

**SECOND AMENDED AND RESTATED DECLARATION OF
RESTRICTIONS AND PROTECTIVE COVENANTS**

THE STATE OF TEXAS

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KNOW ALL MEN BY THESE PRESENTS

COUNTY OF MONTGOMERY

This SECOND AMENDED AND RESTATED DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS (hereinafter called the "**Second Amended Declaration**") is made as of the 12th day of October, 2010, pursuant to the affirmative vote of a majority of the Lot owners authorized to be cast in accordance with the Amended Declaration (as defined below).

RECITALS

Whereas, on the 20th day of March, 1972, DOWNING AND WOOTEN ENTERPRISES, INCORPORATED, formally known as DOWNING AND WOOTEN CONSTRUCTION COMPANY, a Texas corporation (the "Original Declarant"), did file a certain Declaration of Restrictions and Protective Covenants in the Official Real Property Records of Montgomery County, Texas, as set forth in an instrument recorded in Volume 766, Page 872, County Clerk's File Number 283657 (the "**Original Declaration**"), which was subsequently amended by those instruments recorded under Volume 786, Page 582, County Clerk's File Number 297763 and under County Clerk's File Number 9500105 of the Deed Records and as imposed by the map and dedication recorded in Cabinet A, Sheet 50B of the Map Records of Montgomery County, Texas covering the Property (as defined below), being all that land included in:

VICKSBURG, a subdivision of 50.47 acres of land out of the Walker County School Land Survey, A-599, Montgomery County, Texas, according to the map or plat thereof recorded in Cabinet A, Sheet 50B, County Clerk's File Number 282379 (formerly Volume 9, Page 100) of the Map Records of Montgomery County, Texas;

Whereas, on December 16, 1998, at a meeting of the Owners duly called pursuant to Section Thirteen (13) of the Original Declaration, the affirmative vote of more than Fifty-one percent (51%) of the required votes authorized to be cast by the Owners was received approving the AMENDED RESTATED DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS as set forth in an instrument recorded in County Clerk's File Number 283657 in the Official Real Property Records of Montgomery County, Texas (the "**Amended Declaration**");

Whereas the Owners desire to amend and restate the Amended Declaration, pursuant to the authority granted in Article X therein.

Whereas, pursuant to a meeting of the Owners held on , 2009, duly called pursuant to Article X of the Amended Declaration, the affirmative vote of more than Fifty-one percent (51%) of the required votes authorized to be cast by the Owners was received approving this SECOND AMENDED AND RESTATED DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS , and has also received the written approval of the Board of Trustees of the Vicksburg Community Improvement Association.

Whereas the Original Declaration, the Amended Declaration, this Second Amended Declaration and all amendments or supplements thereto shall hereinafter be referred to collectively as the "Restrictions".

ARTICLE I

DEFINITIONS

- 1.01** The following words, phrases, or terms used in this Second Amended Declaration shall have the following meanings:
- A.** "Second Amended Declaration" shall mean this Second Amended and Restated Declaration of Restrictions and Protective Covenants as amended or supplemented from time to time.
 - B.** "Amenities" shall mean the parts of the Common Areas which are designated for recreational or social activities, including without limitation the clubhouse which is presently owned by the Association.
 - C.** "Annual Assessment" shall mean the charge levied and assessed each year against each Lot.
 - D.** "Assessable Property" shall mean the entire Property, as hereinafter defined, except such part or parts thereof as may from time to time constitute Exempt Property.
 - E.** "Assessment Lien" - Shall mean the lien created and imposed by Articles V, VI and VII, herein.
 - F.** "Assessments" - Shall mean the Annual Assessment, Special Assessments, all interest thereon, costs and attorneys fees incurred by the Association in connection therewith, and any other charges assessed by the Association in connection therewith.
 - G.** "Association" shall mean the VICKSBURG COMMUNITY IMPROVEMENT ASSOCIATION, a Texas Non-profit corporation (sometimes referred to as "VCIA"), organized to administer and enforce the Covenants and to exercise the rights, powers, and duties set forth in this Second Amended Declaration.
 - H.** "Board" shall mean the Board of Trustees of the Association.
 - I.** "By-laws" shall mean the By-laws of the Association as the same may from time to time be amended or supplemented.
 - J.** "Common Areas" shall mean such part or parts of the Property, together with the buildings, structures, and improvements thereon, if any, as may be owned at any time by the Association, for as long as the Association is the owner thereof.
 - K.** "Covenants" shall mean the Covenants, conditions, assessments, charges, servitudes, liens, reservations, and assessments set forth herein.
 - L.** "Deed" shall mean a deed or other instrument conveying the fee simple title to all or any portion of the Property.
 - M.** "Exempt Property" shall mean:
 - i.** all Common Areas; and,
 - ii.** all land owned by or dedicated to and accepted by the United States, the State of Texas, Montgomery County, or any political subdivision thereof, for as long as such entity or political subdivision is the Owner thereof, or for so long as said dedication remains effective.
 - N.** "Dwelling Unit" shall mean any portion of a building situated on the Property designed and intended for use and occupancy as a residence by one single family.
 - O.** "Family" means one or more people domiciled together in one dwelling unit who are living together as a single housekeeping unit and sharing common living, cooking, and eating facilities. This definition shall not include:

i. Any society, club, fraternity, sorority, association, lodge, organization or other similar groups of people;

ii. Boarding houses, lodging houses, or hotels; or

iii. Supervised living facilities or other similar groups of people or facilities. Supervised living facility means a residential facility providing shelter, supervision, and rehabilitation services for people who have been inmates of any county, state, or federal correctional institution and who require, upon release of said institution, a group residential setting to facilitate their transition back into society or a residential facility that provides care, training, education, custody, treatment, or supervision for more than six (6) persons who are not related by blood, marriage, or adoption to the owner or operator of the facility, whether or not the facility is operated for profit or charges for the services it offers.

P. "Lot" shall mean any Lot, tract, or parcel of the Property (with the exception of any Common Area) shown upon a plat or plats of the Property or any part thereof now or hereafter filed for record in the Map and Plat Records of Montgomery County, Texas (as such plat or plats may be amended from time to time).

Q. "Owner" shall mean the person or persons, entity or entities, who either own of record fee simple title to a Lot, or have entered as an original party, successor or assignee, into a Contract for Deed for a Lot; the term "Owner" to exclude any person or persons, entity or entities, having an interest in a Lot merely as security for the performance of an obligation. For the purposes hereof, the term "Contract for Deed" shall be any executed contract containing as its title or as part of its title the term "Contract for Deed" pursuant to which a person is acquiring a Lot on an installment basis whereby the Seller does not transfer fee simple title to the Lot until such person has satisfied all of the terms and conditions of such contract.

R. "Permanent Improvements" shall mean all buildings, structures, and other matters and things which, at the time of the assessment of each Annual Assessment, are taxable by the State of Texas or a political subdivision thereof (including without limitation Montgomery County) as real property under applicable law.

S. "Property" shall mean all that land included in VICKSBURG, a subdivision of 50.47 acres of land out of the Walker County School Land Survey, A-599, Montgomery County, Texas, according to the map or plat thereof recorded in Cabinet A, Sheet 50B, County Clerk's File Number 282379 (formerly Volume 9, Page 100) of the Map Records of Montgomery County, Texas.

