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**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS**

FOR

VINEYARD HEIGHTS

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
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THIS DECLARATION is made this 4~~th~~ day of FEBRUARY, 2002, by DAVID A. GUDAL and CHERYL MISSY GUDAL, hereinafter referred to as Declarant.

WHEREAS, Declarant is the owner of Vineyard Heights, an Addition in Johnson County, Texas, according to the subdivision plat (the "Plat") thereof recorded in Volume 8, Page 899 of the Plat Records of Johnson County, Texas, and

WHEREAS, Declarant desires to insure that the development and use of the Properties (hereinafter defined) will maximize the benefit of the unique, presently-existing topographical and aesthetic features offered by the properties and to protect those qualities for all future property owners, and desires to establish and implement a system of covenants, conditions, restrictions, rules and regulations which are designed to take maximum advantage of the unique characteristics of the Properties while maintaining those same considerations for future generations and providing the framework that will support and enhance that quality of life and the security of that environment, and, to this end, desires to subject the Properties to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, to be binding upon each Owner of a Lot (as such terms are hereinafter defined), and

WHEREAS, Declarant desires to impose said covenants, conditions, restrictions, easements, charges and liens on the Properties and yet retain reasonable flexibility to respond to changing or unforeseen circumstances so as to control and maintain the first class quality and distinction of the Properties, and

WHEREAS, Declarant has deemed it desirable, and in the best interests of the residents and Owners of the properties, for the efficient preservation of the values and amenities in said community, to create an entity to which would be delegated and assigned the powers of maintaining and administering the Common Areas and certain other property and improvements, enforcing these restrictions, covenants, easements, charges, and liens, and collecting and disbursing the assessments and charges hereinafter created, and

WHEREAS, Declarant has caused to be incorporated VINEYARD HEIGHTS HOMEOWNERS ASSOCIATION, INC., a Texas non-profit corporation, and has designated it as such entity;

NOW, THEREFORE, Declarant hereby declares that the Properties are and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes collectively referred to herein as the "Covenants, Conditions and Restrictions") hereinafter set forth. The covenants, conditions, restrictions and easements hereinafter set forth are covenants running with the land at law as well as in equity, and shall constitute a general plan for the benefit of and enforceable by all present and future owners of all Lots in the Properties and their heirs, legal representatives, successors and assigns, as well as by Declarant and the aforesaid Vineyard Heights Homeowners' Association, Inc.

ARTICLE I.
DEFINITIONS

The following words, when used in this Declaration or any amendment thereof (unless the context shall otherwise clearly indicate or prohibit), shall have the following meanings:

- (a) "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Corporation.
- (b) "Builder" shall mean any person or entity other than Declarant (whether one or more) which acquires a Lot for the purported purpose of building a structure thereon for occupancy, in whole or in part, by some other person or entity.
- (c) "Common Areas" shall mean and refer to all areas of the Properties which are so identified on the Plat (if any) or are intended to be devoted to the common use and enjoyment of the Owners, including but not limited to the streets and open spaces (except any open spaces dedicated for use as a public park) located within the Properties. The Common Areas specifically include Lot 9 (reserved for subdivision recreational amenities) and Lot 29 (the streets designated on the plat of the addition as "private road").
- (d) "Corporation" shall mean and refer to Vineyard Heights Homeowners' Association, Inc., a Texas non-profit corporation.
- (e) "Declarant" shall mean and refer to David A. Gudal and Cheryl Missy Gudal (herein sometimes collectively referred to as "Gudal"), their successors and assigns who shall receive by written assignment recorded in the real property records of Johnson County, Texas, all or a portion of Gudal's rights hereunder as Declarant, any such successors or assigns also being herein sometimes referred to as "Successor Declarant". No person or entity merely purchasing one or more Lots from Gudal in the ordinary course of business shall be considered a "Declarant".
- (f) "Lot" shall mean and refer to any one of the plots or tracts of land which is designated for separate ownership and numbered (or otherwise similarly identified) on the recorded subdivision maps or plats of the Properties (including the Plat), as said recorded subdivision maps or plats may be amended from time to time.
- (g) "Member" shall mean and refer to each Owner of a Lot, as provided in Article III hereof.

(h) "Owner" shall mean and refer to each and every person or business entity (whether one or more) who is a record owner of fee simple title to any Lot; however, the word "Owner" shall not include person(s) or entity(ies) who hold a bona fide lien or interest in a Lot as security merely for the performance of an obligation (specifically including, but not limited to, any mortgagee or trustee under a mortgage or deed of trust) unless and until such mortgagee or trustee has acquired title pursuant to foreclosure or any proceeding in lieu thereof.

(i) "Properties" shall mean and refer to the real property described hereinabove, any improvements thereto, and any additions thereto pursuant to Article II hereof.

(j) "Permitted Home Occupation" shall mean a non-residential use of a Lot within the Properties which: does not create noise or other manifestations greater in kind or degree than residential use; does not advertise the non-residential use by signs located on the Lot or by other media wherever located; and does not attract to the Lot persons or vehicles in numbers greater than that consistent with residential use; and, does not involve the storage of business vehicles, material or equipment on the Lot.

(k) "Unit" shall mean and refer to any building now or hereafter erected, constructed or situated upon any of the Lots in the Properties designed and intended for use and occupancy as a residence by a single family in conformity with the building restrictions set forth herein.

ARTICLE II. PROPERTIES SUBJECT TO DECLARATION

Section 1. Initial application. From and after the making and recording of this Declaration, it and all its terms shall be applicable to:

Lots 1 through 8, Block 1, and Lots 10 through 28, Block 1, Vineyard Heights. Lot 9 constitutes that portion of the Common Areas designated for improvement with social and recreational amenities for the use of Owners and others as permitted by the Corporation. Lot 29 constitutes that portion of the Common Areas dedicated to use as a private roadway, including therein such streets, walkways, utilities and green spaces as are typically located in the right-of-way of public streets. Provided, however, that:

- (a) Lots 9 and 29 shall not be subject to the assessments provided in Article V of this Declaration, except as hereinafter provided;
- (b) Lots 9 and 29 shall not be subject to the use regulations contained in Article VIII of this Declaration;

- (c) Any building erected on Lot 9 shall comply with the setback requirements applicable to residential buildings on other Lots; and
- (d) If at any time the Corporation should determine to convert the use of Lot 9 to that of a single-family residence, all the provisions of this Declaration applicable to any other Lot shall then apply to Lot 9, including without limitation the assessment provisions of Article V.

Section 2. Supplemental Properties. If Declarant at any time or times desires to add additional property (herein the "Supplemental Property") to the scheme of this Declaration, it may do so by filing of record a Supplementary Declaration, which shall extend the scheme of Covenants, Conditions and Restrictions of this Declaration to such property. However, the Covenants, Conditions and Restrictions, as applied to the property which is so added, may be altered or modified by said Supplementary Declaration, which may contain such additions to, deletions from and modifications of these Covenants, Conditions and Restrictions as may in Declarant's sole judgment be necessary to reflect the different character, if any, of the added properties. Without limiting the generality of the preceding sentence, and by way of example only, such a Supplementary Declaration may provide for assessments at a non-uniform rate per lot and may permit lots covered thereby to be used for churches, schools, police and/or fire stations. The exact legal description of the Supplemental Property may be revised by Declarant prior to filing any such Supplementary Declaration if and as necessary to correct any minor inaccuracies in such description which may be determined to exist.

ARTICLE III. MEMBERSHIP AND VOTING RIGHTS IN THE CORPORATION

Section 1. Membership. Every Owner of a Lot shall automatically be a Member of the Corporation and must remain a Member of the Corporation in good standing, for so long as such party remains an Owner.

Section 2. Voting Rights. The Corporation shall have two (2) classes of voting membership, Class A and Class B. Declarant shall be the only Class B Member, and all other Owners shall be Class A Members. Class A Members shall be entitled to one vote for each Lot owned, and the Class B Member shall be entitled to 30 votes for each Lot owned. The Class B membership shall cease and the Class B Member shall become a Class A Member upon the later to occur of the following:

- (a) when Declarant shall have conveyed (other than to a Successor Declarant) all of the Properties (and the Supplementary Property, if any), or
- (b) December 31, 2006.

