally constructed) and shall maintain the sprinkler system (except within the courtyard walls as they are originally constructed). Except as otherwise provided above, each Owner shall be responsible for the maintenance, repair, and replacement of his/her Residence and Residence exterior. Should, however, an Owner fail to properly maintain, repair, or replace any such item(s), after ten (10) days written notice from the Association, the Association may, at its sole option, provide for the maintenance, repair, and replacement of the Residence Exterior, including, but not limited to, the following:

- a) Maintenance, repair and replacement of structural portions and water, sewer, electrical, and other systems which serve more than one Dwelling Unit Residence, but not including those portions of such systems which serve only one Dwelling Unit Residence, such as air conditioning unit, electrical or plumbing fixtures;
- b) Maintenance, repair, and replacement of drainways, steps, patios, fences, and outer surfaces of exterior walls.
- c) Maintenance, repair, and replacement of a Residence roof, whether or not such Residence shares such roof with another Residence.

Section 3. OWNER'S DUTY TO INSPECT PREMISES AND TO NOTIFY ASSOCIATION OF DEFECTS.

Each Owner shall have the duty to make reasonable inspections of his/her Residence Exterior, from time to time, to determine if said Residence Exterior contains any obvious and necessary maintenance, repairs replacements or defects including improper drainage.

Section 4. DUTY TO MAINTAIN, REPLACE, REPAIR; FAILURE TO DO SO.

In the event an Owner fails to maintain, repair, or replace as described within Section 2 above, or fails to correct a defect as described in Section 3 above as either may affect the Residence Exterior, the Owner that has the maintenance, repair, replacement, or defect item shall repair the same in a workman like fashion within a reasonable time following discovery or notice thereof. Upon the failure of such Owner to so maintain, repair, or replace, the Association may enter into and upon the Lot and Residence and effect such repair, the cost of which shall be chargeable to such Owner by assessment, which assessment and all costs of collecting thereof shall be a lien against the Residence and collectible as other assessments under this Declaration.

Section 5. WILLFUL OR NEGLIGENT ACTS.

In the event that any maintenance, repair or other work is required for the Common Area or Residence because of the willful or negligent action or lack of action of any Owner, his/her family, guests, tenants, invitees, lessees or licensees and such maintenance, repair or other work is not covered or paid for by insurance, the Board may perform such work or cause the same to be performed at such Owners cost and expense and may make an assessment to recover payment thereof against such Owner, which may be collected in like manner as set out in Section 4 above.

ARTICLE X

INSURANCE

Section 1. MASTER POLICY; PUBLIC LIABILITY.

The Association shall carry a blanket insurance policy from an insurance company qualified to do and conduct business in the State of Oklahoma and holding a rating of Best's Insurance Reports of Class B+ or better, the limits of coverage of which insurance shall be reviewed annually by the Board of Directors, of fire and extended coverage, vandalism and malicious mischief insurance covering the Common Area and, if required by law, workmen's compensation insurance (all of which hereinafter referred to as the "Master Policy", with respect to the project and the Association's administration thereof in accordance with the following. The Board of Directors shall obtain and maintain, to the extent obtainable, public liability insurance in such limits as may from time to time be determined necessary, covering all of the Common Areas in the Property. Such insurance policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. The scope of coverage must include all other coverage in the kinds and amounts required by private institutional mortgage investors for projects similar in construction, location and use. Coverage shall be for at least \$1,000,000.00 per an occurrence for personal injury and/or property damage. The Association shall use its best efforts to see that the liability insurance carried by the Association shall contain cross-liability insurance endorsement, or appropriate provisions to cover liability of the Owners, individually and as a group, to another Owner. The Master Policy and the endorsements made a part thereof may provide for such deductibles from any amounts otherwise payable thereunder as the Association may determine, and shall also, if reasonable:

- a) contain no "escape" or "other insurance" clause that would cause said policy to become void in whole or in part or cause any proceeds payable thereunder to be reduced, set off, apportioned, prorated, or otherwise brought into contribution with or by reason of separate insurance contained by or for any owner or his/her Mortgagee,