T. "Residence" shall mean a Dwelling Unit as defined herein.

U. "Resident" shall mean any occupant of a Residence.

V. "Special Assessment" shall mean any assessment levied and assessed pursuant to Section 5.03 of Article V herein.

W. "Special Use Fee" shall mean special fees which an Owner or any other person is obligated by his Deed or by contract to pay to the Association over, above and in addition to any such assessments, charges, and fees as are levied, assessed, imposed or payable hereunder.

X. "Voting Owners" shall mean those Owners who, pursuant to Article XI herein, have voting rights.

ARTICLE II

COVENANTS BINDING ON PROPERTY, OWNERS AND ASSOCIATION

2.01 Property Bound. From and after the date of recordation of this Second Amended Declaration, the Property shall be subject to these Covenants, and these Covenants shall run with, be for the benefit of, bind, and burden the Property.

2.02 Owners Bound. From and after the date of recordation of this Second Amended Declaration, the Covenants shall be binding upon and inure to the benefit of each Owner and his heirs, executors, administrators, personal representatives, successors, and assigns, whether or not so provided or otherwise mentioned in the

Deed. Each Owner, for himself, his heirs, executors, administrators, personal representatives, successors, and assigns, expressly agrees to pay, and to be personally liable for, the assessments provided for hereunder, and to be bound by all of the Covenants herein set forth. Each Owner shall be and remain personally liable, regardless of whether he has transferred title to his Lot, for the amount of assessments (together with interest, costs, and attorneys' fees as provided for herein) which became due while he was an Owner. No Owner shall escape personal liability for the assessments herein provided by non-use of Association land or by Transfer or abandonment of his Lot.

2.03 Association Bound. The Covenants shall be binding upon and shall inure to the benefit of the Association.

ARTICLE III - ARCHITECTURAL CONTROL

3.01 Architectural Control Committee. There is hereby created an Architectural Control Committee (the "Committee") which shall consist of three (3) members from the Vicksburg residents which shall be in addition to the current Association Board of Trustees, each of whom Committee members shall serve until his successor is appointed by a majority of the Association Board of Trustees. Each Committee member shall serve a two year term, staggered such that two Committee members are appointed in even years, and one Committee member is appointed in odd years. A majority of the Committee may designate a representative to act for the Committee. No member of the Committee shall serve concurrently as a member of the Association Board of Trustees, nor shall any member of the Committee be related by blood or marriage with any other member of the Committee or any member of the Association Board of Trustees. In the event of the death, resignation or disqualification of any member of the Committee, the Association Board of Trustees shall have full authority to designate and appoint a successor for the remainder of the term. No member of the Committee or its designated representative shall be entitled to any compensation for services performed pursuant to this instrument. At any time a majority of the then Voting Owners shall have the power to change the membership of the Committee, to withdraw any powers from the Committee and to restore to the Committee any of the powers and duties created hereunder, by the execution of an instrument duly acknowledged and duly recorded in the Deed Records of Montgomery County, Texas.

3.02 Establishment and Amendment of Rules and Policies. The Committee shall promulgate a set of Rules and Standards governing the construction or alteration of Improvements to Lots including, but not limited to, the form and content of plans and specifications for specific Structures or Improvements. Annually, such Rules and Standards shall be submitted to the Board and Voting Owners for review at a regularly noticed Board meeting, to discuss any proposed amendments or revisions thereto. The establishment and/or revision of the Rules and Standards must be approved by a majority of the Board present and a majority of the Voting Owners present at said meeting. A copy of the then current Rules and Standards shall be distributed to the Owners annually. It shall be the responsibility of each Owner to inform themselves of the current Rules and Standards as of the date of application for Committee consideration. Failure by any Owner to so inform himself shall not bind the Committee to approve or disapprove any feature or matter submitted to it, or to waive the exercise of the Committee's discretion as to any such matter. No revision to the Rules and Standards shall affect the finality of any approval granted prior to such revision. Approval for use on any Lot of any plans or specifications shall not be deemed a waiver of the Committee's right to disapprove such plans or specifications, or any of the features or elements included therein, if such plans, specifications, features, or elements are subsequently submitted for use on any other Lot or Lots. Approval of any matter relating to a Lot shall be final as to that Lot and such approval may not be revoked or rescinded thereafter, provided:

- A.** the Structures, Improvements or uses shown or described on any plans and specifications do not violate any prohibition contained in these Covenants, unless a Variance has been granted in accordance with Section 3.13 herein;
- B.** the approved plans and specifications and any condition attached to such approval have been adhered to and complied with in regard to all Structures or Improvements on, and uses of, the Lot; and
- C.** the approval is not subsequently appealed and overturned by the Committee or the Board pursuant to Section 3.07 herein.

3.03 Operations of the Committee. Meetings of the Committee shall be held at such time and at such place as the members of the Committee shall specify. Except as hereinafter provided, the affirmative vote of a majority of the Committee members present and voting shall be required to: (1) make any finding, determination, ruling or

order, (2) issue any permit, authorization or approval, or (3) act upon any other business properly before the Committee. The Committee shall have the authority to delegate to any member of the Committee the right to exercise the full authority of the Committee regarding the review of plans and specifications for matters relating to Lots, so long as such authority does not conflict with any Rules and Standards promulgated by the Committee. Each member of the Committee exercising the full authority of the Committee shall cause complete and accurate records of his exercise of this authority. The granting or denial of any matter by one Committee member in accordance with the terms hereof, shall be final and binding, provided however, the applicant Owner or other Owner may appeal the approval or disapproval in accordance with Section 3.07 herein.

3.04 Construction or Alteration. No Structure shall be commenced, erected, placed, moved onto or permitted to remain on any Lot, nor shall any existing Structure upon any Lot be altered in size, nor shall any exterior Improvement be undertaken or conducted on any Lot, nor shall any new use be commenced on any Lot, unless complete plans, specifications and descriptions of the proposed Structure, Improvement or use shall have been submitted to and approved in writing by the Committee. Such plans and specifications shall be in the form and contain the information required by the Committee, but in any event shall include a complete set of construction plans and specifications reasonably satisfactory to the Committee, including the exterior color scheme and materials, and full and complete description of the intended use of the Lot and each proposed structure. In addition, owners may be requested to provide an accurate survey to the committee, of which shall be provided at the owners expense.

3.05 Time for Review. The Committee shall review and respond to a request for approval of a matter within twenty (20) days after receipt of a written request from a Lot Owner, otherwise the request shall be deemed approved.

3.06 Disapproval of Plans. The Committee shall have the right to disapprove any plans and specifications submitted pursuant to this Article III for the following reasons:

- A. failure to comply with any of the Restrictions,
- B. failure to comply with any of the Rules and Standards promulgated by the Committee,
- C. failure to include such information as may reasonably have been requested by the Committee,
- D. incompatibility of any proposed Structure, Improvement or use with existing Structures, Improvements or uses upon other Lots,
- E. the location of any proposed Structure or Improvement upon any Lot or with reference to other Lots,
- F. the exterior design, appearance or materials of any proposed Structure or Improvement,
- G. the grading plan for any Lot,
- H. the color scheme, finish, proportion, style of architecture, height, bulk, safety or appropriateness for any proposed Structure or Improvement,
- I. the parking areas proposed for the Lot,

The Committee's approval or disapproval of plans and specifications submitted hereunder shall be delivered to the applicant Owner in writing stating an unequivocal approval or specifying the grounds for qualified approval or disapproval. The Committee shall make reasonable efforts to consult with and advise the applicant Owner so that an acceptable proposal may be prepared and submitted.