From and after such conversion, all Members of the Corporation shall be Class A Members and each Member shall thereupon be entitled to one (1) vote for each Lot owned. Notwithstanding the foregoing, an Owner who is a Class B Member may elect to become a Class A Member at any time by written notice to the Corporation. When more than one person or entity has an ownership interest in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote [or 30 votes, in the case of a Class B Member) be cast with respect to such Lot. With respect to any such Lot which is the subject of joint ownership, the Board may refuse to recognize the vote incident to such Lot until such time as all Owners thereof have either cast such vote unanimously and jointly or designated one of such Owners to cast such vote by written proxy or similar instrument delivered to the Corporation. A person's or entity's membership in the Corporation shall terminate automatically whenever such person or entity ceases to be an Owner, but such termination shall not release or relieve any such person or entity from any liability or obligation incurred under or in any way connected with the Corporation or this Declaration during the period of such ownership, or impair any rights or remedies which the corporation, Declarant or any Owner has with regard to such former Owner. Declarant, or any Successor Declarant, may retain the voting rights incident to any Lot it may convey to a Builder, until such time as such Lot is occupied by the Owner thereof or such Owner's tenant.

Section 3. Quorum, Voting and Notice Requirements. Members holding twenty percent (20%) of the votes entitled to be cast, represented in person or by legitimate proxy, shall constitute a quorum. The vote of the majority of the votes entitled to be cast by the Members present, or represented by legitimate proxy, at a meeting at which a quorum is present, shall be the act of the Members meeting, unless the vote of a greater number is required by law, this Declaration or the By-Laws of the Corporation. Notice requirements for all action to be taken by the Corporation shall be as set forth in its Articles of Incorporation and/or By-Laws, as the same may be amended from time to time.

Section 4. Class A Members Owning More than One Lot. The Board may by resolution provide for the waiver or reduction in the amount of assessments for any Lot in excess of one owned by a Class A Member when such Member owns two or more Lots; provided, that: any such waiver or reduction shall apply only to unimproved Lots of such Owner while such Lots remain unimproved; and, the Owner of such lot shall not be entitled to a vote for any Lot on which an assessment has been waived or reduced.

ARTICLE IV. PROPERTY RIGHTS

Section 1. Easements of Enjoyment. Subject to the provisions of Section 3 of this Article, Declarant hereby grants and conveys to the following persons a right and easement of use and enjoyment in and to the Common Areas and an easement of ingress and egress across the streets and bridges, and such easements shall be appurtenant to and shall pass with the title to every Lot:

- (a) Each Member and each individual in his family residing with him in his Unit; and
- (b) Each tenant (and each individual in the family of such tenant residing with the tenant) who resides in a Unit owned by a Member;

provided, however, such easements shall not give such persons (excluding Declarant) the right to make alterations, additions or improvements to the Common Areas. Guests of Members and Members' tenants shall also have the right, on a temporary basis and subject to any rules or regulations from time to time established by the Board, to use the Common Areas and the streets or bridges.

Section 2. Title to the Common Areas. Declarant may retain the legal title to the Common Areas (subject to the easements set forth in Section 1 above) until such time as, in the opinion of Declarant, the Corporation is able to maintain the same, provided that Declarant hereby covenants for itself and its successors that it shall convey the Common Areas to the Corporation no later than the date set forth in Article III, Section 2, for the conversion of Class B membership to Class A membership. Until title to the Common Areas is conveyed to the Corporation, Declarant shall have the right and option to encumber, mortgage, alter, improve, landscape and maintain the Common Areas without the joinder or consent of any person or entity. The Corporation will not hold title to any of the Common Areas until title thereto is transferred to the Corporation by Declarant as aforesaid, and, except for the easement of ingress and egress across streets and bridges and the other easements granted herein, no Member or Owner will have a direct or undivided ownership interest in the Common Areas. Declarant reserves the right to execute any open space declarations applicable to the Common Areas which may be permitted by law in order to reduce ad valorem property taxes applicable to such Common Areas. The Corporation shall bear the expense of taxes, insurance and maintenance with respect to the Common Areas (including but not limited to streets), whether before or after legal title has been conveyed to the Corporation.

Section 3. Extent of Member's Easements. The rights and easements of use and enjoyment created hereby shall be subject to the following:

- (a) The right of the Board to prescribe reasonable rules and regulations governing the use, operation and maintenance of the Common Areas (including, by way of illustration, limiting the number of guests);
- (b) The right of the Board, as provided in its By-Laws, to suspend the voting rights and/or enjoyment rights of any Member or other person to use and enjoy any of the Common Areas (except as necessary to gain access to and from his Lot) for any period during which any assessment against a Lot owned by such Member remains unpaid, and for any period not to exceed thirty (30) days for an infraction of its then-existing rules and regulations (or such longer period as such infraction may continue);

- (c) The right of Declarant or the Corporation to place liens against all or any portion of the Common Areas to secure monies borrowed by the Declarant to develop and improve the Properties or Common Areas or by the Corporation to improve and/or maintain the Common Areas;
- (d) The right of the Corporation to enter into and execute contracts with any party (including without limitation the Declarant) for the purpose of providing maintenance or such other materials or services respecting the Common Areas as the Board of Directors of the Corporation may deem consistent with the purposes of the Corporation and/or this Declaration;
- (e) The right of the Corporation to charge admission and other fees for the use of any recreational areas within the Common Areas;
- (f) All easements, rights-of-way and other matters of record with respect to the Properties in the real property records of Johnson County, Texas; and
- (h) The right of Declarant or the Corporation to grant additional easements.

ARTICLE V.
COVENANTS FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot or Unit, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree (and such covenant shall be deemed to constitute a portion of the purchase money and consideration for acquisition of the Lot) to pay to the Corporation (or to any entity or agency which may be designated by the Corporation to receive such monies): (a) regular monthly or other periodic assessments or charges ("Regular Assessments") for matters concerning the properties including, but not limited to, those matters described in Section 2 of this Article V, (b) special group assessments ("Special Group Assessments") for capital improvements or unusual or emergency matters, such assessments to be fixed, established and collected from time to time as hereinafter provided; and (c) special individual assessments ("Special Individual Assessments") levied against individual Lot Owners to reimburse the Corporation for extra costs for maintenance, repairs, or other expenses caused by the willful or negligent acts of the individual Owner (or the tenants or guests of such Owner, the guests of any tenants of such Owner, or the licensees or invitees of any such Owner or tenant) or acts or conditions in violation of this Declaration and not caused by ordinary wear and tear, such assessments to be fixed, established and collected from time to time as hereinafter provided.

Section 2. Purposes of Assessments. The assessments levied by The Corporation shall be collected and used exclusively for the purpose of promoting the enjoyment and welfare of the residents of the Properties, and in particular (by way of example, and not limitation) for (a) the improvement and maintenance of the Common Areas and any facilities or improvements thereon and any related personal property, and any facilities which are presently or shall in the future be dedicated to the public but which are not maintained by any public or municipal authority, (b) the payment of taxes on, and insurance in connection with, the Common Areas, any improvements or facilities thereon; (c) carrying out the duties, or exercising the powers, of the Board of Directors of the Corporation as set forth in this Declaration, (d) carrying out the purposes of the Corporation as stated in its Articles of Incorporation; (e) for any matter or thing designated by any governmental authority having jurisdiction in connection with any zoning, subdivision, platting, building or development requirements; (f) landscaping and maintaining the Common Areas and any areas along any other public rights-of-way adjacent to the Properties; (g) costs related to water control and maintenance, including but not limited to the drilling of any wells, indemnification or reimbursement to water supply sources, public or private, and the maintenance of any open spaces and; (h) any common satellite dish, television antenna, cable television, or similar system or apparatus; and (i) the services of a person or firm (including affiliates of Declarant, as long as any compensation to or contracts with such affiliates are fair and reasonable) to assist in the management of the Corporation or any of its affairs, to the extent deemed advisable by the Board, legal and accounting services, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Corporation, whether such personnel are employed directly by the Board or any such manager.

Section 3. Basis and Amount of Assessments. The Board shall set the amount of the Regular Assessment for each Lot, which may be revised by the Board at its discretion in conformity with Section 6 of this Article V, taking into consideration the then current maintenance costs and the future needs and obligations of the Corporation. All Regular and Special Group Assessments shall be set at a uniform rate per Lot, except as may otherwise be expressly provided herein.

Section 4. Special Group Assessments. In addition to the Regular Assessments, the Corporation may levy in any calendar year one or more Special Group Assessments, applicable to that year only or to designated future years, to be paid in the manner designated in the resolution authorizing such assessments, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of any capital improvements upon or part of the Common Areas, streets or roadways, including the necessary fixtures and personal property related thereto, or any unusual or emergency matters; provided that any such assessments shall have the assent of the holders of at least two-thirds (2/3) of the votes of the Members of the Corporation then entitled to vote who are voting in person or by legitimate proxy at a meeting duly called for this purpose, as provided in Section 3 of Article III.