- b) provide that only improvements made or installed by the Association shall affect the valuation of any Building or Improvement on the project for co-insurance purposes,
- c) provide for at least an annual insurance review which shall include an appraisal of all Buildings, Improvements and Personal Property of the Association located on or within the Property required to be insured hereby by a representative of the insurer issuing said Master Policy,
- d) contain a waiver by said insurer of any and all rights of subrogation against any Owner, the Association, its Board (and each member thereof), its officers (and each of them), the Manager and his/her staff, and the agents, representatives, and employees of the Association,
- e) provide that said Master Policy cannot be canceled, invalidated, suspended, substantially modified, terminated, avoided, or expire in whole or in part by reason of any act, omission or breach of any Covenant contained in the Declaration or the Amended and Restated Bylaws by any Owner, Declarant, the Association, its Board, its officers, the Manager and his/her staff, or the agents, representatives or employees of the Association without a prior written demand that the Association cure such breach, and that in no event shall said policy be canceled, invalidated, suspended, substantially modified, terminated, voided or expired for any reason without ten (10) days prior written notice from the insurer to the Association and to any Owner and Mortgagee
- f) provide that the Board or its Authorized agent or representative shall have the exclusive authority to adjust any and all losses covered by said policy,
- g) provide that the insurance obtained pursuant to this paragraph shall not be prejudiced by any act or neglect of any of the insureds when such act or neglect is not within the knowledge and control of the insureds collectively,
- h) provide that the insurance obtained pursuant to this paragraph shall not be prejudiced by failure of the insureds collectively to comply with any warranty or condition with regard to any portion of the premises over which the insureds collectively have no control,
- h) provide that the insurance obtained pursuant to this paragraph shall not be prejudiced by reason of the vacancy or non-occupancy of any one or more Residence within the Property, provided that the Declaration (as the same may be amended from time to time) is in force, and
- i) provide that all insurance proceeds under said Master Policy shall be payable to the Association as trustee to be held and expended as provided herein for the benefit of the owners and their respective Mortgagees as their interests may appear.

Section 2. NAMED INSURED; MORTGAGEE CLAUSE, MODIFICATION OR CANCELATION NOTICE.

The Master Policy shall be purchased by the Association naming the Association as the insured, as attorney-in-fact, or trustee (for all of the Owners), which policy or policies shall provide that same cannot be canceled or substantially modified until after ten (10) days prior to written notice is first given to the Association and each first mortgagee, All policies of hazard insurance must contain or have attached the standard mortgagee investors in the area in which the mortgaged premises are located.

Section 3. FIDUCIARY LIABILITY INSURANCE.

The Board of Directors may also obtain and maintain, to the extent maintainable, professional, and fiduciary liability insurance coverage against dishonest acts on the part of directors, managers, trustees, employees or volunteers responsible for handling funds belonging to or administered by the Association. The fidelity bond or insurance must name the Association as the named insured and shall be written in an amount no less than Fifty Thousand Dollars (\$50,000). In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

Section 4. OTHER PERILS.

The Association may, in its sole discretion, elect to carry insurance to cover other perils.

Section 5. MORTGAGEE'S RIGHTS; DISTRIBUTION OF INSURANCE PROCEEDS

In the event of substantial damage to, or destruction of, any part of the Common Area, any distribution of insurance proceeds hereunder shall be made to the Owners and their respective Mortgagees, as their interests may appear, and no Owner or other party shall be entitled to priority over the first mortgagee of a Residence with respect to any such distribution; provided, however, that nothing in this Section 5 shall be construed to deny the Association the right to apply any such proceeds to repair or replace damaged portions of the Common Area. The Association shall notify the appropriate Mortgagee forthwith whenever damage to the common Area exceeds \$10,000.

Section 6. RESIDENCE INSURANCE.

Each Owner shall be responsible for and shall procure fire, extended coverage, and other perils insurance upon each of their Residence for the current estimated insurable replacement value thereof under a policy or policies of insurance with such company or companies and for such premium as the Owner may determine. The Owner shall bear the total financial responsibility for all premiums, deductibles, and other costs associated with such insurance on their Residence. Given the Association's maintenance obligation over certain limited portions of the Residence Exterior pursuant to Article IX, Section 2 above, the Residence insurance policy shall name the Association as an additional interest or however designated provided in every event the Association shall be given timely notice of any cancellation of the insurance policy. Annually, but no later than January 31 of each year, each Owner shall deliver to the Association Secretary a certificate of insurance certifying that a policy of insurance as required under this Section is in effect, and that said policy shall not be canceled, allowed to lapse, or materially altered except upon ten (10) days prior written notice thereof to the Association. Should any Owner fail to provide to the Association a timely delivered insurance certificate evidencing placement of the minimum insurance required under this Section, the Association may at its option:

- a) Immediately place a policy for the insurance required under this Section and assess the costs of such policy to the Owner and against the Residence, such assessment to be collected in like manner as other assessments under this Declaration, and
- b) Charge the Owner failing to provide the insurance certificate all costs incurred by the Association in placing the insurance policy, including but not limited to
 - 1) copy charges in an amount the greater of actual copy costs or the amount allowed by law,
 - 2) any incurred minimum earned premium and/or policy premium, and

- 3) a reasonable administrative fee not to exceed seventy-five dollars per hour for the time expended on behalf of the Association to procure the insurance policy.