3.07 Appeals. Within ten (10) days after receipt of the decision from the Committee, the applicant Owner, or any other Owner, may file a written appeal of such decision with the Committee. The Committee shall hear and rule upon the appeal as promptly as possible. All decisions of the Committee, whether on appeals or on matters brought to it originally, shall be final and binding unless within ten (10) days after receipt of the final decision from the Committee the applicant Owner, or any other Owner, may file a written appeal of such

decision with the Board. The Board shall hear and rule upon the appeal as promptly as possible. The decision of a majority of a quorum of the Board with respect to such matter shall be final and binding.

- 3.08** Filing of Approved Plans. Upon approval by the Committee, a copy of such plans and specifications on which the approval is clearly marked shall be deposited with the Committee as a permanent record.
- 3.09** Inspection of Lots and Improvements. After approval by the Committee, an agent of the Committee may enter upon and inspect any Lot and any Structures, Improvements or uses thereon during regular business hours (between the hours of 7:00 am and 9:00 pm) at a time mutually agreeable to the agent of the Committee and the Lot Owner, for the purpose of ascertaining whether such Lot and the Structures, Improvements and uses thereon are in accordance with the plans and specifications and uses approved by the Committee. The Lot Owner shall be present during any such inspection. Neither the Association, the Committee, nor the agent of any of them shall be deemed to have committed a trespass by reason of such entry or inspection, provided such inspection is carried out in accordance with the terms of this section.
- 3.10** Certificate of Completion of a Structure or Improvement. Upon completion of a Structure or Improvement approved by the Committee, and upon written request by the Owner of the Lot, the Committee shall have authority, to issue a Certificate of Completion identifying the Lot and the Structure or Improvement, and stating, based upon the information supplied by third party architects, inspectors or other agents of the Owner, or other information available to the Committee, that construction of the proposed Structure or Improvement has been completed in substantial accordance with the plans and specifications approved by the Committee. Such Certificate shall not be construed to certify the acceptability, sufficiency or approval by the Committee of any work, materials or specifications included in the actual construction of the Structure or the completion of the Improvement, or of the safety of the Structure of completed Improvement. Such a Certificate shall be conclusive evidence of the facts stated therein as to any bona fide purchaser or encumbrancer in good faith and for value, or as to any title insurer. The Owner is hereby notified and does hereby agree that the Certificate in no way warrants the sufficiency, acceptability, or approval by the Committee of the construction, workmanship, materials, equipment or safety of the Structure or Improvement. Preparation and recordation of such a Certificate shall be at the expense of the Owner of the subject Lot.
- 3.11** Violation of Article III. If any Structure shall be erected, placed or maintained, or if any Improvement shall be made or any new use commenced on any Lot without Committee approval, or other than in accordance with plans, specifications and descriptions approved by the Committee, such Structure, Improvement or use shall constitute a violation of these Covenants. Upon written notice from The Association or the Committee, as appropriate, any such Improvement shall be removed or corrected and any such use shall be terminated so as to extinguish the violation.
- 3.12** Enforcement. If the Owner or Resident of a Lot upon which a violation of these Covenants exists has not taken reasonable steps to extinguish the violation within the time prescribed herein following the mailing of written notice specifying the violation, The Association or the Committee shall have the right, through their agents or employees, to enter upon such Lot during regular business hours and to take such steps as were specified in the notice to extinguish the violation. Any costs or expenses incurred by the Association or the Committee in taking such action shall be added to the Assessments for the Lot.
- 3.13** Variance. Concerning any matter for which approval has been requested by a Lot Owner that is otherwise prohibited by this Second Amended Declaration or the Rules and Standards, if the Committee finds same is reasonable and necessary AND will not negatively impact other Lot Owners, the Committee may request the Board to grant a Variance approving the matter. The request for Variance shall be submitted to the Board and Voting Owners for review at a regularly noticed Board meeting, to discuss the proposed Variance. The Variance must be approved by a majority of the Board present at said meeting. In granting a Variance, the Board may make its approval subject to any conditions or stipulations deemed reasonable by the Board. A memorandum of any such Variance may be filed of record in the Montgomery County Deed records.
- 3.14** Committee compliance. No member of the Committee may be in violation of any provision of the Restrictions. Should a violation occur, the member shall have thirty (30) days to eliminate the violation. If the violation is not eliminated within this time, the member shall be removed by the Committee if the member does not resign their position immediately upon the expiration of said thirty (30) days.
- 3.15** Conflict of Interest. Should a member of the Committee be deemed to have a conflict of interest in any matter for decision making brought before the Committee, that Committee member shall recuse themselves and

abstain from participating in the decision making process of the Committee for that matter. Whether a member of the Committee has a conflict of interest on any particular matter shall be determined at the sole and final discretion of the Board.

- 3.16** Prior Approval. Any improvement approved by the Committee or Board in writing prior to the effective date of this Second Amended Declaration shall be deemed approved hereunder, and no new application for approval of the Committee shall be required.

ARTICLE IV - USE RESTRICTIONS

4.01 Specific Land Use:

- A. Subdividing**. No Lots may be resubdivided into building sites having a width of less than fifty-five (55) feet at the front building line as shown on the recorded map of the subdivision, or having an area of less than six thousand (6,000) square feet in each building site, unless approved by the Architectural Control Committee.
- B. Number of Dwelling Units**. Except as otherwise stated herein, no building shall be erected, altered, placed or permitted to remain on any residential building site other than one detached single family dwelling not to exceed two stories in height and a one-story garage for not more than three (3) cars. This shall not prevent the erection of one-story quarters for bonafide servants employed on the premises by the occupant of the main residence thereon.
- C. Residential Use Only**. Each and every Lot is hereby restricted to residential dwellings for single family residential use only. No structure other than one single family residence and its outbuildings shall be constructed, placed on, or permitted to remain on any Lot in the Subdivision. As used herein, the term "residential use" shall be construed to prohibit the use of any Lot for Condominiums, townhouses, duplex houses, garage apartments for rental purposes, or apartment houses. No business, commercial, or manufacturing use shall be made of any said Lots, even though such business, commercial, or manufacturing use be subordinate to or incident to use of the premises as a residence. The determination of whether a Lot is being used for business, commercial or manufacturing may be made by observance of any the following factors: published materials or signs which advertise a business, increased traffic, parking problems, regular deliveries by vehicles with three or more axles, employees or vendors or clients regularly entering and leaving the Lot, noxious emissions, or any other observation indicate the existence of an ongoing business, commercial or manufacturing use. Notwithstanding the foregoing, nothing herein shall prohibit a Lot owner from having one home office, as long as use of the home office is not accompanied by any of the above referenced factors.
- D. Single Family Occupancy Only**. Each and every Lot is hereby restricted to occupancy by one family. There shall be not more than one family occupying a dwelling unit as a residence. The term "family" shall be defined by the Texas Family Code. Except, this provision shall not prohibit the Owner of a Dwelling Unit from hiring either one live-in maid, or one live-in child care provider, or necessary live-in medical personnel, to reside in the Dwelling Unit with said Owner for said purposes.

4.02 Size and Location of Structures and Materials:

- A.** The living area of any main residence building, exclusive of porches, garages, storage rooms and/or servants quarters, shall not be less than one thousand eight hundred (1800) square feet of useable floor space.
- B.** Exterior walls of all main residential buildings shall be constructed with not less than fifty-one percent (51%) masonry veneer. In computing this percentage, all gables, windows and door openings shall be excluded from the required area.
- C.** Masonry used on one (1) wall of an attached garage may be included in calculation of the masonry used. At the discretion of the Architectural Committee, the Committee may waive the 51% brick restrictions if, in the opinion of the Committee the masonry restriction would materially affect the design and beauty of the proposed residence.