Section 5. Date of Commencement of Assessments; Due Dates. The Regular Assessments shall commence on the first day of February, 2002 (or on the date of Owner's purchase of a Lot), and such Regular Assessments shall continue to be due and payable annually, in advance, on the first day of February of each year thereafter, or at such other intervals as may be determined by the Board. The total Regular and Special Group Assessments due from any Owner other than Declarant prior to February 1, 2003, shall not exceed \$450.00 (per Lot). The due date or dates, if it is to be paid in installments, of any Special Group or Special Individual Assessment shall be fixed in the resolution authorizing such assessment.

Section 6. Duties of the Board of Directors with Respect to Assessments.

(a) In the event of a revision of the amount or rate of the Regular Assessment or establishment of a Special Group Assessment or Special Individual Assessment, the Board shall fix the amount of the assessment against each Lot and the applicable due date(s) for each assessment at least fifteen (15) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Corporation and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be delivered or mailed to every Owner subject thereto.

(b) The Board shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Corporation, setting forth whether said assessment has been paid. A reasonable charge may be made by the Board for the issuance of such certificates.

Section 7. Effect of Non-Payment of Assessment; the Personal Obligation of the Owner; the Lien and Remedies of the Corporation.

(a) If any Regular, Special Group or Special Individual Assessment or any part thereof is not paid on the date(s) when due (being the date(s) specified pursuant to this Article V), then the unpaid amount of such assessment shall become delinquent and shall, together with interest thereon as hereinafter provided and costs of collection thereof, thereupon become a continuing debt and personal obligation of the non-paying Owner, secured by a continuing self-executing lien on the Lot of the non-paying Owner and any right, title or interest that the non-paying Owner may have in such Lot or in the Properties, which lien shall bind the then Owner, his heirs, executors, devisees, transferees, personal representatives, successors and assigns. The Corporation shall have the right to reject partial payment of any assessment and demand full payment thereof or the Corporation may accept such partial payment on account only without waiving any rights hereunder with regard to the remaining balance due. The personal obligation of the then Owner of any respective Lot to pay such assessment, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them. The lien

for any unpaid assessments, however, shall be unaffected by any sale or assignment [other than a foreclosure sale (or deed in lieu thereof) upon a lien which is superior to the lien securing the unpaid assessments] of a Lot and shall continue in full force and effect. No Owner may waive or otherwise escape liability for any assessment provided herein by non-use of the Common Areas or abandonment of his Lot.

(b) If any assessment or part thereof is not fully paid within thirty (30) days after the due date, the unpaid amount of such assessment shall bear interest from the due date at the lesser of eighteen percent (18%) per annum or the maximum legal contract rate of interest, and the Corporation may, at its election, retain the services of an attorney for collection or to foreclose the lien against the property subject thereto or pursue any other remedy which the Corporation may have at law or in equity, and there shall be added to the amount of such unpaid assessment any and all collection costs incurred hereunder by the Corporation, including reasonable attorneys' fees and costs of suit.

(c) Any lien arising under this Section 7 may be foreclosed judicially or in accordance with Section 51.002 of the Texas Property Code, as same may hereafter be amended or supplemented (or any future statute taking the place of said Section 51.002, governing non-judicial foreclosures of deed of trust and/or contractual liens on Texas real property). For this purpose, Declarant and each future Owner hereby grant, bargain, sell and convey the Lots unto Stan Wilkes, as Trustee, or such successor Trustee(s) as may from time to time be appointed in writing by the Board, the conveyance of each Lot hereunder being for the purpose of securing the payment of all assessments coming due hereunder with respect to such Lot.

Section 8. Exempt Property. The following property, otherwise subject to this Declaration, shall be exempted from the assessments, charges and liens created herein:

- (a) All properties dedicated to a governmental authority or to the public;
- (b) All streets and roadways on the Properties; and
- (c) All Common Areas.

Section 9. Dedication of Streets. In the event the Corporation fails to properly operate and maintain the streets and roadways and a governmental authority is called upon to do so, then, at the option of and upon acceptance by the said governmental authority, the streets within the Properties shall become public streets to be maintained by the said governmental authority, which shall thereupon have the right to remove therefrom any objects within or such streets conflicting with the use of same as public streets and roadways.

Section 10. Direction by Declarant. Notwithstanding anything in this Declaration to the contrary, until the later to occur of (a) December 31, 2006, or (b) such time as all of the Properties and Supplemental Property have been conveyed by Declarant (other than to a Successor Declarant), Declarant shall have the right to direct the Corporation to perform specific items of maintenance, in a time and manner satisfactory to Declarant and at the expense of the Corporation, with respect to the Common Areas, streets and roadways within the Properties, in the event any such items are in Declarant's opinion not being properly maintained.

Section 11. Subordination of the Liens to Mortgages. The liens securing the various assessments provided for in this Article V shall be subordinate and inferior to the lien of any valid mortgage or deed of trust now or hereafter placed upon any Lot to secure or obtain purchase-money, development or improvement financing or refinancing by the Owner thereof, provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the foreclosure sale (whether public or private) of such Lot pursuant to the terms and conditions of any such mortgage or deed of trust. Such sale shall not relieve any such Lot Owner of personal liability therefor, nor the new Owner thereof from liability for the amount of any assessments thereafter becoming due nor from the lien of any such subsequent assessment.

ARTICLE VI.

GENERAL POWERS AND DUTIES OF BOARD OF DIRECTORS OF THE CORPORATION

Section 1. Disbursements. The Board, as it deems appropriate for the benefit of the Corporation, the Properties and the Owners, shall make disbursements for purposes set forth in Article V, section 2 above, out of the funds derived from the assessments provided for in Article V, Section 1.

Section 2. Additional Rights, Powers and Duties of the Board. The Board or any officer or agent of the Corporation designated by the Board (including without limitation the Declarant.) shall have the following additional rights, powers and duties in addition to those which may be provided by statute or under the Articles of Incorporation or By-Laws of the Corporation:

- (a) Once title has been conveyed to the Corporation, to execute all declarations of ownership for tax assessment purposes with regard to any of the Common Areas or other portions of the Properties owned by it;
- (b) To enter into agreements or contracts (including but not limited to any maintenance, reimbursement or indemnity agreements) with utility companies, water districts and other governmental authorities with respect to: (i) utility installation, consumption and service matter; and (ii) water control and maintenance matters.
- (c) To borrow funds to pay costs of operation, which may be secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit;

- (d) To enter into contracts, maintain one or more bank accounts, and, generally, to have all the powers necessary or incidental to the operation and management of the Corporation;
- (e) To protect or defend the Common Areas, streets and roadways and related appurtenances from loss or damage by suit or otherwise, to sue or defend in any court of law on behalf of the Corporation, and to provide adequate reserves for repairs and replacements of equipment and other property or items owned or maintained by the Corporation;
- (f) To make reasonable rules and regulations for the operation and use of the Common Areas, streets and roadways, and other portions of the Properties as specified herein and to repeal or amend them from time to time (without limiting the generality of the foregoing language, the rules and regulations may provide for limitations on use of all or any portion of the Common Areas by children, guests, or otherwise):
- (g) Pursuant to Article VII herein, to adjust the amount, collect, and use any insurance proceeds to repair damaged or replace lost property; and if proceeds are insufficient to repair damaged or replace lost property, to assess the Members in amounts sufficient to cover the deficiency;
- (h) To enforce the provisions of this Declaration and any rules and regulations made hereunder and to enjoin and seek damages from any Owner for violation of such provisions, rules or regulations;
- (i) To establish such committees with such delegated powers as the Board may deem necessary or appropriate to the fulfillment of its duties and the exercise of its powers hereunder; and
- (j) To obtain such fidelity bonds as the Board may deem necessary or appropriate.

Section 3. Liability Limitations. Neither any Member, director, or officer of the Corporation shall be personally liable for debts contracted for or otherwise incurred by the Corporation or for a tort of another Member, whether or not such other Member was acting on behalf of the Corporation or otherwise. Neither the Declarant, the Corporation, its directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portions thereof or for failure to repair or maintain the same, nor for any personal injury, property damage or any other damages including, but not limited to, incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portions thereof.

Section 4. Reserve Funds. The Board may establish reserve funds which may be maintained and accounted for separately from other funds maintained for annual operating expenses and may establish separate, irrevocable trust accounts in order to better demonstrate that the amounts deposited therein are capital contributions and not net income to the Corporation.

ARTICLE VII.
INSURANCE; REPAIR AND RESTORATION

Section 1. Right to Purchase Insurance. The Corporation shall have the right and option to purchase, carry and maintain in force insurance for the interest of the Corporation, its Board of Directors, officers, agents, employees, and the Architectural Control Committee, in such amounts and with such endorsements and coverage as shall be considered by the Board to be reasonable and proper.

Section 2. Insurance Proceeds. The Corporation, through the Board, shall use any net insurance proceeds to satisfy any liability or to repair and replace any damage or destruction of property, real or personal, covered by such insurance. Any balance of insurance proceeds of insurance paid to the Corporation which is remaining after satisfaction of such liability or satisfactory completion of repair and replacement shall be retained by the Corporation as a reserve fund for repair and replacement of the Common Areas and the satisfaction of the Corporation's other maintenance obligations hereunder.

Section 3. Insufficient Proceeds. If the insurance proceeds are insufficient to satisfy any liability or to repair or replace any loss or damage, the Board may levy a Special Group Assessment or, if appropriate, a Special Individual Assessment, to cover the deficiency.

ARTICLE VIII.
AFFIRMATIVE, NEGATIVE AND PROTECTIVE RESTRICTIONS
AND COVENANTS; ARCHITECTURAL CONTROL COMMITTEE

Section 1. Residential Use Only. Each Lot and Unit (save and except Lots 9 and 29, Block 1) shall be used exclusively for single-family residential purposes, and no Unit may be used for the engaging in or practice of any commerce, industry, business, trade or profession within the Properties, save and except (a) development, construction, sales and marketing activities by Declarant, (b) such activities as may be approved by the Board (including Permitted Home Occupations) and which do not violate any applicable law, (c) with the prior written authorization of the Architectural Control Committee hereinafter described ("Committee"), a Builder may conduct its sales and marketing program for the portion of the Properties owned by such Builder from any completed Unit owned by such Builder if so authorized for a period not to exceed six (6) months from the date of such authorization, which may be renewed for successive six (6) month periods at the discretion of the Committee, and (d) that Declarant or, if and to the extent approved by the Committee, a Builder may conduct its construction operations and activities on the properties and, in connection therewith, do all things reasonably necessary or

convenient in order to most expeditiously commence, continue and complete such construction operations. The restrictions on use herein contained shall be cumulative of, and in addition to, such restrictions on usage as may from time to time be applicable under and pursuant to the statutes, rules, regulations and ordinances of any governmental authority having jurisdiction over the Properties, any violation of which shall also constitute a violation hereof.

Lot 9, Block 1 shall constitute a portion of the Common Areas and may be used for recreational facilities such a swimming pool, tennis court and similar uses, together with such buildings consistent with such uses as the Declarant or the Corporation may approve. Any structures located thereon shall be built in compliance with the construction materials and setback requirements provided herein for other Lots in the Properties. If at any time the Declarant (or the Corporation, after Lots 9 and 29, Block 1 are conveyed to the Corporation) shall determine to cease the use of the such portion of the Common Areas for the herein-described purposes, then said lot shall thereafter be used exclusively for single-family residential purposes, subject to all the terms and conditions of this Declaration applicable to other Lots.

Section 2. Individual Units; Garages. Each residential structure erected or placed on any Lot shall be designed, intended and used as a residence for a single family only, and no residential structure shall be more than 45 feet in height from the lowest point of the interior living space of the structure to the peak of the roof without the prior written consent of the Committee, nor less than 2,200 square feet of living space, exclusive of garages, porches, stoops, or any structures or improvements which are not part of the air-conditioned, interior living quarters of the residence. No one and one-half story, split level, or two story Unit shall have less than 1,500 feet of living area on the ground floor.

No building or other structure shall be erected, altered, placed or permitted to remain on any Lot other than a single-family dwelling and, if any, its customary and usual accessory structures (unless prohibited herein). Such permitted accessory structures shall include but not be limited to guesthouses, pool houses and/or maid quarters. No building or structure intended for or adapted to business purposes shall be erected, placed, permitted or maintained on such premises, or any part thereof, save and except those related to activities permitted in the preceding Section 1 of this Article VIII.

No air conditioning equipment may be situated or placed in the front of any residential structure or attached to the front wall of any Unit.

There shall be constructed and maintained with and for each Unit at least two hard surface (concrete or asphalt) off-street automobile parking spaces, both of which shall be enclosed by a garage. No garage on any Lot in Vineyard Heights shall face the street or otherwise have its entrance located on the front of the residence, unless such placement is approved in advance in writing by the Committee. All driveways shall be paved with concrete or asphalt.

A determination that a non-residential use of a Lot is a Permitted Home Occupation, as defined in Article I (j) of this Declaration, shall be done by the Board of Directors of the Corporation, whose decision shall be final and conclusive.

Section 3. Construction Materials of Buildings. Each residential structure constructed upon a Lot shall have total combined exterior walls of the first and second story consisting of not less than 70% (excluding doorway and window openings) stone or brick exterior building materials (of a type approved by the Committee) provided, however, that second-story walls above a roof line and not above a first-floor exterior wall are exempt from this requirement. The Committee may authorize and permit the selected use of other building materials if the same are aesthetically acceptable, in the sole judgment of the Committee, as to architectural detail, style, motif and accent.

All roofs shall be constructed of materials approved by the Committee, including approved concrete or clay tile, standing seam copper and other approved metal, slate and approved imitation slate, fire-treated #1 wood shingles or composition. The roof of the residential unit shall have a minimum 7/12 pitch.

All barns and outbuildings shall be architecturally compatible with the primary residential structure on the Lot and shall have not less than 50% brick or stone exterior wall surfaces. Roofs of auxiliary buildings shall have a minimum 4/12 pitch. Metal roof materials must have not less than a 20-year painted finish. Sidewall heights shall not exceed 14 feet. Barns and outbuildings shall be located behind the rear line of the principal Unit. Doors on barns and outbuildings may face a street only if located at least 50 feet behind the rear line of the principal Unit. Metal carports are prohibited. Detached garages, workshops and other outbuildings shall be of a design and construction type approved by the Committee prior to erection and shall thereafter be maintained in good repair.

All buildings shall be substantially constructed in accordance with the Uniform Building Code, Uniform Fire Code and Uniform Plumbing Code in effect at the time of such construction.

No Lots may be replatted or subdivided so as to create from the total combined replatted Lots more separate building sites or Lots than existed in the original plat of the Properties.

Section 4. Construction; Trees; Setback Lines; Landscaping. Prior to any site improvements, including but not limited to grading and the removal of any trees of four (4) inch caliper or greater, a complete site plan showing the location of all existing trees of eight (8) inch caliper or greater, an indication of any such trees that are to be removed in connection with such improvements, the location of the proposed structures to be constructed on such site, drive and walk locations, existing topography and proposed changes to same, drainage scheme, utility runs, and elevations shall be submitted to the Committee for written approval. The Committee may, in its sole discretion, impose any stipulations, conditions or requirements it deems necessary or appropriate with respect to the preservation or placement of trees or plant growth upon any Lot.

It being the intent of the Declarant to preserve as much as possible the trees and tree canopy cover within the Properties, no clearing of any living trees of four (4) inch caliper or greater shall be conducted or allowed without the prior written approval of the Committee. Initial clearing and grubbing of Lots is permissible in order to facilitate preliminary engineering and design of the site plan. However, the preceding sentence shall not be construed as a waiver of the prohibition against removing trees of four (4) inch caliper or greater without the prior written approval of the Committee nor as a waiver of the restrictions set forth in the succeeding paragraph. No trees shall be cut down, removed or substantially cut back if located within forty (40) feet of the west line of Lots 27 and 28.

This Section 4 shall not be construed to limit in any way the scope of discretion or the powers herein or elsewhere accorded the Committee respecting approval of matters covered herein. The minimum floor finish elevation of all Units and other structures within the Properties shall be as set forth on the plat, except structures (not designed for occupancy) for which such requirement is waived by the Committee. The finished floor elevation of houses on sloping lots shall be not less than 18 inches above the proposed exterior grade of the yard adjacent to the slab on the uphill side of the Unit.

Section 5. Storage and Use of Vehicles. Boats, buses, trailers, motor homes; recreational vehicles, campers, and all other similar vehicles or items designated by the Board (other than conventional passenger automobiles and pick-up trucks) may be parked, maintained, stored or kept on any parcel of the Properties covered by these Covenants, Conditions and Restrictions only if such vehicles are not visible to public view from any street or public or common area, and if, furthermore, such vehicles are housed completely in a garage, or, such vehicles may be parked, maintained, stored or kept on a paved area adjacent to the garage at the rear of each respective Unit so as to be located entirely within the boundaries of said paved area on each applicable Lot, so long as such vehicles are not visible to public view from any street or public or common area, and otherwise in full compliance with any and all rules and regulations with respect thereto as may be promulgated by the Board and/or the Committee from time to time. Trucks with a cargo capacity of over one (1) ton shall not be kept overnight on the streets or other Common Areas or on the Lot of any Owner. No motorcycle or "dirt bike" shall be operated in the Properties unless the same is equipped with an effective baffled muffler and anti-noise device, and in no event shall such vehicles be operated on roadways or other Common Area property or on any Lot other than the Lot belonging to the owner of such vehicle.

Section 6. Antennas. Except with the prior written approval of the Board, (a) no antenna shall be used or kept on any Lot except for A.M., F.M., V.H.F. or U.H.F. reception, and (b) no satellite dish or similar apparatus shall be kept or erected on any Lot if the diameter thereof exceeds three (3) feet.

Section 7. Fences; Signs. Any fence located in front of the front line of the residential Unit shall be constructed of steel bar or pipe, wood, PVC, brick or stone and shall be maintained in good condition. Wire mesh or welded wire may be attached to fences in front of the Unit but may not be used alone. No cyclone or other chain-link or strand-wire fence may be placed or erected upon any Lot or portion thereof. Privacy fences or walls may be built only around swimming pools or patios or along rear lot lines. Nothing herein shall be deemed to restrict a fence height or type appropriate to recreational facilities located on Lot 9.

No sign or signs shall be displayed to the public view on any part of the Properties, except. (a) a dignified "For Sale" sign (of not more than six (6) square feet in size) may be utilized by the Owner of the respective residential Lot, (b) signs may be temporarily [for a period not in excess of twelve (12) months with respect to any Lot) used by any Builder in the development and sale of any portion of the Properties owned by such Builder, provided not more than one sign per Lot may be so used and such sign may not exceed six (6) square feet in size, and (c) signs related to development, sale or marketing which are erected by or for Declarant shall be permitted. The Corporation or its designated agent shall have the right to remove and dispose of any prohibited sign, advertisement, billboard or advertising structure which is placed on any Lot or portion of the Properties, and in doing so shall not be subject to any liability for trespass or other tort in connection therewith or arising from such removal nor any liability for any accounting or other claim respecting the disposition thereof.

Section 8. Utilities. Except as to special street lighting or other aerial facilities which may be required by the franchise of any utility company or which may be installed by the Declarant pursuant to its development plan, no aerial utility facilities of any type (except meters, risers, service pedestals, transformers and other surface installations necessary to maintain or operate appropriate underground facilities) shall be erected or installed on the interior of the Properties (i.e., at locations other than within 20 feet of the boundary of the Properties), whether upon individual Lots, easements, streets, or rights-of-way of any type, either by the utility company or any other person or entity, including, but not limited to, any person owning or acquiring any part of the properties, and all utility service facilities (including, but not limited to, water, sewer, gas, electricity and telephone) shall be buried underground unless otherwise required by a public utility.

Section 9. Temporary Structures. No temporary structure of any kind shall be erected or placed upon any Lot, save and except with the prior written authorization of the Committee, and then only in strict compliance with the terms of such authorization. In no event shall a building designed or used for human habitation be built on a Lot prior to the construction of the primary residential structure on said Lot. Declarant may maintain temporary sales or construction offices, provided such sale or construction offices are removed within sixty (60) days after completion of sales or construction, as the case may be. In addition, Declarant may conduct its sales and marketing program for the Properties from any Unit owned by it and/or from temporary sales building(s) or trailers and Declarant may also conduct its construction and development operations and activities on the Properties and, in connection therewith, do all

things reasonably necessary or convenient. in order to most expeditiously commence, continue and complete such construction and development operations (specifically including, but not limited to, construction and maintenance of temporary buildings and trailers for storage of construction materials and equipment and open storage of uncovered building materials and equipment).

Section 10. Garbage and Trash Collection; Maintenance; Water and Sewage. No rubbish, trash or garbage may be dumped or stored on or in any Lot or any portion of the Common Areas, streets or roadways (except at such times and in such manner as may be designated by the Committee or the Board). All trash receptacles shall be covered containers. Each Lot Owner shall observe and comply with any and all regulations or requirements promulgated by the Corporation in connection with the storage and removal of trash and garbage. Each Lot Owner shall subscribe to an approved trash pick-up service during all times that the Lot is occupied.

If, after ten (10) days' prior written notice, an Owner shall fail to: (a) control weeds, grass and/or other unsightly growth (to a height of not more than six (6) inches in front yards and along driveways and not more than fifteen (15) inches elsewhere on a Lot and along roadways adjacent to the Lot); (b) remove trash, rubble, building and construction debris (during and after construction); or (c) exercise reasonable care to prevent or remedy an unclean, untidy or unsightly condition, then the Corporation shall have the authority and right to go onto said Lot for the purpose of mowing or cleaning said Lot or otherwise remedying the situation and shall have the authority to render a Special Individual Assessment (as hereinabove provided) and collect from the Owner of said Lot the amount so expended by the Corporation.

All Units shall be connected to water and sewage systems acceptable to the Declarant and the Corporation. No outside toilets will be permitted, except those approved by the Committee for use during construction. The drainage of any sewage into any road, ditch, surface easement, or water body, either directly or indirectly, is prohibited.

Each Unit shall be connected to an aerobic wastewater treatment unit designed, operated and maintained in accordance with applicable regulations and with a permit therefor issued by Johnson County or such other governmental authority as may have jurisdiction thereof. No septic tanks or wells may be placed or operated upon any Lot, except those that have been approved in writing by the Committee. Septic tanks with absorption trenches shall not be permitted. Disposal areas shall not be located within 30 feet of a Lot line or within 50 feet of a ditch or creek. Lot Owners acknowledge the following:

“On-site sewage facility performance cannot be guaranteed even though all provisions of the Rules for Private Sewage Facilities of the appropriate County are complied with.

“Inspections and/or acceptance of a private facility by the County Public Works Department shall indicate only that the facility meets minimum requirements and does not relieve the owner of the property from complying with County, State and Federal regulations. Private Sewage

Facilities, although approved as meeting minimum standards, must be upgraded by the owner at the owner's expense if normal operation of the facility results in objectionable odors, if unsanitary conditions are created, or if the facility when used does not comply with governmental regulations.

"A properly designed and constructed private sewage facility system, in suitable soil, can malfunction if the amount of water it is required to dispose of is not controlled. It will be the responsibility of the lot owner to maintain and operate the private sewage facility in a satisfactory manner."

Section 11. Prohibited Acts and Activities. No noxious or offensive activity shall be conducted on any portion of the Properties that will adversely affect the peace, quiet, comfort or serenity of any other Owners. No Owner shall permit anything to be done or kept in his Unit, on his Lot or in the Common Areas, which would violate any applicable public law or zoning ordinance or which would result in the cancellation of, or increase the premium(s) for, any insurance carried by the Corporation, or which would be in violation of any law or any rule or regulation promulgated by the Board. There shall be no obstruction of the Common Areas, nor shall anything be kept or stored in or on the Common Areas, nor shall anything be altered, or constructed or placed in or on the Common Areas without the prior written consent of the Committee or the Board.

No animals, livestock or poultry shall be raised, bred or kept in any portion of a Lot, the Common Areas or the Properties, save and except as follows: (I) Not more than three (3) dogs, cats or other household pets may be kept in a Unit or in a fenced area of a Lot (and only if such fence is permitted hereunder); and (ii) not more than two (2) cattle or horses in a fenced area; provided, that any such animals do not create a nuisance and that they may not be kept, bred or maintained for commercial purposes. No animal shall be permitted to be at-large off of the Lot of the owner of such animal.

No mineral exploration, removal or related activities shall be conducted on any Lot; provided, however, that incident to the construction of a structure (when such construction has been approved in writing by the Committee as provided herein), core borings and excavation activities reasonably necessary for such construction shall be permitted. Nothing in the immediately preceding sentence shall be deemed to waive any of the requirements or prohibitions of Sections 4 or 13 of this Article VIII.

Section 12. Damages; Use of Common Areas; Rules and Regulations. Each Owner shall be liable to the Corporation for any damage to any part of the Properties owned or maintained by the Corporation caused by the negligence or willful misconduct of the Owner, his tenant, or either of their families, guests or invitees.

Use of the Common Areas shall be limited to Owners, permitted tenants and guests in accordance with the provisions of Article IV, Section 1 hereof. The Board may provide for use

of the Common Areas by residents and/or owners of lots in the Berry Hill Estates subdivision adjacent to the Properties, but such use shall be conditioned upon payment of a fair consideration therefor, as determined by the Board.

All Owners, tenants, guests and occupants shall abide by any rules and regulations adopted by the Board. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and any party who has violated said rules and regulations shall be liable to the Corporation for all damages and costs, including reasonable attorneys' fees.

Following initial construction of roadways and utilities on the Properties, Lot Owners shall be responsible for protecting the roadways and ditches (particularly those adjacent to the Owner's Lot or Lots) from erosion and damage due to construction or other activities on or adjacent to the Lot. Any damage to a roadway or ditch caused by the Owner or its contractors shall be repaired promptly (within 15 days) by the Lot Owner without any cost to the Association. Equipment shall not be loaded or unloaded on a roadway. Ruts created in ditches shall be promptly filled and leveled. Disturbed areas shall be protected from sediment washing into ditches and drainage courses until vegetation is reestablished. Upon failure to so maintain or correct damage to Common Areas, the Association may at its option maintain or correct such damaged condition and the Owner of the Lot to which the damage is attributable shall be obligated to reimburse the Association for the costs thereof and upon failure to make reimbursement the Association may file a lien in the office of the County Clerk of Johnson County to secure the payment of such reimbursement.

Section 13. Architectural Control Committee. Following the date of recordation of this declaration, the Architectural Control Committee (herein sometimes called the "Committee") shall initially be composed of the Declarants, and thereafter may be one or more individuals or business entities appointed by Declarant, each generally familiar with residential and community development design matters and knowledgeable about the Declarant's concern for a high level of taste and design standards within the Properties, who shall serve for a tenure at the pleasure of Declarant. The Committee shall function as the representative of Declarant and the Owners of the Lots for the purposes herein set forth as well as for all other purposes consistent with the creation and preservation of a first-class community development. The Committee shall use its best efforts to promote and ensure a high level of taste, design, quality, harmony and conformity throughout the Properties. In the event of the death or resignation of any member of the Committee, the Declarant shall designate and appoint a successor. No member of the Committee acting in good faith shall be liable for claims, causes of action or damages arising out of services performed pursuant to this Declaration, and the Corporation shall indemnify and defend the Committee and the members of the Committee against any such claims, demands, causes of action and liabilities, and any expenses relating to any such claims, demands, and causes of action (including but not limited to reasonable attorneys' fees).

No building, structure, or improvement of any kind or nature shall be removed from or erected, placed or altered (including, but not limited to, alterations of the exterior and facade of any Unit or the appearance or design thereof, such as changes or alterations of the color or appearance or composition of exterior materials) on any Lot until all plans and specifications and a plot plan have been submitted to and approved in writing (sometimes hereinafter termed the "Building Permit") by the Committee (acting by a majority of its members) as to:

- (a) quality of workmanship and materials; adequacy of its dimensions; and proper facing of main elevation with respect to nearby streets;
- (b) conformity and harmony of the external design, type and appearance of exterior surfaces;
- (c) location with respect to topography and finished grade elevation and effect of the location and use of any structure or improvement on neighboring Lots and improvements situated thereon and drainage arrangement; and
- (d) the other standards set forth within this Declaration (and any amendments hereto) or as may be set forth within bulletins or regulations promulgated by the Committee, or matters in which the Committee has been vested with the authority to render a final interpretation and/or decision.

The Committee is authorized and empowered to consider and review any and all aspects of dwelling construction which may, in the reasonable opinion of the Committee, adversely affect the living enjoyment of one or more Lot Owners or the general value of the Properties or the intent or purposes of this Declaration. Final plans and specifications shall be submitted in duplicate to the Committee for approval or disapproval. The Committee is authorized to require the submission of samples of proposed construction materials. At such time as the plans and specifications meet the approval of the Committee, one complete set of plans and specifications will be retained by the Committee and the other complete set of plans will be marked "Approved" and returned to the Lot Owner or his designated representative. If found not to be in compliance with these Covenants, Conditions and Restrictions or if otherwise found unacceptable to the Committee, one set of such plans and specifications shall be returned marked "Disapproved", accompanied by a statement of items found unsatisfactory. Any modification or change to the approved set of plans and specifications must again be submitted to the Committee for its inspection and approval. The Committee's approval or disapproval, as required herein, shall be in writing. If the Committee fails to approve or disapprove such plans and specifications within ten (10) days after the date of submission, the approval by the Committee of any matters submitted which were discretionary with the Committee shall be deemed granted. However, the failure to receive written approval of plans and specifications shall not, under any circumstances, relieve any party from compliance with these Covenants, Conditions and Restrictions.

In addition to the provisions set forth above, and in order to provide adequate funds for use by the Committee in providing for the review of plans and specifications and periodic inspections of construction and alteration of Units, it is hereby provided that:

(a) Each application for a Building Permit for new construction shall be accompanied by two (2) sets of plans and specifications for all proposed construction to be done on such Lot, including (i) site plans showing the location on the Lot and dimensions of all proposed walls, driveways, fences, all areas to be graded or altered, building and roof outlines, drives, walks, and any existing trees of eight (8) inch caliper or greater, such site plans to be of a proportion acceptable to the Committee; (ii) floor plans showing dimensions and total floor areas of the proposed building(s), such floor plans to be of a proportion acceptable to the Committee; (iii) elevation plans showing the exterior appearance and existing and proposed finish grades, and a notification of all exterior materials and colors; (iv) any plans, documents, or requirements concerning all other matters deemed relevant by the Committee to architectural approval. An architectural review fee, if established by Declarant in his discretion, shall be due the Committee in connection with its review of plans and specifications under this paragraph (a).

(b) Applications for Building Permits for any structural changes or additions must be accompanied by two (2) sets of plans and specifications showing the existing structure(s) and proposed changes or additions, together with any other plans, documents or other information required by the Committee, and a review fee of not more than \$50.00 payable to the Committee or its designee. The review fee due the Committee under this paragraph (b) shall be paid by the Owner submitting such application.

(b) The Committee may grant conditional approval and issue a Temporary Building Permit upon such conditions and subject to such restrictions as the Committee in its discretion may designate. A Building Permit or Temporary Building Permit shall expire six (6) months from the date of issuance if the construction authorized therein has not yet commenced, in which case a new application must be submitted for review and approval by the Committee in the same manner and subject to the same requirements as set forth above for original applications. An architectural review fee shall be payable to the Committee by the Owner submitting such new application, in an amount established by Declarant (but in no event greater than the architectural review fee paid in connection with such Owner's original application, regardless of by whom paid).

(c) Once approved, no deviation from the plans and specifications for which a Building Permit has been issued shall be made unless such deviation is approved in writing by the Committee. Submission of plans and specifications for review by the Committee constitutes an acknowledgement by the builder or Owner that compliance with these Covenants, Conditions and Restrictions is mandatory and that the intent of

same shall be enforced. Nonconformance to approved plans and specifications shall prevent the issuance of a Certificate of Substantial Compliance and Completion by the Committee in accordance with the succeeding paragraph (e).

The Committee may from time to time publish and promulgate architectural standards bulletins which shall carry forward the spirit and intention of these Covenants, Conditions and Restrictions. Although the Committee shall not have unbridled discretion with respect to taste, design and any standards specified herein, the Committee may be responsive to technological advances or general changes in architectural designs and materials and related conditions in future years and may use its discretion concerning any adoption of its standards in regard to matters of taste and design in the context of any such advances or changes. Such bulletins shall supplement these Covenants, Conditions and Restrictions and are incorporated herein by this reference.

The amount of any review fees payable to the Committee hereunder may be adjusted by Declarant from time to time.

Notwithstanding anything herein contained to the contrary, the right to appoint and remove Committee members and to adjust the review fees thereof shall be vested in the Board at such time as Declarant may turn over (in writing) such responsibilities to the Corporation, which shall occur on or before the later of (a) December 31, 2006, or (b) the conveyance of all of the Properties and the Supplemental Property by Declarant (other than to a Successor Declarant).

ARTICLE IX. EASEMENTS

Section 1. Easements Reserved by Declarant. Easements for installation, maintenance, repair and removal of utilities and drainage facilities are reserved by Declarant for itself, its successors and assigns, over, under and across the portion of the Properties (if any) designated on the Plat and over, under and across the Common Areas. Declarant shall have the right to assign and convey, in whole or in part, the easements reserved by it hereunder to one or more public utility companies or to a governmental authority having jurisdiction or to the Corporation. Nothing in this paragraph shall be deemed to relieve any of the Owners from any of its maintenance responsibilities under this Declaration.

Section 2. Easement Reserved for the Corporation. Full rights of ingress and egress shall be had by the Corporation at all times over and upon the Properties for the performance of its rights, functions, duties and obligations hereunder, provided, however, that any such entry by the Corporation upon any Lot shall be made with as minimum inconvenience to the Owner as practical.

Section 3. Drainage Easements. A drainage easement is hereby reserved in all lakes and waterways within the Properties for the benefit of Declarant, the Corporation, and the Owners for storm drainage of public and private waters.

ARTICLE X.
GENERAL PROVISIONS

Section 1. Binding Effect and Duration. The Covenants, Conditions and Restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Corporation, Declarant and any Owner, and their respective legal representatives (including trustees), heirs, successors and assigns, for a term ending on December 31, 2042, after which time said Covenants, Conditions and Restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument agreeing to abolish these Covenants, Conditions and Restrictions has been signed by the Members then entitled to cast two-thirds (2/3) of the votes of the Corporation and recorded in the Deed Records of Johnson County, Texas, on or before the expiration of the initial term or preceding extended term, as the case may be.

Section 2. Amendment or Termination. These Covenants, Conditions and Restrictions may be amended or terminated with the written consent of the Members then entitled to cast at least two-thirds (2/3) of the votes of the Corporation by filing such amendment or termination for record in the Deed Records of Johnson County, Texas, provided that Declarant must consent thereto if such amendment or termination is to be effective prior to the later of December 31, 2006, or the conveyance of the Properties and the Supplemental Property by Declarant (other than to a Successor Declarant). These Covenants, Conditions and Restrictions may not be amended or terminated in a manner which would prohibit an Owner from gaining access to and from his Lot.

Section 3. Attorney's Fees. In the event of any litigation by or against Declarant or any other Owner pursuant to or with respect to this Declaration, the prevailing party shall be entitled to recover reasonable attorney's fees.

Section 4. Notices. Any notice, request, demand, instruction or other communication to be given to any Owner of any Lot hereunder shall be in writing, and shall be deemed to be delivered upon receipt, if hand delivered, or upon deposit in the U.S. Mail, postage prepaid, addressed to such Owner (or the person who appears as Member or Owner in the records of the Corporation at the time of such notice) at the last known address as reflected on the records of the Corporation at the time of such mailing.

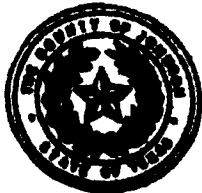
Section 5. Headings, Captions and Gender. All article, section and paragraph headings and captions herein contained are for purposes of identification only and shall not be considered in construing this Declaration, and any gender used herein shall include every other gender.

WARNING — THIS IS PART OF THE OFFICIAL RECORD
DO NOT DESTROY

Filed For Record 12¹⁶ AM/PM

FEB 26 2002

County Clerk Johnson County
By [Signature] Deputy



STATE OF TEXAS
COUNTY OF JOHNSON

that I hereby certify this instrument was FILED on the date and at the time stamped hereon by me and was duly RECORDED in the OFFICIAL PUBLIC RECORDS OF JOHNSON COUNTY, TEXAS in the Volume and Page as shown hereon.

[Handwritten Signature]

CURTIS H. DOUGLAS, COUNTY CLERK
JOHNSON COUNTY, TEXAS

FIRST SUPPLEMENTARY DECLARATION
to
DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS
for
VINEYARD HEIGHTS

THIS DECLARATION is made this 12th day of April, 2004, by DAVID A. GUDAL and CHERYL MISSY GUDAL, hereinafter referred to as Declarants or collectively as Declarant.

WHEREAS, Declarant is the same Declarant who caused to be platted "VINEYARD HEIGHTS", and addition in Johnson County, Texas, according to the plat thereof contained in Volume 8, Page 899 of the Plat Records of Johnson County, Texas and who executed and filed for record a "Declaration of Covenants, Conditions and Restrictions for Vineyard Heights", such declaration (herein the "Original Declaration") being recorded in Volume 2784, Pages 0616 through 0643, Official Records of Johnson County, Texas; and

WHEREAS, Declarant is the owner of additional real property now known as Lots 1 through 17, Block 2 and Lots 1 and 2, Block 3, VINEYARD HEIGHTS, according to the plat thereof recorded in Volume 9, Page 220, Slide C of the Plat Records of Johnson County, Texas; and

WHEREAS, Declarant desires to invoke the provisions of Article II, Section 2 of the Original Declaration by adding the property covered by this Supplementary Declaration to the scheme of the Original Declaration;

NOW THEREFORE, Declarant hereby declares:

1. Property described. That the following described property is the subject of this Declaration:

Lots 1 through 17, Block 2, and Lots 1 and 2, Block 3, VINEYARD HEIGHTS, an Addition in Johnson County, Texas, according to the Plat thereof recorded in Volume 9, Page 220, Slide C, Plat Records of Johnson County, Texas

and shall hereafter be included in the term "Properties" as that term is defined in Article I, (h) of the Original Declaration, as that document is hereinabove described.

2. Declaration applied. That the terms and conditions of the Original Declaration are hereby adopted herein by this reference, applied to and imposed upon the property described in paragraph 1. of this Declaration the same as if the said Original Declaration were repeated verbatim herein, subject only to the modifications contained in paragraph 3. of this Declaration.

**FIRST SUPPLEMENTARY DECLARATION to
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS for VINEYARD HEIGHTS**

Page 2

3. Modifications to Declaration. This Declaration and, to the extent applicable, the Original Declaration, are hereby modified as follows;

(a.) Lot 2, Block 3 is hereby deemed a portion of the "Common Areas" as that term is defined in (c) of Article I of the Original Declaration and is hereby dedicated to use as a private roadway, including therein such streets, walkways, utilities and green spaces as are typically located in the right-of-way of public streets; provided however, that Lot 2, Block 3 shall not be subject to the assessments provided in Article V of the Original Declaration.

(b) Article VIII of the Original Declaration is amended as follows:

(1) By the addition to Section 4 of the following:

"The site plan required by this section shall include a designation of the size, material and location of any driveway culvert, which culvert shall be constructed at the sole cost of the Lot Owner."

(2) By the addition to Section 10 of the following:

"Each Lot Owner shall maintain adequate receptacles for trash and building materials waste generated during construction and shall be responsible for the removal from the addition of debris or trash wherever found, originating on that Owner's lot."

and

"Each Lot Owner shall furnish or cause to be furnished temporary, portable toilet facilities located on the Lot, to be used during construction on the Lot."

(3) By the addition to Section 13 of the following:

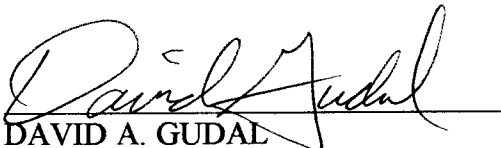
"All plans submitted to the Architectural Control Committee shall contain the name, street address and telephone number of the builder in charge of construction pursuant to the plans. The Committee reserves the right to approve or disapprove any builder whose past performance within the Addition has not been acceptable to the Association."

**FIRST SUPPLEMENTARY DECLARATION to
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS for VINEYARD HEIGHTS**

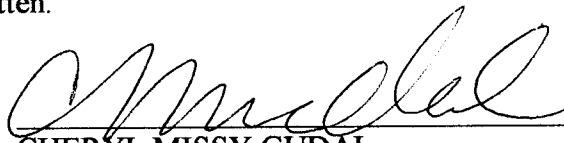
Except as hereinabove modified, the Original Declaration shall be applicable in its entirety to all property described in this First Supplementary Declaration, including without limitation all covenants for assessments and provisions of governance contained in the Original Declaration.

This First Supplementary Declaration shall be a covenant running with the Property and shall be binding and may be amended as provided in Article X. of the Original Declaration.

IN WITNESS WHEREOF, the above-described Declarants have caused this instrument to be executed as of the date first above written.



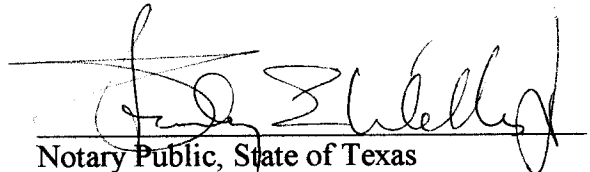
DAVID A. GUDAL
Declarant



CHERYL MISSY GUDAL
Declarant

STATE OF TEXAS }
 }
COUNTY OF TARRANT }

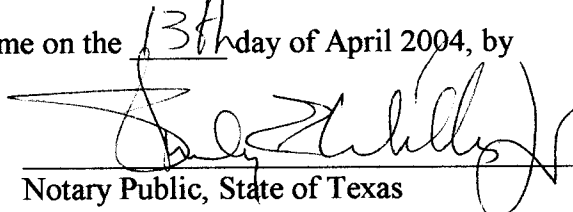
This instrument was acknowledged before me on the 13th day of April 2004, by DAVID A. GUDAL.



Notary Public, State of Texas

STATE OF TEXAS }
 }
COUNTY OF TARRANT }

This instrument was acknowledged before me on the 13th day of April 2004, by CHERYL MISSY GUDAL.



Notary Public, State of Texas

Cheryl M. Gudal
7812 Rose Creek Ct
Burleson, TX 76028

011686

BK 3267PG0334

NO NOTARY SEAL

**FIRST SUPPLEMENTARY DECLARATION
to
DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS
for
VINEYARD HEIGHTS**

**Supplementary to Declaration dated February 4, 2002, filed for
record February 26, 2002, recorded in Volume 2784, Pages 0616
through 0643, Official Public Records of Johnson County, Texas.**

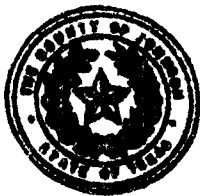
BK 3267PG0338

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Filed For Record 1:19 AM/PM

APR 13 2004

County Clerk Johnson County
By [Signature] Deputy



STATE OF TEXAS
COUNTY OF JOHNSON

that I hereby certify this instrument was FILED on the date and at the time stamped hereon by me and was duly RECORDED in the OFFICIAL PUBLIC RECORDS OF JOHNSON COUNTY, TEXAS in the Volume and Page as shown hereon.

[Signature]
CURTIS H. DOUGLAS, COUNTY CLERK
JOHNSON COUNTY, TEXAS

**SECOND SUPPLEMENTARY DECLARATION
to
DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS
for
VINEYARD HEIGHTS**

**Supplementary to Declaration dated February 4, 2002, filed for
record February 26, 2002, recorded in Volume 2784, Pages 0616
through 0643, Official Public Records of Johnson County, Texas.**

AND

**Supplementary to First Supplementary Declaration dated April 12,
2004, recorded in Volume 3267, Pages 0334 through 0337, Official
Public Records of Johnson County, Texas.**

SECOND SUPPLEMENTARY DECLARATION
to
DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS
for
VINEYARD HEIGHTS

THIS DECLARATION is made this 22 day of November, 2006, by DAVID A. GUDAL and CHERYL MISSY GUDAL, hereinafter referred to as Declarants or collectively as Declarant.

WHEREAS, Declarant is the same Declarant who caused to be platted "VINEYARD HEIGHTS", an addition in Johnson County, Texas, according to the plat thereof contained in Volume 8, Page 899 of the Plat Records of Johnson County, Texas and who executed and filed for record a "Declaration of Covenants, Conditions and Restrictions for Vineyard Heights", such declaration (herein the "Original Declaration") being recorded in Volume 2784, Pages 0616 through 0643, Official Records of Johnson County, Texas; and

WHEREAS, Declarant is the same Declarant who caused to be platted a second phase of "VINEYARD HEIGHTS", an addition in Johnson County, Texas, according to the plat thereof contained in Volume 9, Page 220, Slide C of the Plat Records of Johnson County, Texas and who executed and filed for record a "First Supplementary Declaration of Covenants, Conditions and Restrictions for Vineyard Heights", such declaration (herein the "First Supplementary Declaration") being recorded in Volume 3267, Pages 0334 through 0337, Official Records of Johnson County, Texas; and

WHEREAS, Declarant is the owner of lots in VINEYARD HEIGHTS sufficient in number so that Declarant, in accordance with the terms of the Original Declaration, can cast at least 2/3 of the votes of the Vineyard Heights Homeowners Association, Inc.; and

WHEREAS, Declarant desires to invoke the provisions of Article X, Section 2 of the Original Declaration in order to amend and modify certain of the Covenants, Conditions and Restrictions;

NOW THEREFORE, Declarant hereby declares:

1. Modification to Declaration. Article VIII, Section 5 of the Original Declaration is hereby modified and amended so that hereafter it shall read as follows:

"Section 5. Storage of Vehicles. Boats, buses, trailers, motor homes; recreational vehicles, campers, and all other similar vehicles or items designated by the Board (other than conventional passenger automobiles and pick-up trucks) may be parked, maintained, stored or kept on any parcel of the properties covered by these Covenants, Conditions and Restrictions only if such vehicles are located at least fifty (50) feet behind the rear

**SECOND SUPPLEMENTARY DECLARATION to DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS for VINEYARD HEIGHTS**

Page 2

building line of the residence and at least one-hundred seventy-five (175) feet from any street or common area, or, such vehicles may be parked, maintained, stored or kept on a paved area adjacent to the garage at the rear of each respective Unit so as to be located entirely within the boundaries of said paved area on each applicable Lot, so long as such vehicles are not visible to public view from any street or public or common area, and otherwise in full compliance with any and all rules and regulations with respect thereto as may be promulgated by the Board and/or the Committee from time to time. Trucks with a cargo capacity of over one (1) ton shall not be kept overnight on the streets or other Common Areas or on the Lot of any Owner. No motorcycle or "dirt bike" shall be operated in the Properties unless the same is equipped with an effective baffled muffler and anti-noise device, and in no event shall any such vehicle be operated on a roadway or other Common Area property or on any Lot other than the Lot belonging to the owner of such vehicle."

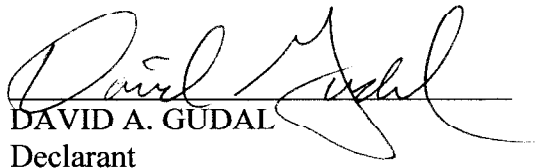
2. Modification to Declaration. Article VIII, Section 11 of the Original Declaration is hereby modified and amended so that hereafter the third paragraph thereof shall read as follows:

"No mineral exploration, removal or related activities shall be conducted on any Lot: provided, however:

- a. Incident to the construction of a structure (when such construction has been approved in writing by the Committee as provided herein), core borings and excavation activities reasonably necessary for such construction shall be permitted.
- b. Nothing herein shall be deemed to prohibit directional drilling by a well located outside the Addition or the pooling of lands within the Addition in a Unit for such a well."

Except as hereinabove modified, the Original Declaration and the First Supplementary Declaration shall continue in full force and effect as originally adopted. This Second Supplementary Declaration shall be a covenant running with the Property and shall be binding and may be amended as provided in Article X. of the Original Declaration.

IN WITNESS WHEREOF, the above-described Declarants have caused this instrument to be executed as of the date first above written.


DAVID A. GUDAL
Declarant

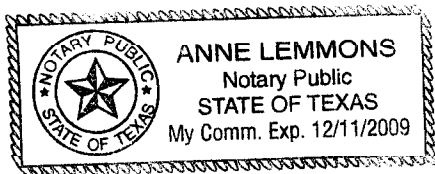

CHERYL MISSY GUDAL
Declarant

SECOND SUPPLEMENTARY DECLARATION to DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for VINEYARD HEIGHTS

Page 3

STATE OF TEXAS }
 }
COUNTY OF TARRANT }

This instrument was acknowledged before me on the 22nd day of November 2006, by DAVID A. GUDAL.

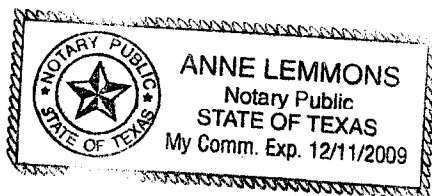


Anne Lemmons

Notary Public, State of Texas

STATE OF TEXAS }
 }
COUNTY OF TARRANT }

This instrument was acknowledged before me on the 22nd day of November 2006, by CHERYL MISSY GUDAL.



Anne Lemmons

Notary Public, State of Texas

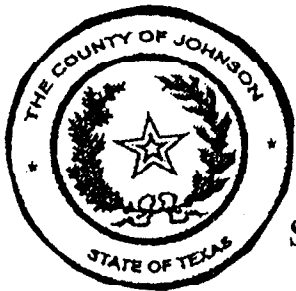
Return to: Vineyard Heights HOA Inc
 c/o Gudal
 7812 Rose Creek Ct
 Burleson, TX 76028

WARNING --- THIS IS PART OF THE OFFICIAL RECORD
DO NOT DESTROY

Filed For Record 10:25 AM PM


NOV 22 2006

County Clerk Johnson County
By md Deputy



STATE OF TEXAS
COUNTY OF JOHNSON

that I hereby certify this instrument was FILED on the date and at the time stamped hereon by me and was duly RECORDED in the OFFICIAL PUBLIC RECORDS OF JOHNSON COUNTY, TEXAS in the Volume and Page as shown heron.


CURTIS H. DOUGLAS, COUNTY CLERK
JOHNSON COUNTY, TEXAS