Each Owner may carry such additional insurance as he/she deems advisable. Each Owner is responsible for his/her own insurance on the contents of his/her Residence.

Section 7. REBUILDING OF DAMAGED RESIDENCE.

In the event of damage to or destruction of any Residence by fire or any other casualty, the Owner shall within thirty (30) days submit to the Board a comprehensive plan for complete repair/restoration of the damage or destruction, such plan to include a timeframe for which all repairs and/or restoration shall be completed without delay and in all diligence in a workmanlike manner with materials comparable to those used in the original structure, and in conformity in all respects with the laws or ordinances regulating the construction of buildings in force at the time of such repair or reconstruction. The Residence, when rebuilt or repaired, shall be substantially similar to and its architectural design and landscaping shall be in conformity with the design of the original Residence and the surrounding Residences which are not so damaged or destroyed. The Owner shall not be relieved of this obligation to repair or rebuild by the fact that proceeds received from the insurer are not sufficient to cover the cost thereof. If the proceeds received from the insurer by the Owner and Association are insufficient, it shall be the duty of the Owner to complete the necessary repairs at their own expense. Upon the failure of such Owner to complete the necessary repairs, then after notice and demand by the Association therefor, the Board may cause the repair or rebuilding as provided, and the amount of the deficiency shall be the Owner's personal obligation and a continuing lien on the Owner's Residence, which may be collected in like manner as assessments.

Section 8. WAIVER.

The Association and each Owner hereby waive and release any and all claims which they may have against any Owner, the Association, its officers, members of the Board, its employees and agents, the Declarant and any Manager and its respective employees or agents, for damage to the Properties or to any personal property located on the Properties caused by any casualty, to the extent that such damage is covered by fire or other form of casualty insurance.

ARTICLE XI

MORTGAGEE'S RIGHTS

Section 1. NOTICE AND DOCUMENTS TO AND RIGHTS MORTGAGEE.

Each holder of a first mortgage on any Lot and Residence shall, upon written request by such holder to the Board, receive any of the following:

- a) Copies of budgets, notices of assessments, insurance certificates, or any other notices or statements provided hereunder by the Association to the Owner of the Lot and Residence covered by the mortgage;
- b) Any audited or unaudited financial statements of the Association within ninety (90) days following the end of any fiscal year, which are prepared for the Association and distributed to the Owners;

- c) Copies of notices of meetings of the Owners and the right to be represented at any such meetings by a designated representative;
- d) Notice of the decision of the Owners or the Association to make any material amendment to this Second Amended Declaration, the Bylaws, or the Articles of Incorporation of the Association;
- e) Notice of substantial damage to or destruction of any Residence or any part of the Common Area;
- f) Notice of commencement of any condemnation or eminent domain proceedings with respect to any part of the Common Area;
- g) Notice of any default of the holder's Owner which is not cured by the Owner within sixty (60) days after the giving of notice by the Association to the Owner of the existence of the default; and
- h) The right to examine the books and records of the Association at any reasonable time.

Section 2. FORM OF REQUEST.

The request of a holder shall specify which of the above it desires to receive and shall indicate the address to which any notices or documents shall be sent by the Association. Failure of the Association to provide any of the foregoing to a holder who has made proper request therefor shall not affect the validity of any action which is related to any of the foregoing. The Association need not inquire into the validity of any request made by a holder hereunder and in the event of multiple requests from purported holders of the same Lot and Residence, the Association shall Honor the most recent request received.

Section 3. PROTECTION OF LIEN OF MORTGAGE.

No violation or breach of or failure to comply with any provision of this Amended and Restated Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any mortgage taken in good faith and for value and perfected by recording in the appropriate office, prior to the time of recording in said office of an instrument describing the Lot and listing the name or names of the Owner or Owners thereof and giving notice of such violation, breach, or failure to comply. However, the purchaser on foreclosure or person accepting a deed in lieu thereof shall take subject to the Declaration as amended from time to time.

Section 4. MORTGAGEE VOLUNTARY PAYMENT.