- D. No building shall be located on any building site nearer to the front Lot line or the side street line, than the minimum building set back lines shown on the recorded map or the subdivision, or within five feet of the interior property line, except as herein provided. For the purpose of interpreting this provision, eaves, steps and patios shall not be considered as part of the building provided, however, that this shall not be construed to permit any portion of a building to overhang, or encroach upon another building site.
 - E. On all Lots, detached garages located on the rear portion of the Lot may be built within three feet of any side Lot line, or interior Lot line, except in those instances where the location of the garage in this manner would violate a dedicated easement.
 - F. Residential building on corner Lots shall face the street upon which the Lot fronts as shown by the recorded map of the subdivision. The front of the Lot is the property line having the smallest dimension on a street. On certain irregular shaped corner Lots, the facing of the residence is hereby declared to be under the supervision and control of the Architectural Control Committee herein above named.
 - G. No fence or wall shall be erected, placed, altered, or maintained on any Lot nearer to the front property line than the minimum building setback line shown on the recorded plat of the subdivision.
 - H. Roofs of all residences shall be constructed so that the exposed material is a color and weight per square acceptable to the Architectural Control Committee. All Roofing material must be of a composition and color consistent with other homes in Vicksburg.
 - I. Any Residential building or other permanent improvement built on a Lot that is partially or completely destroyed by an Act of God, natural disaster or otherwise, including but not limited to fire, flood, tornado, hurricane, landslide, sinkhole, or earthquake, must be repaired or reconstructed or completely removed from the Lot within twenty-four (24) months of the occurrence that caused the damage. For the purposes of this section, "removed" shall include removal of all remnants of the permanent improvement, including but not limited to any foundation and remaining structure. In the event of a Lot owner's failure to comply with this section, the Association shall have the right (but not the obligation), without any further permission from the Lot owner or its occupants, to take whatever action the Association deems necessary to repair, reconstruct or completely remove the damaged Residential building or other damaged permanent improvements. Neither the Association, its agents or employees will be liable for any damages to any Lot or property thereon, nor be liable for trespass nor any other tort claimed to be incurred by the Lot owner or the Lot occupants as a result of the Association's actions taken in connection with the performance of its rights hereunder. The Lot owner agrees to pay to the Association all costs and expenses incurred by the Association in exercising its' rights hereunder.
 - J. Exterior Paint color must be Approved by the Architectural Control Committee prior to the changing of color or prior to repainting the same color if said color is prohibited by the Rules and Standards.
 - K. Siding must be of a color and material consistent with other homes in Vicksburg. Complete replacement of siding must be approved by the Architectural Control Committee. Shingle siding is not permitted.
 - L. Windows and shutters must be of a color and material consistent with other homes in Vicksburg. Complete replacement of windows or shutters must be approved by the Architectural Control Committee. Awnings are not permitted.
 - M. Driveways must be constructed from concrete and installed by a professional contractor. Complete replacement of the driveway or changing the color or pattern of the driveway must be approved by the Architectural Control Committee.
 - N. Carports are not permitted. If a carport is substantially damaged or destroyed, the carport must be removed, and may not be re-built.
 - O. Garages cannot be renovated to be used as a living area.
- 4.03** Temporary Structures. No structure, trailer, mobile home, mobile camper, motor home, camper, boat, or other similar recreational type vehicle, basement, tent, shack, garage or other outbuilding shall be used on any Lot as a residence, either temporarily or permanently. No treehouses, forts, swings, tree swings, slides, pools,

outdoor cookware or children's play equipment shall be allowed to remain on any Lot: (i) if it has fallen into disrepair, (ii) in such a manner that it is visible from the street, or (iii) in such a manner that it is visible from another Lot so that it becomes a Nuisance to other Lot owners. "Nuisance" is a noxious or offensive state or activity that may be or become an annoyance or nuisance to the neighborhood or deprive any reasonable Lot Owner of the use and enjoyment of their Lot.

- 4.04** Nuisances. No noxious or offensive state or activity shall be permitted upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood or deprive any reasonable Lot Owner of the use and enjoyment of their Lot. Any Owner having a pet must take reasonable efforts to keep said pets from disturbing other Lot Owners at night, and otherwise. Animals shall not be kept outside if the Animal displays a tendency to bark, howl or otherwise create a disturbance. Use of outdoor smokers or grills for cooking food items shall be operated in a manner that is not an annoyance or nuisance to other Lot Owners. Burning of trash, leaves or debris is prohibited.
- 4.05** Signs. No signs of any kind shall be displayed in public view on any Lot except: (i) up to a three (3) foot square sign advertising the Lot for sale or rent; and/or (ii) one temporary sign of not more than three (3) foot square advertising a garage sale; advertising a political candidate; advertising school related activities; or, a sign used by a building contractor to advertise the Lot during the construction of improvements to the Lot. All other signs must be approved by the Architectural Control Committee. For the purposes of this provision, a sign shall be considered "temporary" if it is displayed in public view for no longer than two (2) weeks, cumulatively.
- 4.06** Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. Trash, garbage, or other waste shall not be kept except in sanitary containers, and shall not be burned on any Lot or disposed of or allowed to be disposed of in storm drains. All equipment for the storage or disposal of waste material shall be kept in a clean and sanitary condition. All trash cans, building materials, wood piles, and any unsightly debris shall be stored so that they are: (i) not visible from the street, (ii) not visible from another Lot in such a manner that it becomes a Nuisance to other Lot owners; and (iii) not an attractive nuisance for snakes, rodents, insects, pests and other vermin that may threaten the health or safety of Lot owners. The term "garbage" shall include, but not be limited to grass clippings, leaves, pine needles, pine cones and dead tree branches, tires, vehicles or parts thereof, appliances, and anything that could cause a health or safety hazard or create a refuge for snakes, pests or other vermin.
- 4.07** Animals. Animals shall not be raised or bred on any Lot. No cattle, swine, horses, sheep, goats or other livestock or fowl, wild or domesticated wild animals shall be kept on any Lot. No Inherently Dangerous animals shall be kept on any Lot. An animal shall be deemed Inherently Dangerous if the Owner knows of at least one instance when that animal has attacked a person or other animal, or if the breed of the animal is reputed generally as being inherently dangerous. This provision shall not prohibit the keeping of a limited number of dogs, cats, rabbits or birds as personal pets, but the keeping of such pets shall not be done in such a way as to constitute a Nuisance or be obnoxious or offensive to the neighborhood or other Lot Owners. Further, the keeping of said animals shall not be done in such a way as to constitute either a business or commercial use. Animals shall not be allowed to run free around the Property, but shall be kept confined in the Lot Owner's yard in such a manner that is not visible from the street. In the event a Lot Owner shall take an animal outside their Lot, said animal must at all times remain on a leash, under the control of the Owner. Any Owner having a pet must take reasonable efforts to keep said pets from disturbing other Lot Owners at night, and otherwise. Animals shall not be kept outside if the Animal displays a tendency to bark, howl or otherwise create a disturbance.
- 4.08** Oil and Mining Operations. No drilling development, refining, quarrying, mining or prospecting for any minerals of any kind shall be permitted upon any Lot, nor shall any well, tanks, tunnels, mineral excavations or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for any minerals shall be erected, maintained or permitted upon any Lot.
- 4.09** Sight Distance at Intersections. No fence, wall, hedge, or shrub which obstructs sight lines at elevations between two (2) and six (6) feet above the street elevation shall be placed or permitted to remain on any corner Lot within the triangular area formed by the streets, property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded corner, from the intersection of the street property lines extended to intersect. The same sight line limits shall apply on any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway pavement. No

trees shall be permitted to remain within the above sight line of each intersection unless the foliage line is maintained at sufficient height to prevent the obstruction of the above sight lines.

4.10 Storage and Repair of Vehicles. No boat, mobile home, trailer, boat rigging, truck larger than a two (2) ton pickup, bus, business related equipment or inoperable vehicle shall be parked or kept in the street in front of, or on the side of any Tract or on any Tract, unless such vehicle is stored within a garage or stored within a privacy wood fence and is not visible from the street. Vehicles, whether operational or not, may not be parked on the grass or yard on any Tract. No Owner of any Lot in the subdivision or any visitor or guest of any Owner shall be permitted to keep inoperable vehicles or perform work on the vehicles in driveways or streets other than work of a temporary nature. For the purposes of the foregoing the term "temporary" shall mean that the vehicle shall not remain in driveways for an excess of seven (7) days in a thirty (30) day period, or streets in excess of forty-eight (48) hours in a seven (7) day period, and not otherwise be of a continuous nature. For the purposes of the foregoing the term "inoperable vehicle" shall mean a vehicle that has expired registration or inspection tags or is unable to be moved using its own power source. If an Owner or Resident of a Lot upon which a violation of this Section 4.10 exists has not taken reasonable steps to extinguish the violation within seven (7) days following the mailing of written notice to the Owner or resident specifying the violation, the Association shall have the right, through their agents or employees, to enter upon such Lot during regular business hours (between 7 am and 9 pm) and to take such steps as were specified in the notice to extinguish the violation of these Restrictions. The Association shall also have the right to file a Nuisance Abatement Action with the County requesting the Nuisance be removed. The cost thereof shall be a binding, personal obligation of the Owner, payment of which is secured by the Assessment Lien in the same manner as if amounts owing under this Section were Annual Assessments.

4.11 Grass, Shrubbbery, Trees and Fencing.

A. The Owner of each Lot shall keep the yard of his/her Lot in good order and repair, with grass covering the entire area between the front of his/her residence and the curb line of the abutting street. Grass shall be regularly mowed, weeds regularly pulled, and grass along curbs, sidewalks, and driveways shall be regularly edged to prevent unsightly appearance.

B. Shrubs and trees shall be regularly pruned. Dead or damaged trees, which might create a hazard to property or persons within the Subdivision shall be promptly removed or repaired. Shrubs or trees obstructing the site line at any intersection shall be pruned or removed so as to remove the obstruction. Major landscaping (total cost in excess of \$5,000.00) or permanent outdoor lighting shall be considered an Improvement requiring the approval of the Architectural Control Committee.

C. Fencing. The Owner of each Lot shall construct and maintain a six (6) to eight (8) foot high, cedar or treated pine fence (or other material approved by the Architectural Control Committee) to screen from public view the drying of clothes, yard equipment, and wood piles or storage. Owners of Lots abutting Budde Road shall construct and maintain a six (6) foot high cedar fence to screen their Lot from public view along Budde Road, which fence shall be stained to match the color of the existing fence. The Owner of each Lot shall keep their fence in good order and repair, with regular maintenance to prevent an unsightly appearance. Any change to the fencing material or location of the fencing or installation of a gate must be approved by the Architectural Control Committee.

If an Owner or Resident of a Lot upon which a violation of this Section 4.11 exists has not taken reasonable steps to extinguish the violation within seven (7) days following the mailing of written notice to the Owner or resident specifying the violation, the Association shall have the right, through their agents or employees, to enter upon such Lot during regular business hours (between 7 am and 9 pm) and to take such steps as were specified in the notice to extinguish the violation of these Restrictions. The cost thereof shall be a binding, personal obligation of the Owner, payment of which is secured by the Assessment Lien in the same manner as if amounts owing under this Section were Annual Assessments.

4.12 Exterior Antennae and Satellite Systems. No radio or television wires, antennae, satellite dish or direct tv dish shall be placed on any Lot between the residence and an adjoining street. Nor shall antennae, including freestanding antennae extend more than ten (10) feet above the top peak of the roof of a residence.

4.13 Air Conditioners. No window or wall type air conditioner visible from any street shall be permitted to be installed in a residence.

- 4.14** Private Utility Lines. All electrical, telephone, cable, and other utility lines and facilities which are located on a Lot, and are not owned by a governmental entity or a public utility company shall be installed in underground conduits or other underground facilities unless otherwise approved in writing by the Association.
- 4.15** Mailboxes. Mailboxes, house numbers, yard-lights and similar items installed on a Lot which are visible from the street must be harmonious with the overall character and aesthetics of the community.
- 4.16** Pools. Swimming pools shall be considered an Improvement for which Architectural Control Committee approval is required prior to installation or alteration. Swimming pools shall be kept fenced with an automatic locking mechanism to keep unsupervised small children from gaining access to said Swimming pool. Swimming pools shall be maintained regularly in such a manner that they do not become an attractive nuisance for snakes, rodents, mosquitos, pests and other vermin that may threaten the health or safety of Lot owners.

If an Owner or Resident of a Lot upon which a violation of this Section 4.16 exists has not taken reasonable steps to extinguish the violation within three (3) days following the mailing of written notice to the Owner or resident specifying the violation, the Association shall have the right, through their agents or employees, to enter upon such Lot during regular business hours (between 7 am and 9 pm) and to take such steps as were specified in the notice to extinguish the violation of these Restrictions. The cost thereof shall be a binding, personal obligation of the Owner, payment of which is secured by the Assessment Lien in the same manner as if amounts owing under this Section were Annual Assessments.

- 4.17** Exterior Appearance & Maintenance. Each Owner and Resident shall keep all Lots owned or occupied by him, and all Structures and Improvements thereon such as garage doors, entry doors, windows, patios, porches, entries, gutters, shingles, roofs, dormers, siding, brick, shutters, driveways, walkways, gates, mailboxes, in good order and repair, including but not limited to the cleaning, painting or other appropriate maintenance and repair, all in a manner and with such frequency as is consistent with safety and good property management. All trash cans, building materials, wood piles, barbeques, childrens toys and any unsightly debris and personal items shall be stored so that they are not visible from the street and so that they do not create a Nuisance to other Lot owners. Trash cans and other trash items shall be placed at the curb for service no earlier than the evening before pickup, and within twelve (12) hours after pickup said trash cans must be removed out of view from the street.
- 4.18** Septic Tanks. No Septic tanks shall be constructed or maintained, and no individual water wells shall be drilled, dug or maintained, or operated by any person or persons on any Lot or property, unless approved by the Architectural Control Committee.
- 4.19** Glider Swings, Basketball Goals, Playground Equipment and Other Structures.
- A.** Glider Swings may be placed on a Lot in such a manner that said swing is not visible from the street. A Glider Swing may be placed on a Lot in such a manner that said swing is visible from the street only upon approval of the Architectural Control Committee. In the event the Glider Swing is not maintained or becomes unsightly, the Architectural Control Committee may revoke its approval and require the Owner to remove the Glider Swing from the Lot.
- B.** Basketball Goals may be used in such a manner that is temporary in nature, and not a permanent improvement to a Lot, unless otherwise approved by the Architectural Control Committee. Temporary Basketball Goals must be used regularly, well maintained and not unsightly to other Lot Owners. While Temporary Basketball Goals may be used in view of the street, they shall not be stored in view of the street. In the event a Basketball Goal is not maintained or becomes unsightly, or in the event it is not used regularly in such a manner so that it is effectively being stored in view of the street, then the Architectural Control Committee may require the Owner to remove the Basketball Goal from the Lot.
- C.** Playground Equipment may be placed on a Lot in such a manner that they are not a visible nuisance. Nuisance will include but is not limited to equipment that is in disrepair, deteriorated to a state that is aesthetically displeasing, or painted with colors that cause a nuisance. If playground equipment becomes a nuisance, the Architectural Control Committee with govern decisions regarding this equipment, which may include requiring the resident to remove the structure from the Lot. Playground Equipment may be used in such a manner that is temporary in nature, and not a permanent