First mortgagees of Lots and Residences may, jointly or singularly, pay taxes or other charges which are in default, and which may or have become a charge against any common property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such common property and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

ARTICLE XII

CONDEMNATION PROCEDURE

Section 1. CONDEMNATION OF COMMON AREA.

In the event of a proceeding in condemnation or partial condemnation of any Common Area by any governmental authority authorized so to do, the proceeds from such condemnation attributable to the Common Area shall be distributed unto the Owners based upon their ownership interest.

Section 2. LIEN HOLDERS.

When a condemnation of a Lot and Residence occurs and the Lot and Residence is subject to an encumbrance, the Association shall send written notice forthwith to all holders of first mortgages covering any Lot and Residence affected thereby. The proceeds due the Owner by reason of such condemnation shall be paid to the holder of encumbrance. The holder of a first mortgage shall be entitled to priority over all other parties with respect to any distribution of condemnation proceeds. Any excess amount not required to clear the encumbrance shall be paid to the Owner.

ARTICLE XIII

PARTY WALLS

Section 1. PARTY WALL.

The Owner shall possess in fee simple that portion of the Party Wall lying within his/her Lot. Each Owner having a Party Wall is hereby granted a mutual reciprocal easement for repair or replacement of said Party Wall. No Owner shall commit or omit any act, the result of which is an infringement of the adjoining Residence Owner's rights in the Party Wall absent written agreement between such Owners. In the event that any portion of any structure, originally constructed by Declarant, including any Party Wall, shall protrude over an adjoining Dwelling Unit, such structure shall not be deemed to be an encroachment upon the adjoining Lot and Residence, nor shall any action be maintained for the removal or for the damage because of such protrusion. It shall be deemed that the said Owner has granted perpetual easements to the adjoining Owner for continuing maintenance and use of any such protrusion. The foregoing shall apply to any replacements of any Party Wall if the same are constructed substantially in conformity with the original Party Wall constructed by the Builder.

Section 2. DESTRUCTION.

If a Party Wall is destroyed or damaged by any casualty, the Owners-Residences abutting such Party Wall shall jointly restore it substantially to its original form and they shall contribute equally to the cost of restoration thereof without prejudice however, to the right of any such Owner to call for a larger contribution from the other Owner under any rules of law regarding liability for negligent or willful acts or omissions. Destruction or damage to any Party Wall shall not cause the termination of any rights of any of the adjoining Owners thereto, any reconstruction or replacement of a Party Wall. Owners of Residences abutting such a Party Wall are obligated hereby to restore it in its substantially original condition. Notwithstanding any other provisions of this Article, an Owner who, by his/her negligent or willful act, causes the Party Wall to be damaged shall bear the whole cost of repairing such damage and shall diligently prosecute all such repairs and reconstruction. If such Owner shall fail to do so, then any other Owner of a Residence abutting such Party Wall may do so at the sole cost and expense of the Owner causing damage. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

ARTICLE XIV

DURATION AND AMENDMENTS

Section 1. AMENDMENTS AND REVOCATION; PARTITION, SALE, ENCUMBRANCE, OR SUBDIVISION OF COMMON AREA; CONSENT OF FIRST MORTGAGEES, RECORDING AMENDMENTS.

This Amended and Restated Declaration shall remain in full force and effect for as long as the Properties remain as a single family attached and detached home development. Except as herein provided, the Declaration may not be amended or revoked, nor may any Common Area used or held for the benefit of all the Owners be abandoned, partitioned, subdivided, sold, encumbered, or transferred except by a vote of the Owners' interests in the Lots, as provided elsewhere in this Amended and Restated Declaration or the Bylaws. Such amendments shall be effective only upon the recordation of a certificate setting forth the amendments signed by the Owners representing not less than sixty (60%) of all the interests in the Lots. The adoption of this Amended and Restated Declaration and the enforcement thereof as to the Owners and the Association shall not be impaired by the failure of any mortgagee to consent hereto. No amendment to the Declaration shall be in conflict with the Laws of the State of Oklahoma.

Section 2 MORTGAGEE'S RIGHTS.

The foregoing notwithstanding, the rights of mortgagees on the date of adoption hereof shall be identical to the rights of said mortgagees pursuant to the original Declaration and shall not be impaired by the adoption of this Amended and Restated Declaration. From and after the adoption hereof the prior written approval of all holders of first mortgages on the Lots and Residences will be required for any of the following:

- a) An amendment to the Declaration which:
 - i. changes the ratios of assessments against Owners; or
 - ii. amends this Article, Section, or any other provision which specifically grants rights to Mortgagees hereunder;
- b) The alienation, partition, subdivision, release, transfer, hypothecation, or other encumbrance of the Common Area after such Common Area has been conveyed to the Association; except that the consent of Mortgagees shall not be required for action by the Association to:
 - i. grant easements for utilities and similar or related purposes, or
 - ii. to lease or grant licenses.
- c) The abandonment of the development or the removal of any part or all of the Properties from the provisions of the Declaration, as amended from time to time;
- d) The waiver or abandonment or the removal of the scheme of regulation of Architectural Control or the enforcement thereof pertaining to the design or the exterior appearance of Residences, the exterior the exterior maintenance of Residence, the maintenance of the common property party walks or common fences and driveways or the upkeep of lawns and plantings;

- e) The failure to maintain fire and extended coverage insurance on the Common Area on a current replacement cost basis in an amount not less than 100% of the insurable value (based on current replacement cost) or any decision not to use the proceeds of such insurance to repair, rebuild, replace, or reconstruct the Common Area, all as provided herein.

Section 3. SPECIAL AMENDMENTS.

The Association hereby reserves and is granted the right and power to record a Special Amendment to this Amended and Restated Declaration at any time and from time to time which amends this Amended and Restated Declaration:

- a) to comply with requirements of any federally insured savings and loan association, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veteran's Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities and/or
- b) to induce any of such agencies or entities to make, purchase, sell, insure, or guarantee first mortgages covering Lots and Residences. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Association to make or consent to a Special Amendment on behalf of each Owner. Each deed, mortgage, trust deed, other evidence of obligation or other instrument affecting a Lot and Residence, and the acceptance thereof, shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Association to make, execute and record Special Amendments. No Special Amendment made by the Association shall affect or impair the lien of any first mortgage upon a Lot and Residence or any warranties made by an Owner or first mortgagee in order to induce any of the above agencies or entities to make, purchase, insure or guarantee the first mortgage on such Owner's Lot and Residence.

ARTICLE XV

GENERAL PROVISIONS

Section 1. ENFORCEMENT AT LAW OR IN EQUITY: NOTICE TO MORTGAGEE OF UNCURED DEFAULT.

The Association or any Owner shall have the right to enforce by proceedings at law or in equity all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Amended and Restated Declaration or any amendment hereto including the right to prevent the violation of any such restrictions, conditions, covenants, or reservations and the right to recover damages or other individual assessment for such violation; provided, however, with respect to assessment liens and Association Rules, the Association shall have the exclusive right to enforcement thereof. Failure by the Association or by any member to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Association or any Owner shall also have the right to enforce by proceedings at law or in equity the provisions of the Articles or Bylaws and any amendments thereto.

Section 2. INVALIDITY.

Any provision of this Amended and Restated Declaration invalidated in any manner whatsoever shall not be deemed to affect in any manner the validity, enforceability, or effect of the remainder of this instrument, and in such event all of the other provisions of this instrument shall continue in full force and effect as if such invalid provision had never been included herein.

Section 3. CLAIMS.

No claim or cause of action shall accrue in favor of any person in the event of the invalidity of any provision of this Second Amended Declaration or for failure of the Association or Declarant to enforce provisions hereof. This Section may be pleaded as a full bar to the maintenance of any suit, action or arbitration brought in violation of this provision.

Section 4. WAIVER.

No provision contained in this Amended and Restated Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 5. CAPTIONS.

The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Second Amended Declaration nor the intent of any provision hereof.

Section 6. GENDER.

The use of the masculine gender in this instrument shall be deemed to refer to the feminine gender, and the use of the singular shall be deemed to refer to the plural, and vice versa, when the context so requires.

[SIGNATURE PAGES FOLLOWING]

EXHIBIT "A"

Parcel # 1

All Lots, Blocks, and Common Area in Vintage Gardens Homes II, an addition to the City of Oklahoma City, Oklahoma County, Oklahoma, according to the recorded plat thereof; and

Parcel #2

All Lots, Blocks, and Common Area in Vintage Gardens Homes III, an addition to the City of Oklahoma City, Oklahoma County, Oklahoma, according to the recorded plat thereof.

EXHIBIT "B"

ASSESSMENT SCHEDULE

Each Residence shall be assessed a fractional share of the common area expenses. The numerator of said fraction shall be equal to the total applicable common area expense assessed and the denominator of the fraction shall be the total number of Residence located within Vintage Gardens Homes II and III Inc.