improvement to a Lot. Playground Equipment includes but is not limited to all outdoor play systems, slides, swings, climbing walls, forts, play houses, zip lines and game equipment.

D. Other Structures in excess of six (6) feet in height including but not limited to gazebos, tool sheds, patio structures and outdoor cooking equipment may be placed on a Lot in such a manner that they are not visible from the street, and not visible from another Lot in such a manner as to create a Nuisance to other Lot owners. Other Structures may be used in such a manner that is temporary in nature, and not a permanent improvement to a Lot. Placement of the Other Structures must be approved by the Architectural Control Committee.

4.20 Cost of Notice. In the event the Owner or Resident of a Lot is observed to be in violation of this Section 4, the Association shall mail written notice to the Owner or Resident specifying the violation. The Association may utilize the services of an attorney for notice letters, in which case the cost thereof shall be a binding, personal obligation of the Owner, payment of which is secured by the Assessment Lien in the same manner as if amounts owing under this Section were Annual Assessments.

4.21 Notice and Opportunity to Cure. Unless otherwise specified, if an Owner or Resident of a Lot upon which a violation of Section 4 exists has not taken reasonable steps to extinguish the violation within fourteen (14) days, unless a different time for response is specifically set forth herein, following the mailing of written notice to the Owner or resident specifying the violation, the Association shall have the right, through their agents or employees, to enter upon such Lot during regular business hours and to take such steps as were specified in the notice to extinguish the violation of these Restrictions. The cost thereof shall be a binding, personal obligation of the Owner, payment of which is secured by the Assessment Lien in the same manner as if amounts owing under this Section were Annual Assessments.

In the event an Owner or Resident shall initially cure any such violation for which a first notice has been sent by the Association, but the Owner subsequently violates Section 4 again in a similar manner, but said Owner or Resident has not taken reasonable steps to extinguish the violation within seven (7) days following the mailing of written notice to the Owner or resident specifying the violation, the Association shall have the right, through their agents or employees, to enter upon such Lot during regular business hours (between 7am and 9 pm) and to take such steps as were specified in the notice to extinguish the violation of these Restrictions, and the board may assess a fine of \$25.00 per month until the violation is extinguished. The cost thereof shall be a binding, personal obligation of the Owner, payment of which is secured by the Assessment Lien in the same manner as if amounts owing under this Section were Annual Assessments.

ARTICLE V - ASSESSMENTS

5.01 Annual Assessment. Each residential building site shall be subject to an annual charge at an initial rate of two tenths of one percent of the appraised value of the building site and improvements, for the purpose of creating a fund to be known as "Maintenance Fund", to be paid by the owner of each Lot (the "Annual Assessment"). This charge shall be payable to VICKSBURG COMMUNITY IMPROVEMENT ASSOCIATION annually in advance of January 1st., of each year. The Annual Assessment may be increased or decreased from year to year by the VICKSBURG COMMUNITY IMPROVEMENT ASSOCIATION, its successors and assigns as the needs of the subdivision may require provided, however, that any change to the Annual Assessment rate must be approved by a majority of all Voting Owners. Any Annual Assessment not paid when due shall bear a monthly late fee in the amount of \$25.00 per month.

5.02 Use of Annual Assessment. VICKSBURG COMMUNITY IMPROVEMENT ASSOCIATION shall, at their discretion, apply the total fund accumulated from the Annual Assessment, so far as the same may be sufficient, towards the payment of maintenance expenses incurred for any or all of the following purposes; lights; improving and maintaining streets; parks; parkways; esplanades; ditches; collecting and disposing of garbage, ashes rubbish and the like; caring for vacant Lots; payment of legal and all other expenses incurred in connection with the collection, enforcement and administration of the "Maintenance Fund" and the subdivision; employing policemen and watchman; and doing other things necessary or desirable in the opinion of VICKSBURG COMMUNITY IMPROVEMENT ASSOCIATION to keep the Property in the subdivision neat and in good order or which it considers of general benefit of the owners or occupants of the subdivision. It is understood that judgment of the VCIA and its members is exercised in good faith.

- 5.03** Special Assessment. In addition to the Annual Assessment authorized above, the Association may at any time and from time to time levy Special Assessments to meet other needs or requirements of the Association and the Property for which it is responsible, including without limitation, assessments for the cost of any construction, reconstruction, repair, or replacement of capital improvements upon the Common Areas or Association Land. The Board shall establish Special Assessments in the manner provided in the By-laws of the Association; provided, however, that no Special Assessment shall be levied without the prior approval of at least two-thirds (2/3) of all Voting Owners.

ARTICLE VI - ASSESSMENT LIEN

- 6.01** Covenant to Pay Assessment. Each Lot shall be charged with and subject to a continuing servitude and lien from the date of recordation of the Original Declaration as amended by the Amended Declaration as amended by this Second Amended Declaration for the amount of the Annual and Special Assessments assessed and levied against each such Lot and for all Assessments and all other fees assessed by the Association in accordance with this Second Amended Declaration. In order to secure the payment of the Assessments and any other charges hereby levied, a vendor's lien for the benefit of the Association shall be and is hereby reserved in the Deed from any Owner of a Lot(s) to the purchaser of each said Lot(s) or portion thereof, and each Owner of a Lot in the subdivision, by such party's acceptance of a deed thereto, hereby grants the Association a lien on such Lot which may be foreclosed on by non-judicial foreclosure and pursuant to the provisions of Section 51.002 of the Texas Property Code (and any successor statute), and further, each such Owner hereby expressly waives the right to require judicial foreclosure and grants the Association a power of sale in connection therewith (collectively referred to as the "Assessment Lien"). The Association shall, whenever it proceeds with non judicial foreclosure of the Assessment Lien pursuant to the provisions of said Section 51.002 of the Texas Property Code and said power of sale, designate in writing a Trustee to post or cause to be posted all required notices of such foreclosure sale and to conduct such foreclosure sale. The Trustee may be changed at any time and from time to time by the Association by means of a written instrument executed by the President or any Vice President of the Association and filed for record in the Real Property Records of Montgomery County, Texas.
- 6.02** Priority of Assessment Lien. The Assessment Lien shall be superior to any and all other charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon any Lot whether arising from or imposed by judgment or decree, or by any agreement, contract, mortgage or other instrument, excepting only mortgage liens made or insured by the Federal Housing Administration, the Veterans Administration or any successor to said agencies (unless said agency has agreed by recorded document to subordinate its lien) and such liens for taxes or other public charges as are made superior by applicable law. Sale or transfer of any Lot at foreclosure or Deed in lieu of foreclosure shall not relieve said Lot from liability for any Assessments thereafter becoming due.
- 6.03** Owners' Additional Covenants. Each Owner, for himself, his heirs, executors, administrators, personal representatives, successors, and assigns, covenants and agrees:
- i. That he will pay to the Association when due the Annual and Special Assessments assessed by the Association in each year against his Lot, together with any charges or other fees imposed;
 - ii. That he acquires his Lot subject to the Annual and Special Assessments, other fees, and Assessment Lien; and
 - iii. That by accepting a Deed to his Lot, he shall be, and remain, personally liable for any and all Annual and Special Assessments and other fees assessed against his Lot while he is (or was) the Owner thereof, regardless of whether such covenants or agreements are expressed in such Deed and regardless of whether he signed the Deed.

ARTICLE VII

ENFORCEMENT OF PAYMENT OF ASSESSMENTS

- 7.01** Effect of Nonpayment of Assessment; Remedies of the Association. Any Assessments which are not paid when due shall be delinquent. Interest accruing on the past due assessments at the rate set forth herein, costs and reasonable attorney's fees incurred by such action shall be added to the amount of the Assessment.

In addition, a monthly Late fee will be assessed in the amount of \$25.00, which Late Fee may be increased by the Association from time to time. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Property or the abandonment of his/her Lot.

- 7.02** Loss of Privileges. Any Owner that is delinquent in paying any Assessment hereunder for a period of ninety (90) days, shall thereafter and until said Assessment and all penalties and interest accrued in connection therewith are paid in full, no longer be entitled to vote or use the Amenities or hold any Office.
- 7.03** Remedies of the Association. If any Assessments due hereunder or other sums secured by the Assessment Lien remain unpaid beyond the date same become delinquent, the Association shall have the right to pursue any and all remedies available to the Association, at law or in equity, to enforce payment of said sums, including without limitation the following:
- A.** Bringing an action at law against the Owner or Owners personally obligated to pay the Assessments or other sums secured by the Assessment Lien to collect such delinquent sums together with penalties, interest, costs of collection, court costs and reasonable attorneys fees incurred in the collection of delinquent sums,
 - B.** Furnish to any mortgage holder and file in the Real Property Records of the county in which the Lot is located, a notice of the Assessments or the sums owing under the Assessment Lien,
 - C.** Bring an action for judicial foreclosure of the Assessment Lien in the manner prescribed by law, and D. If any Assessments due hereunder or other sums secured by the Assessment Lien remain unpaid two (2) or more years beyond the date same become delinquent, authorize and direct the foreclosure of the Assessment Lien against the Lot and all Structures thereon for which Assessments or other charges are delinquent, by nonjudicial foreclosure in accordance with Section 7.04 herein. The decision by the Association to exercise a particular remedy shall not be construed to constitute an election to waive the right to exercise any other remedy available. The Association is hereby authorized by all Owners to use any and all of such remedies as often as may be required to collect payment of sums secured by the Assessment Lien. In the enforcement of its remedies, interest, costs and reasonable attorney's fees incurred by the Association shall be added to the amount of any such Assessment or charge sought to be collected.
- 7.04** Non-Judicial foreclosure. In the event that the Association has determined to non judicially foreclose the Assessment Lien provided herein pursuant to the provisions of said Section 51.002 of the Texas Property Code and to exercise the power of sale hereby granted, the Association shall mail to the defaulting Owner a copy of the Notice of Trustee's Sale not less than twenty-one (21) days prior to the date on which said sale is scheduled by posting such notice through the U. S. Postal Service, postage prepaid, registered or certified, return receipt requested, properly addressed to such Owner at the last known address of such Owner according to the records of the Association. If required by law, the Association or Trustee shall also cause a copy of the Notice of Trustee's Sale to be recorded in the Real Property Records of Montgomery County, Texas. Out of the proceeds of such sale, there shall first be paid all expenses incurred by the Association in connection with such default, including, reasonable attorney's fees and reasonable trustee's fee; second, from such proceeds there shall be paid to the Association an amount equal to the amount in default; and, third, the remaining balance shall be paid to such Owner. Following any such foreclosure, each occupant of any such Lot foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and all lawful means, including a judgment for possession in an action of forcible detainer and the issuance of a writ of restitution there under. It is the intent of the provisions of this Section to comply with the provisions of said Section 51.002 of the Texas Property Code relating to non judicial sales by power of sale and, in the event of the amendment of said Section 51.002 of the Texas Property Code hereafter, the President or any Vice President of the Association, acting without joinder of any other Owner or mortgagee or other person may, by amendment to this Declaration filed in the Real Property Records of Montgomery County, Texas, amend the provisions hereof so as to comply with said amendments to Section 51.002 of the Texas Property Code.

ARTICLE VIII

EASEMENTS AND RIGHTS OF ENJOYMENT IN ASSOCIATION LANDS

- 8.01** Easements for the installation, removal, replacement and maintenance of equipment of public utilities as shown on the recorded map of the subdivision are reserved herein. No building or other permanent structure shall be constructed or placed within any of the ground easements shown on the recorded map of this subdivision.
- 8.02** The title to any building site shall not include title to any utility equipment located within these easements.
- 8.03** The right of entry to any easement for the purpose of construction, maintaining, replacing and repairing any public utility equipment located therein is expressly reserved and neither the parties executing this instrument nor their assigns, nor the operator of any public utility shall be liable for damage to any plant, structure or building situated on such easement because of any construction, maintenance, removal or repair of the equipment.

ARTICLE IX.

ENFORCEMENT OF COVENANTS

- 9.01** Violation or Breach of Covenants. Violation or breach of any Covenant herein contained shall give the Association, in addition to all other remedies, the right (after written notice is sent to the Owner of any Lot involved setting forth in reasonable detail the nature of such violation or breach and the specific action or actions to be taken to remedy such violation or breach and if at the end of such time reasonable steps to accomplish such action have not been taken), to enter upon the land on which such violation or breach exists, and to take the actions specified in the notice to the Owner to remedy, abate and remove, at the expense of the Owner thereof, any structure, thing or condition that may be or exist thereon contrary to the intent and meaning of the provisions hereof; and the said parties shall not hereby be deemed guilty of any manner of trespass for such entry, abatement or removal, provided that such remedy, abatement or removal is carried out in accordance with the provisions of this section. Nothing herein contained shall be deemed to affect or limit the rights of the Association or any Owner to enforce the Covenants by appropriate judicial proceedings.
- 9.02** Imminent Harm - Health and Safety. In the event of a violation of any covenant herein by an Owner or Resident of any Lot in such a manner so as to effect the health or safety of other Lot Owners, where there is a reasonably imminent likelihood of injury or harm to other Lot Owners or their guests, the Association shall have the right (but not the obligation), without any further permission from the Lot Owner or Resident, to take whatever action the Association deems necessary to repair, maintain, or restore the Lot and the exterior of the residence and any other improvements located thereon. Whether an "imminent likelihood of injury or harm" exists shall be determined at the sole and final discretion of the Association. Neither the Association, its agents or employees will be liable for any damages to any Lot or property thereon, nor be liable for trespass nor any other tort claimed to be incurred by the Lot owner or the Lot occupants as a result of the Association's actions taken in connection with the performance of its rights hereunder. Any costs or expenses incurred by the Association or the Committee in taking such action shall be added to the Assessments for the Lot.
- 9.03** Right to Enforce. The Association, or any person, firm or corporation owning any Lot in VICKSBURG, which is subject to the Covenants herein contained, or similar restrictions hereinafter imposed, may require the observance of these conditions, restrictions and covenants by the prosecution of any proceedings at law or in equity against any person, firm or corporation so violating or attempting to violate the same, including proceedings to restrain or prevent such violation or attempted violation by injunction, whether prohibitive in nature or mandatory in commanding compliance with such provisions; and it shall not be a prerequisite to the granting of any such injunction to show inadequacy of legal remedy or irreparable harm
- 9.04** Failure to Enforce Covenants. The failure of the Association or any Owner to enforce the Covenants or any portion thereof shall in no event be considered a waiver of the right to do so thereafter as to the same violation or breach or as to such other violation or breach occurring prior or subsequent thereto.
- 9.05** Covenants Shall Not Create Reversion. No Covenant herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.
- 9.06** Relief for Violation or Breach. Damages shall not be deemed to be the exclusive remedy for any breach or violation of any provision hereof. Any person or entity entitled to enforce any provision hereof shall be entitled to relief by way of injunction, as well as any other available relief either at law or in equity.

- 9.07** Enforcement of Covenants. In taking any legal or equitable action to enforce the restrictions contained herein, the Association shall be entitled to recover from the violating party, all court costs and attorneys fees incurred in connection with taking said action.
- 9.08** Administration Pursuant to these Covenants. The Association may adopt and promulgate reasonable rules and regulations regarding the administration, interpretation and enforcement of the provisions of these Covenants. In so adopting and promulgating such rules and regulations, and in making any finding, determination, ruling or order or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, rules or regulations, the Association shall take into consideration the best interests of the Lot Owners to the end that the Property shall be developed, preserved and maintained as a high quality community.

ARTICLE X

TERM AND AMENDMENT

- 10.01** Term. These restrictions, covenants and conditions shall run with the land and shall be binding on all parties and all persons owning Lots in said subdivision until January 1, 2029, at which time they shall automatically be extended for successive periods of ten (10) years unless an instrument, signed, and duly acknowledged by a majority of the then Voting Owners has been recorded in the County Clerk's office in Montgomery County, Texas agreeing to change these restrictions, covenants and conditions in whole or in part.
- 10.02** Amendment. Except as stated herein regarding Special Assessments, this Second Amended Declaration may be amended or changed in whole or in part at any time by the affirmative vote of Fifty-one percent (51%) of the votes authorized to be cast by the Voting Owners and the written approval of the Association Board.

ARTICLE XI

VOTING RIGHTS

- 11.01** Membership in the Association. Immediately upon the organization of the Association, each and every Lot owner, by virtue of being an owner, shall automatically be a Member of the Association, and shall thereafter remain such for as long as such ownership continues. Such membership shall be appurtenant to and pass with the title of any Lot and may not be in any manner alienated or encumbered except as an appurtenance thereto as part and parcel thereof; provided, however, that no such change of ownership shall be effective for voting purposes, unless and until the Association is given actual notice and is provided satisfactory proof thereof. When more than one person holds an interest in any Lot, all such persons shall be members.
- 11.02** Voting rights. Voting rights, which shall be exercisable only at such time and in such manner as shall be provided herein and by the Articles and Bylaws, shall be vested in all members who are in good standing. A member is in good standing unless that member is delinquent in the payment of any assessment required to be paid herein, or on notice of any violation of any restrictions or provisions of this Second Amended Declaration which has not been cured at the time of voting.
- 11.03** Number of Votes per Lot. Each Lot owner shall be entitled to one vote for each Lot owned.; provided, however, that there shall be not more than one Voting Owner on account of ownership of any single Lot. If more than one person owns an interest in a Lot so as to entitle them to membership in the Association, all owners of that Lot must decide on a representative among them to act as the Voting Owner to cast the one vote for that Lot.

ARTICLE XII

MISCELLANEOUS

- 12.01** Interpretation of the Covenants. Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Second Amended Declaration. In the absence of any adjudication, the Association's construction or interpretation of the provisions hereof shall be final,

conclusive, and binding as to all persons and property benefitted or bound by the Covenants and provisions hereof.

- 12.02** Severability. In the event it shall be determined by a court of competent jurisdiction that any covenant, provision, promise, right, lien or agreement hereunder is void or unenforceable, such determination shall only affect such covenant, provision, promise, right, lien or agreement and shall not impair the remaining terms of this Second Amended Declaration if the overall intent of this Second Amended Declaration, absent such void or unenforceable provision, can still be fulfilled, and shall not affect the validity or enforceability of any of the other provisions hereof.
- 12.03** Renewal of Amended Declaration. In the event it shall be determined by a court of competent jurisdiction that this Second Amended Declaration is void or unenforceable in its entirety, then the Owners understand and desire that the Amended Declaration be automatically extended and renewed in accordance with Section 10.02 of the Amended Declaration.
- 12.04** Rule Against Perpetuities. If any interest purported to be created by this Second Amended Declaration is challenged under the Rule against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be (a) those which would be used in determining the validity of the challenged interest, plus (b) those of the issue of the Board who are living at the time the period of perpetuities starts to run on the challenged interest.
- 12.05** Change of Circumstances. Except as otherwise expressly provided in this Second Amended Declaration, no change of conditions or circumstances shall operate to extinguish, terminate, or modify any of the provisions of this Second Amended Declaration.
- 12.06** Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Second Amended Declaration, the Association shall have the right to adopt rules and regulations with respect to all other aspects of the Association's rights, activities, and duties, provided said rules and regulations are not inconsistent with the provisions on this Second Amended Declaration.
- 12.07** Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the feminine shall include the masculine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.
- 12.08** Captions and Titles. All captions, titles, and headings of the Articles and Sections in this Second Amended Declaration are for the purpose of reference and convenience only, and are not to be deemed to limit, modify, or otherwise affect any of the provisions hereof, or to be used in determining the intent or context thereof.
- 12.09** Notices. Any notice required or permitted to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, delivery shall be deemed to have been made twenty-four (24) hours after a copy of the notice has been deposited in the United States mail, postage paid, registered or certified mail, addressed to each such person at the address given by such person to the party sending the notice or to the address of the Dwelling Unit of such person if no address has been given. Such address may be changed from time to time by notice in writing to the VCIA.

All other provisions set forth in the Amended Declaration not otherwise amended or supplemented herein shall remain in full force and effect.

This Second Amended Declaration shall be effective on October 15, 2010.

VICKSBURG COMMUNITY IMPROVEMENT ASSOCIATION BY:

_____, President

SECRETARY'S CERTIFICATION

I, _____, Secretary of Vicksburg Community Improvement Association, do hereby certify that the foregoing Second Amended Declaration was approved pursuant to the affirmative vote of a majority of the Lot owners authorized to be cast in accordance with Article X of the Amended Declaration, and by the written approval of the Board of Trustees of Vicksburg Community Improvement Association.

Dated this _____ day of _____, 20____. BY:

_____, Secretary

STATE OF TEXAS

§

COUNTY OF MONTGOMERY

§

§

This instrument was acknowledged before me this _____ day of _____, 20____, by _____, President of VICKSBURG COMMUNITY IMPROVEMENT ASSOCIATION, a Texas non-profit corporation, on behalf of said corporation.

Notary Public in and for the State of Texas

AFTER RECORDING RETURN TO:

