



**2014047544**

**RECORDED: 10/02/2014 2:34:49 PM**

**ANITA MATHER**

**ALLEN COUNTY RECORDER**

**FORT WAYNE, IN**

**AMENDED AND RESTATED DEDICATION AND DECLARATION  
OF PROTECTIVE RESTRICTIONS, COVENANTS, LIMITATIONS,  
EASEMENTS AND APPROVALS COVINGTON POINTE, SECTIONS I AND II  
A SUBDIVISION IN ABOITE TOWNSHIP, ALLEN COUNTY, INDIANA  
[Cross Reference 94-051546, 95-037659, 205051618 and 205051619]**

The undersigned, representing at least seventy-five percent (75%) of the lot owners numbered 1 to 26, of Covington Pointe, Section I, recorded as Document No. 94-051546 in Plat Cabinet C, Page 30 in the Office of the Recorder of Allen County, Indiana, as amended by Document No. 205051618, and of the Lot owners numbered 27 through 44, of Covington Pointe Section II, recorded as Document No. 95-037659 in Plat Cabinet C, Page 64 in the Recorder's Office, as amended by Document No. 205051619, hereby approve this Amended and Restated Dedication and Declaration of Protective Restrictions, Covenants, Limitations, Easements and Approvals Appended as to Part of the Dedication and Plat Covington Pointe Sections I and II, a subdivision in Aboite Township, Indiana ("Covenants").

These Covenants are for the mutual benefit and protection of the Owners present and future of any and all Lots and shall:

1. Replace and restate the Covenants recorded as Document Nos. 94-051546, 95-037659, 205051618, and 205051619;
2. Be applicable to the Property, as defined below, which shall be subject to and impressed with these Covenants;
3. Be considered a part of every conveyance of land in Covington Pointe Sections I and II without being written in the deed of conveyance; and
4. Shall run with and bind the Property and Lots and shall inure to the benefit of and be enforceable by the Association and the Owners of Lots, their respective legal representatives, successors, grantees and assigns.

**ARTICLE I. DEFINITIONS**

Section 1.01. "Application" shall mean any written submission for approval to the Committee pursuant to Article VI, and to the Board pursuant to Article VIII.

Section 1.02. "Association" shall mean and refer to the Covington Pointe Community Association, Inc., its successors and assigns, formed as the unified Association for both Sections I and II of Covington Pointe.

*Covington PT Community Assn.  
m: 507 Airport North Office Park  
FW 25*

*8/1+2WC*

Section 1.03. "Board" shall mean the Board of Directors of Covington Pointe Community Association, Inc.

Section 1.04. "By-laws" shall mean the By-laws initially adopted by Covington Pointe Community Association, Inc. and all amendments and additions.

Section 1.05. "Committee" shall mean the Architectural Control Committee, composed of three members as appointed by the Board from time to time. The members of the Committee shall be subject to removal by the Board at any time with or without cause. The Board may choose itself to serve as the Architectural Control Committee.

Section 1.06. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners as identified on the Plat and which shall be appurtenant to and shall pass with the title to every Lot.

Section 1.07. "Disguised Lease Land Contract" shall mean a land contract where (1) the Owner has not received in cash, at the time the land contract is entered into with the land contract buyer, in an amount equal to ten percent (10%) of the land contract purchase price; and/or (2) the land contract was not recorded within thirty (30) days after the date the land contract was entered into between the Owner and the land contract buyer.

Section 1.08. "Dwelling Unit" shall mean and refer to the structure used as a residential living unit located upon a Lot including the garage and any appurtenances.

Section 1.09. "Lot" shall mean any type of Lot as has been or may be platted or any tract or tracts of land as conveyed originally or by subsequent Owners, which may consist of one or more Lots or parts of one or more Lots as set forth on the Plat restrictions as set forth in these Covenants or such further restrictions as may be imposed by any applicable zoning ordinance, provided, however, no tract of land consisting of part of any one Lot or parts of more than one Lot shall be considered a Lot unless said tract of land has a frontage of 45 feet in width at the established building line as shown on the Plat.

Section 1.10. "Nonowner Occupied Residence" shall mean:

(a) A residence that is rented or leased by the Owner where during the rental period (A) the Owner of the Residence, or (B) the Owner's spouse, or (C) one or more of the Owner's parents or a parent of the spouse of the Owner, or (D) one or more of the Owner's children or a spouse of one of the Owner's children is not a full-time occupant of the Residence, or in the case of a Residence owned by a trust, where a settlor or material beneficiary of such trust is not a full-time occupant of the Residence during the rental period; or in the case of a Residence owned by a for-profit corporation or a limited liability company or other entity (but specifically excluding a not-for-profit corporation), where a person that holds directly or indirectly at least fifty and one one-hundredth percent 50.01%) of the ownership and voting power of such entity is not a full-time occupant of the

Residence during the rental period; or in the case of a not-for-profit corporation, where a person who is an officer, manager, or director of the not-for-profit corporation's local, regional or national unit or chapter (as determined by the Board, in its discretion) is not a full-time occupant of the Residence during the rental period; and/or

(b) A residence that is being sold on a "Disguised Lease Land Contract" basis.

(c) Notwithstanding anything herein to the contrary, when a former Owner rents back to a purchaser of the Lot after closing pursuant to a bona fide real estate residential purchase agreement for a period of less than sixty (60) days prior to delivering possession to the purchaser, this transaction shall not be deemed a Nonowner Occupied Residence and shall be expressly permitted by these Covenants.

Section 1.11. "Owner" shall mean and refer to the record owner of fee simple title to a Lot, whether one or more persons or entities, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

Section 1.12. "Plan Commission" shall refer to, collectively, the Allen County Plan Commission, the agency that initially approved the Plat, the Fort Wayne Plan Commission, the agency exercising jurisdiction over the Plat since the area was annexed by the City of Fort Wayne, and any successor agency.

Section 1.13. "Plat" shall mean originally recorded plats of Covington Pointe, Sections I (Doc. No. 94-051546) and II (Doc. No. 95-037659). The plats for Sections I and II may also be referred to collectively as "Covington Pointe." The term "Plat" is synonymous with, and shall be used interchangeably with, the term "Subdivision" as used in these Covenants.

Section 1.14. "Property" or "Properties" shall mean and refer to that certain real property described in the Plat, all Lots, and such additions as may be added to and brought within the jurisdiction of the Association.

Section 1.15. "Residence" shall mean and refer to the single-family residential structure and related improvements constructed and located upon a Lot, including the garage and any appurtenances.

Section 1.16. "Restrictions" shall mean and refer to the limitations imposed on Lots by these Covenants.

Section 1.17. "Unit" is defined as the individual living, space(s) within each building structure which includes, drywall, permanently installed cabinetry, basic kitchen and bathroom fixtures, electrical fixtures, major appliances (stove, dishwasher, refrigerator, washer/dryer), and basic lighting fixtures.

## ARTICLE II. PROPERTY RIGHTS

Section 2.01. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) The right of the Association to suspend the use of the recreational facilities by an Owner for any period during which any Assessments against the Owner's Lot remains unpaid;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area not within the boundaries of a Lot to any public agency, authority or utility for such purposes and subject to such conditions as may be approved by the affirmative vote of the Board.

(d) Access to the Common Areas not within the boundaries of a Lot shall be only at such locations where the Common Areas adjoin public roads. Existence of Common Areas shall not be deemed to have granted or created any easement, actual, implied or constructive, over the Lot of any Owner for access to or use of the Common Areas, unless such easement is shown on the Plat for access to a Common Area.

Section 2.02. Delegation of Use. Any Owner may delegate, in accordance with the By-laws, his right of enjoyment to the Common Area and facilities to the members of the Owner's family, tenants or contract purchasers who reside on the property.

Section 2.03. Common Party Walls. Each Dwelling Unit has a common Party Wall ("Party Wall") located on a Lot boundary line with an adjacent Dwelling Unit. Each Lot and the Dwelling Unit will be separately conveyed, and any Party Wall shall be subject to the following provisions:

(a) The cost of maintaining each Party Wall shall be borne equally by the Owners on either side of the Party Wall.

(b) In the event of damage or destruction suffered by a Party Wall from any cause, other than the negligence of either Owner thereof, the Owners shall, at their joint expense, repair or rebuild the Party Wall.

(c) If either Owner's negligence or willful act is the cause of the damage to or destruction of the Party Wall, including, but not limited to, an Owner who causes the Party Wall to be exposed to the elements, such Owner shall bear the entire cost of repair or reconstruction.

(d) If either Owner neglects or refuses to pay his share of the repair or reconstruction costs, or all of such costs in the event of said Owner's negligence or

willful act, the other Owner may have the Party Wall repaired or restored and shall have a lien in the same manner as provided for in these Covenants for a lien for unpaid Assessments on the Lot and Dwelling Unit of the Owner who failed to pay in the amount of the defaulting Owner's share of the repair or replacement costs.

(e) No Owner shall alter or change a Party Wall in any manner, interior paint or decoration excepted, and a Party Wall shall always remain in the same location as when erected.

(f) Each Owner of a Party Wall shall have a perpetual easement of encroachment, maintenance and support on that part of the Lot of the other Owner of the Party Wall, for Party Wall purposes only.

(g) The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the Owner's Lot and shall pass to such Owner's successors in title.

(h) In the event of any dispute arising concerning a Party Wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one (1) additional arbitrator, and the decision shall be by a majority of all of the arbitrators. Said arbitration shall be conducted in accordance with the rules of the American Arbitration Association. Each party shall share equally in the cost of same.

(i) No change to this Dwelling Unit Party Wall configuration will be permitted without approval of the Architectural Control Committee and the concurrence of the Board.

### **ARTICLE III. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

Section 3.01. Member of the Association. An Owner of a Lot shall be a member of the Association ("Member(s)", or collectively "Membership") and subject to all terms and conditions, restrictions and assessments of the Association. The membership in the Association shall be appurtenant to and may not be separated from ownership of a Lot.

Section 3.02. Voting Memberships. Each Owner shall be entitled to one vote for each Lot owned. When more than one person holds an ownership interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot.

### **ARTICLE IV. ASSESSMENTS**

Section 4.01. Annual Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of residents of Covington Pointe, including but not limited to the ordinary recurring improvement and maintenance of ponds and streams, entrance ways and all other common areas, payment of certain utility expenses, the cost of labor, equipment and materials, supervision, security,

lighting, lawn and yard maintenance, snow removal, insurance as required by these Amended Covenants or as otherwise deemed necessary by the Board, taxes, the hiring of a professional manager to manage the affairs of the Association, and all other things necessary or desirable in the opinion of the Board in connection with these purposes, and as provided in the Articles of Incorporation ("Annual Assessments").

Section 4.02. Optional Reserve for Building Maintenance, Repair and Improvements. The Association may, but is not obligated to create a reserve account to be used for the comprehensive re-painting, re-roofing, and re-siding of all the Buildings in order to provide for consistent repair and appearance. This is an option for the Association, not an obligation, and the funding of such reserve may not come at the expense of the other financial obligations of the Association. This option in no way alters the obligation of each Owner to maintain the Owner's Lot and Dwelling Unit as provided in the Amended Covenants. The Association is not obligated to fund the reserve to such an extent as to cover the entire cost of any such comprehensive maintenance, but merely as a supplement to the Owner's individual responsibility to pay for such maintenance on their own Dwelling Units.

Section 4.03. Increase in Annual Assessments. From and after the date of the adoption of these Amended Covenants, the Annual Assessment may be increased by more than ten percent (10%) of those of the prior year only if proposed by the Board and approved by the vote or written consent of fifty-one percent (51%) of the Members, but a reduction of or continuation of the prior year's Annual Assessment, or increases of ten percent (10%) or less, may be approved by a vote of the Board without a vote of the Members.

Section 4.04. Special Assessments for Capital Improvements. In addition to the Annual Assessments authorized above, the Association may levy, in any assessment year, a special assessment ("Special Assessment") applicable to that year only for the purpose of defraying, in whole or in part, the cost of construction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related to the Common Area and not within the recurring expenses included in Annual Assessments, provided that any such Assessment shall have the vote or written consent of fifty-one percent (51%) of the Members.

Section 4.05. Limited Special Assessments Without Member Approval. In addition to all other Annual and Special Assessments, the Board *without the approval of the Members* may levy in any year Special Assessments as is necessary to resolve, settle, or otherwise satisfy an act or enforcement against the Association for violating a federal, state or local law or regulation, including, but not limited to:

- (a) A tax recoupment assessment applicable to that year only for the purpose of defraying, in whole or in part, any cost or expense incurred by the Association in the form of a tax, and/or penalty and/or interest on a tax imposed upon, assumed by or assessed against the Association or its properties, and arising out of or in any way related to the acceptance of title to, the ownership of and/or operation or maintenance of any Common Area or equipment (including utility lines, lift stations and other property) for the transmission, delivery or furnishing of water, or for the collection, transmission and disposal of liquid and solid waste and sewage, and/or the ownership of any real estate or

easements or other rights with respect to real estate owned and/or possessed in connection with such plan or equipment; or,

(b) A storm water assessment necessary for the maintenance, repair and/or replacement, of the storm water drainage system and any current or future storm water detention basin together with its outlet and water level control structures ("Storm Water Detention System"), as filed with the Plan Commission in conjunction with the initial approval of the Plat. Such maintenance shall be the obligation of the Association, and the Owner of any Lot in Covington Pointe and/or the Allen County Drainage Board, or its successor agency, shall have the right to order the Association to carry out its obligation to maintain, repair, or replace the storm water drainage system and any current or future Storm Water Detention System improvements, as above provided (collectively, "Compliance Assessment").

Section 4.06. Special Approval With Respect to Certain Contracts. With the exception of a Compliance Assessment as provided above, the Board may not enter into any contract that would result in a new Special Assessment or the increase in an existing Annual or Special Assessment payable by the affected members of the Association in the amount of more than five hundred dollars (\$500) per year for each affected Member of the Association unless the Board holds at least two (2) Association meetings (either annual or special) at which the contract is discussed; and, notwithstanding other provisions of the By-Laws, the contract is approved by the affirmative vote of at least sixty-seven percent (67%) of the Members.

Section 4.07. Special Approval With Respect to Certain Borrowing. Excepting only as necessary to finance the subject of a Tax Recoupment Assessment, or Compliance Assessment, the Board may not borrow money during any calendar year on behalf of the Association in an amount that exceeds the greater of:

- (a) Five thousand dollars (\$5,000) during any calendar year; or,
- (b) An amount equal to at least ten percent (10%) of the previous annual budget of the homeowners association;

Unless borrowing the money is approved by the affirmative vote of fifty-one percent (51%) of the Members.

Section 4.08. Provisions Applicable to Any Action on Assessments Requiring Special Vote of Members. Any action approving Annual or Special Assessments requiring a fifty-one percent (51%) or greater affirmative vote or approval of the Members shall be taken:

- (a) At a meeting called for that purpose, written notice of which, including a copy of a paper ballot to be used for the vote of the Members, shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting; and,

(b) By a paper ballot stating the specific action for which approval is sought, which ballots shall be opened and counted at such meeting.

(c) If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite fifty-one percent (51%) of the Members or such greater majority as may be required, Members who were not present in person or by proxy may give their assent in writing on the applicable form of paper ballot, provided the same is obtained by officers of the Association not later than thirty (30) days from the date of the meeting at which such vote was taken.

(d) Uniform Rate of Assessment. Except as otherwise provided, both Monthly Assessments and Special Assessments must be fixed at a uniform rate for all Lots, and shall be billed and collected on a monthly basis with due dates as established by the Board.

Section 4.09. Certification of Payment. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on the specified Lot have been paid.

Section 4.10. All Assessments Are Common Expenses. All Assessments as set forth in this Article shall be "common expenses" for the purposes of Indiana Code § 32-28-14-1, as may be amended, and shall become a lien to secure such Assessments as provided under Indiana law and these Covenants.

## **ARTICLE V. PAYMENT AND COLLECTION OF ASSESSMENTS**

Section 5.01. Personal Obligation of Owner for Assessments. Each Owner of any Lot, by acceptance of a deed for that Lot, whether or not it shall be so expressed in such deed, is and shall be deemed to covenant and agree to pay to the Association:

- (a) Annual Assessments;
- (b) Special Assessments;
- (c) Compliance Assessments; or,
- (d) Any other Assessments to be established and collected as provided in these Covenants or any installment of any Assessment; and,
- (e) Interest, Late Fees, Attorneys' Fees and Costs of Collection upon the terms and conditions as set forth in these Covenants (individually or collectively referred to as "Assessment[s]").

Section 5.02. Interest, Late Fees and Attorneys' Fees and Costs. If any Owner shall fail, refuse or neglect to make any payment of any Assessment when due, the



following shall be immediately due and payable with respect to any Assessment which shall be thirty (30) days past due:

(a) Simple interest at the rate of eighteen percent (18%) per annum (one and one half percent [1.5%] per month), calculated from the date such Assessment was originally due and payable.

(b) An administrative expense and late fee of Twenty Five Dollars (\$25.00) ("Late Fee") per partial or whole month that any Assessment or portion thereof remains past due, which Late Fees shall not be cumulative, shall not exceed Twenty Five Dollars (\$25.00) per month regardless of the number of Assessments which are unpaid and upon which Late Fee interest shall not be due; and,

(c) All reasonable attorneys' fees and costs of collection incurred in the collection of any such past due Assessment.

Section 5.03. No Exemption From Assessment. No Owner may become exempt from paying, or liability for, any Assessments pursuant to these Covenants by any waiver of use or abandonment or any other action with respect to the Owner's Lot.

Section 5.04. Liens. The Association shall have liens upon Lots to secure payment of Assessments as follows.

(a) All charges for Assessment constitute a lien on the Lot subject to the Assessment (Lien") which Lien may be perfected by the filing of a Notice of Intention to Hold Lien in the office of the Recorder of Allen County, Indiana.

(b) The priority of the Lien shall be established on the date the Notice of Intention to Hold Lien is recorded, which is the date the Lien attaches to the Lot.

(c) The Lien may be foreclosed by the Association according to law by the filing of a complaint in the circuit or superior court of Allen County, Indiana.

(d) A Lien not foreclosed within the time periods set forth above is void.

Section 5.05. Liability of Grantee for Unpaid Assessments. A grantee of a Lot in a conveyance is jointly and severally liable with the grantor Owner for all unpaid Assessments against the grantor Owner incurred before the conveyance of the Lot, without prejudice to the grantee's right to recover from the grantor Owner the amounts of Assessments paid by the grantee provided that the Notice of Intention to Hold Lien securing said Assessments was recorded prior to the date of such conveyance. The grantee is entitled to a statement from the Association that sets forth the amount of the unpaid Assessments owing by the grantor Owner.

Section 5.06. Collection of Past Due Assessments. Notwithstanding the lien and foreclosure provisions stated above, nothing shall prevent the Association from collecting the Assessments as other claims are collected by law.

## **ARTICLE VI. ARCHITECTURAL CONTROL**

Section 6.01. The Association wishes to maintain the original character and external continuity of Covington Pointe pursuant to the architectural control provisions of this Article VI. The Board or Committee may adopt architectural guidelines not inconsistent with these Covenants, from time to time. These guidelines shall be available to the Members upon request.

Section 6.02. No building, fence, wall, pond, or other structure or improvement of any kind other than landscaping shall be commenced, erected or maintained upon any Lot, nor shall the construction of a Dwelling Unit or any exterior addition to or change or alteration to a Dwelling Unit be made until two sets of plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted in advance to the Committee and approved by it in writing as to harmony of external design and location in relation to surrounding structures and topography.

Section 6.03. The Board, the Committee, and any member of either, or any of their respective heirs, personal representatives, successors or assigns, shall not be liable to anyone by reason of any mistake in judgment, negligence, or nonfeasance or otherwise arising out of or relating to the approval or disapproval or failure to approve any plan submitted, nor shall they, or any of them, be responsible or liable for any structural defects, building code violations, any drainage problems or any other defect ("Defect") resulting from any structure submitted to the Committee for review. The Committee's sole objective is to maintain the appearance of the community in accordance with the Covenants. Every Owner acknowledges by acceptance of a deed to a Lot that the Committee is not composed of persons with the expertise to determine whether the plans or their implementation will result in a Defect. The Owner alone has responsibility to ensure the plans and construction conform to all applicable requirements and professional best practices. Every person and entity who submits plans to the Committee agrees by submission of such plans, that such person or entity will not bring any action or suit against the Committee, Board or the Association to recover any damages or to require the Committee, Board or Association to take, or refrain from taking, any action whatever in regard to such plans or in regard to any building or structure erected in accordance with the plans.

Section 6.04. Neither the submission of any complete sets of plans for review by the Committee, nor the approval by the Committee, shall be deemed to guarantee or require the actual construction of the building or structure described in the plans, and no adjacent Owner may claim any reliance upon the submission and/or approval of any such plans or the buildings or structures described in the plans. Any project completed without prior approval by the Committee is subject to the removal and restoration of the property to its prior condition at the Owner's expense if it does not meet Committee criteria.

Section 6.05. Failure to pay the Association within thirty (30) days after the billing for removal and restoration costs will result in a Late Fee of \$25.00 per month for each month payment is not made. The Association shall have all rights and remedies as provided and in the same manner as provided for in these Covenants for a lien for unpaid Assessments.

## **ARTICLE VII. USE RESTRICTIONS**

Section 7.01. Residential Purposes. No Lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot other than one single-family dwelling not to exceed two and one-half stories in height. Each Dwelling Unit shall include not less than a two car garage, which shall be built as part and attached to the Dwelling Unit.

Section 7.02. Home Occupations. No Lot shall be used for any purposes other than as a single-family residence, except that a home occupation, defined as follows may be permitted: any use conducted entirely within Dwelling Unit and participated in solely by a member of the immediate family residing in said Dwelling Unit, which use is clearly incidental and secondary to the use of the Dwelling Unit for dwelling purposes and does not change the character thereof and in connection with which there is:

- (a) No sign or display that indicates from the exterior that the Dwelling Unit is being utilized in whole or in part for any purposes other than that of a Dwelling Unit.
- (b) No commodity is sold upon the Lot;
- (c) No person is employed in such home occupation other than a member of the immediate family residing in the Dwelling Unit; and,
- (d) No mechanical or electrical equipment is used; and, provided that, in no event shall a barber shop, styling salon, beauty parlor, massage parlor, tea room, fortune-telling parlor, licensed child care center or other licensed or regulated babysitting service, animal hospital, or any form of animal care or treatment, such as dog trimming, or other business or occupation where consumers or customers are required or permitted to come upon the Lot to receive goods or services be so permitted.

Section 7.03. Sizes of Dwelling Units. All two-unit attached Dwelling Units shall have a minimum of 1,226 interior square feet per dwelling for (2) two-bedroom units and a minimum of 3,000 interior square feet per dwelling for three or four-bedroom units, exclusive of porches and garages.

Section 7.04. Garages. All Dwelling Units must have a garage as described in Section 7.01. Each garage shall be maintained for the purposes of storing automobiles, boats for personal use and/or their trailers, camper or camping trailer. Garage doors shall normally remain closed. No driveway access shall be off or on to Covington Road.

Section 7.05. Building Setback. No Dwelling Unit shall be located on any Lot nearer to the front Lot line and rear Lot line or nearer to the side street line than the minimum building setback line shown on the recorded Plat. In any event, no Dwelling Unit, shall be located nearer than a distance of five (5) feet to a side Lot line, except at the point where a Dwelling Unit is attached to an adjacent Dwelling Unit, separated by a party wall. No Dwelling Unit shall be located nearer than a distance of twenty-five (25) feet to the rear Lot line.

Section 7.06. Utility Easements. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded Plat. No Owner of any Lot shall erect or grant to any person firm or corporation, the right, license or privilege to erect or use or permit the use of overhead wires, poles or overhead facilities of any kind for electrical, telephone or television service (except such poles and overhead facilities that may be required at those places where distribution facilities enter and leave the Subdivision). This provision does not prohibit street lighting or ornamental yard lighting serviced by underground wires or cables. Electrical service entrance facilities installed for any Dwelling Unit or other structure connecting the same to the electrical distribution system of any electric public utility shall be provided by the Owners of all Lots and shall carry not less than three (3) wires and have a capacity not less than 200 amperes. Any electric public utility charged with the maintenance of any underground installation shall have access to all easements in which said underground installations are located for operation, maintenance and replacement of service connections. Any such electric public utility shall not be liable for damage to walks, driveways, lawn or landscaping which may result from installation, repair or maintenance of such service.

Section 7.07. Surface Drainage. Surface Drainage Easements and Common Areas used for drainage purposes as shown on the Plat are intended for either periodic or occasional use as conductors for the flow of surface water runoff to a suitable outlet and the land surface shall be constructed and maintained so as to achieve this intention. Such easements shall be maintained in an unobstructed condition and the County Surveyor or a proper public authority having jurisdiction over storm drainage shall have the right to determine if any obstruction exists and to repair and maintain or to require such repair and maintenance as shall be reasonably necessary to keep the conductors unobstructed.

Section 7.08. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, or in a Common Area, nor shall anything be done which may be or may become any annoyance or nuisance to the neighborhood. Without limiting any of the foregoing, no exterior lights, the principal beam of which shines upon portions of a Lot other than the Lot upon which they are located, or which otherwise cause unreasonable interference with the use and enjoyment of a Lot by its occupants, and no speakers, horns, whistles, bells or other sound devices, shall be located, used or placed on the premises, except security devices used exclusively for security purposes which are activated only in emergency situations or for testing.

Section 7.09. Temporary Structures, Vehicle Storage and Outbuildings. No structure of a temporary character, trailer, boat trailer, camper or camping trailer, basement, tent, shack, garage, barn or other outbuilding shall be either used or located on any Lot, or adjacent to any Lot, public street or right-of-way with the Subdivision at any time, or used as a residence either

temporarily or permanently. No unlicensed or inoperable motor vehicle or trailer may be stored on any Lot, or on the right-of-way, outside of a garage.

Section 7.10. Signs. No sign of any kind shall be displayed to the public view on any Lot except a real estate sign of not more than five square feet, advertising such Lot for.

Section 7.11. Radio and Television Antennas. No radio or television masts, towers, wind turbines, poles, antennas, satellite dishes (except those not greater than thirty-six (36) inches in diameter and attached to a house or mounted in ground within five (5) feet of house), aerials or similar structures may be erected, constructed, or maintained without the prior approval of the Committee.

Section 7.12. Drilling, Refining, Quarry and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot. No derrick or other structure designed for the use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 7.13. Pets and Animals. Pets and animals shall be permitted in the Subdivision ("Pets"), only as provided for in this Section.

(a) Pets shall be restricted to cats, dogs, fish, domestic birds, hamsters, gerbils, turtles, guinea pigs and rabbits ("Pet(s)"). No other animals shall be allowed or suffered in the subdivision.

(b) All dogs and cats must be inoculated against rabies by a duly qualified and licensed veterinarian and shall also be inoculated in like manner in such cases of emergency whenever ordered by the Board of Health of the State of Indiana.

(c) When outside of the Dwelling Unit, all dogs and cats must be accompanied by an attendant who shall have such dog/cat firmly held by collar and leash, which leash shall not exceed eight (8) feet in length. No cats or dogs shall be permitted to run at large outside of the Dwelling Unit. This shall not prohibit a cat or dog from being maintained without a leash or other restraint in an area bounded by underground electrical fence or within any enclosed privacy area of the Dwelling Unit in which the dog or cat resides.

(d) The owner or custodian of each Pet or the individual walking same is required to clean up fecal waste from the Pet.

(e) The owner or custodian of the Pet shall remove the Pet from the Subdivision when such Pet emits excessive noise such that same may be heard outside of the Dwelling Unit.

(f) The Pet or animal owner and the Owner of the Dwelling Unit at which the Pet is kept shall be strictly liable for damage to person or property of any kind or nature caused by the Pet.

(g) Any Owner's right to have a Pet reside in or visit the Subdivision shall have such right revoked if the pet shall create a nuisance or shall become a nuisance as may be determined by the Board.

Section 7.14. Garbage, Recycling and Refuse. Garbage and refuse shall be placed in containers, which shall be kept in the garage of the Dwelling Unit, recycling, garbage cans, trash containers and recycling containers shall be placed at the curbside no sooner than the evening before and removed no later than the evening of the scheduled pickup.

Section 7.15. Building Materials. All Dwelling Units and other permitted structures shall be constructed in a substantial and good workmanlike manner and of new materials. No roll siding, asbestos siding or siding containing asphalt or tar as one of its principal ingredients shall be used for siding of any Dwelling Unit or other permitted structure on any Lot, and no roll roofing of any description or character shall be used on the roof of any Dwelling Unit or other permitted structure on any Lot. Replacement and repair of external structures shall be consistent with quality and color of pre-existing structures.

Section 7.16. Driveways and Sidewalks. All driveways from the street to the garage shall be poured concrete and not less than sixteen (16) feet in width for a Dwelling Unit with a front load garage and no less than ten (10) feet in width for a Dwelling Unit with a side load garage. Plans and specifications for this Subdivision, on file with the Plan Commission, require the installation of concrete sidewalks within the right-of-way in front of all Lots. Installation of said sidewalks shall be the obligation of the owner of any such Lot, and shall be completed in accordance with said plans and specifications prior to the issuance of a Certificate of Occupancy.

(a) It is the responsibility of the Owner to maintain the sidewalks and to make repairs and replace sidewalks when any cracking, raising or up-thrusting, settling or subsidence in the surface of the sidewalk exceeds one-half (1/2) inch or is in violation of any applicable local or municipal building or construction code ordinance ("Sidewalk Defect").

(b) The Association shall provide written notice to any Owner of any Sidewalk Defect on his or her Lot. The Owner shall have forty-five (45) days to hire a contractor to complete the repair of the Sidewalk Defects and to complete repairs to the Sidewalk Defects; provided, however, that any contractor hired to repair a Sidewalk Defect may make written or oral application to the Board to obtain such extension of time as is reasonably necessary to complete the sidewalk repair by reason of inclement weather.

(c) If repairs are not completed within forty-five (45) days after notice from the Association and there is no extension granted, the Association may make the sidewalk repairs and the Owner shall be liable for, and shall pay to the Association, the cost of the sidewalk repairs. Failure to pay the Association within thirty (30) days after the billing for repair costs will result in a Late Fee of \$25.00 per month for each month payment is

not made with interest assessed and the Association shall have all rights and remedies as provided for in these Covenants with respect to Assessments.

Section 7.17. Individual Water and Sewage Systems. No individual water supply system or individual sewage disposal system shall be installed, maintained or used on any Lots in the Plat.

Section 7.18. Use of Public Easements. In addition to the utility easements designated in these Covenants, easements in the streets, and easements as shown on the Plat, are reserved and granted to the Developer, the Association and any public or quasi-public utility company engaged in supplying one or more of the utility services contemplated by these Covenants, the Plat or otherwise necessary, and their respective successors and assigns, to install, lay, erect, construct, renew, operate, repair, replace, maintain and remove all and every type of gas main, water main and sewer main (sanitary and/or storm) with all necessary appliances, subject nevertheless, to all reasonable requirements of any governmental body having jurisdiction as to maintenance and repair of said streets.

Section 7.19. Sanitary Sewer Restrictions. No rain and storm water runoff or such things as roof water, street pavement and surface water, caused by natural precipitation, shall at any time be discharged into or permitted to flow into the sanitary sewage system, which shall be a separate sewer system from the storm water and surface water runoff sewer system. No sanitary sewage shall at any time be discharged or permitted to flow into the above mentioned storm water and surface water runoff sewer system.

Section 7.20. Improvements. Before any Dwelling Unit on any Lot shall be used and occupied as a dwelling or as otherwise provided by these Covenants, the developer or any subsequent Owner of said Lot shall install improvements serving said Lot provided in said plans and specifications for the Plat filed with the Plan Commission. The requirements of this section shall run with the land and be enforceable by the Plan Commission, the Association or by any aggrieved Owner.

Section 7.21. Permits and Certificates. Before any Dwelling Unit or other structure located on any Lot may be used or occupied such user or occupier shall first obtain an Improvement Location Permit and a Certificate of Occupancy as required under the applicable zoning ordinance.

Section 7.22. Pools and Other Outdoor Recreational Equipment. No in-ground pool or above-ground pool, spa or hot tub or other outdoor recreational equipment, including by way of example and not limited to: basketball backboard, with or without support post or stand, children's swing sets, slides and sandboxes shall be placed or maintained on any Lot.

Section 7.23. Mailboxes. Type, location and installation of mailboxes shall be the responsibility of the Association.

Section 7.24. Time for Building Completion and Restoration. Every Dwelling Unit on any Lot, or approved addition, in the Subdivision shall be completed within twelve (12) months

after the beginning of construction. No improvement which has partially or totally been destroyed by fire or otherwise shall be allowed to remain in such state for more than 180 days from the time of such destruction or damage.

Section 7.25. Exterior Building Surfaces. All exterior building surfaces, materials and colors shall be harmonious and compatible with colors of the natural surroundings and other Dwelling Units. The Committee shall have the right to approve or disapprove materials and colors so controlled.

Section 7.26. Fire. No outdoor fires for the purpose of burning leaves, grass or other forms of trash shall be permitted.

Section 7.27. Motor Vehicles. All motor vehicles shall carry a current year's license tag registration and be maintained in proper operating condition, so that they do not constitute a nuisance because of noise, unsightly appearance, exhaust emissions or otherwise. All motor vehicles, including but not limited to automobiles, golf carts, trucks, trail bikes, motorcycles, dune buggies, etc. shall be driven only upon paved streets and parking areas. No motor vehicles shall be driven upon the pathways or unpaved areas of the Property.

Section 7.28. Parking. Overnight parking of all motor passenger vehicles, recreational equipment, including boats and campers, shall be in garages, with the exception of guests. Guest motor passenger vehicles may be occasionally parked in the Lot's driveways or in other area designated by the Association, for a period of time not to exceed duration of two weeks. Overnight parking of all other motor vehicles and recreational equipment, including boats and campers, shall be in garages. No buses, tractor trailers, or semi-trucks or trucks other than pick-up trucks shall be parked on any Lot, Common Area on any street adjacent thereto upon the Property except for delivery purposes. Except for emergency repairs, no Owner of a Lot shall repair or restore any vehicle, boat or trailer upon any portion a Lot, Common Area or Property.

Section 7.29. Use of Common Area. No motorcycle, motor bikes, mopeds, motor scooters, snowmobiles or other motorized vehicles of any sort shall be permitted in the Common Area. There shall be no obstruction of the Common Area nor shall anything be stored in the Common Area without the prior consent of the Association. No waste shall be permitted in the Common Area. No clothes, sheet blankets, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed in any part of the Common Area. The Common Area shall be kept free and clear of rubbish, debris and other unsightly materials which are not in receptacles provided for such purpose.

Section 7.30. Clothes Lines. No outdoor clothes lines or other outdoor clothes drying apparatus or equipment shall be permitted on any Lot.

Section 7.31. General Property Maintenance.

(a) All Lots shall be maintained by the Owners in a sightly, clean and healthful condition. No Lot shall be used or maintained as a dumping ground for rubbish, debris or other unsightly materials or objects. Garbage and trash shall be placed in



sanitary containers, which shall be concealed and contained within the Dwelling Unit. Additionally, no clothes, sheets, blankets, rugs, laundry or other related things may be hung out or exposed on any Lot.

(b) Each Owner shall, at the Owner's sole cost, maintain and repair the Dwelling Unit, Lot and improvements on the Owner's Lot, to keep them in good condition and repair. This includes, but is not necessarily limited to roofs, painting, exterior siding, entry doors, brick or masonry, windows, balconies, decks, railings, garage doors, and lawns and landscaping. The Association shall provide written notice to the Owner of a dwelling unit in need of repair or maintenance, or a Lot in need of cleaning, giving the Owner a minimum of 30 days to complete the work cited in the notice. If the Owner fails to complete the work within the time stated in the notice, the Association, its agents, employees and independent contractors, shall have the right to enter upon said Lot and to perform the work cited in the notice. The Association, its agents, employees and contractors shall have a temporary license to access any Lot upon which such maintenance shall be performed. The Association is not obligated to solicit competitive bids. The costs incurred by the Association in performing the work, together with interest of 18% per year, costs and reasonable attorney's fees, shall be paid by the Owner to the Association upon demand. Each Owner covenants and agrees to repay the Association the costs incurred to perform the maintenance or repairs. If the Owner fails to repay the Association for the work performed, the Association shall have a lien against the Owner's Lot for the amount due. The Owner is also personally liable for the payment of the amounts due to the Association. The Association may file a Notice of Lien in the Office of the Recorder of Allen County, Indiana to perfect its lien rights. The lien shall be enforced in the same manner as a mortgage lien under Indiana law, and shall include, attorney's fees, title expenses, interest as provided above, and costs of collection. In addition to the foreclosure of its lien, the Association may bring an action at law against the Owner personally obligated to pay the amounts due.

## **ARTICLE VIII. OWNER OCCUPANCY, LEASING, RENTAL**

Section 8.01. Purpose. The purpose of this Article VIII is to: (1) be in the best interest of all Owners all of whom have similar proprietary (property) interests in their Residences; (2) protect the Owner's long-term investment in his Residence and Lot; (3) preserve high standards of accountability and responsibility for the maintenance and care of the Subdivision between and among the Owners; (4) avoid the temporary and transient nature of leasing property and to encourage a low turnover of occupancy; and (5) to encourage and realize the other benefits that accrue from restricting the Subdivision to single family residential use and to avoid any commercial transition of the Subdivision caused by using or occupying the Lots for solely for rental or leasing purposes.

Section 8.02. No Nonowner Occupied Residences in Subdivision. In accordance with the purposes set forth in Section 8.01 above, no Residence shall be used or occupied as a Nonowner Occupied Residence, unless the Board, in its discretion, first approves a Residence to be a Nonowner Occupied Residence in accordance with this Article VIII.

Section 8.03. Guidelines. In determining whether to approve a Residence to be a Nonowner Occupied Residence, the matters the Board may consider, in its discretion, shall include, but not be limited to, the following: (i) the total number of Nonowner Occupied Homes at the time of consideration of the request; (ii) the observations and opinions of the Board or Owners concerning whether Residences in and/or outside the Plat are maintained substantially the same as an Owner occupied Residence when they are rented or leased or sold under a Disguised Lease Land Contract; (iii) whether the disapproval of the Nonowner Occupied Residence would create an unnecessary hardship on the Owner because of circumstances outside the Owner's control; or (iv) any other factors or circumstances which the Board believes appropriate for consideration, in its discretion; provided, however, that the Board shall not at any time consider the age, race, color, creed, religion, sex, sexual orientation, familial status, disability, or national origin of the Owner that has made the Application or the person(s) to whom the Residence is proposed to be rented or leased or sold under a Disguised Lease Land Contract, or of any other person. In all instances whether a person is a full-time occupant of a Residence shall be determined by the Board, in its discretion.

Section 8.04. Review of Nonowner Occupied Residence. In the event an Owner requests a Residence to be approved as a Nonowner Occupied Residence, the Owner must submit an Application to the Board. The Application shall be on a form prescribed by the Board from time to time and shall in detail state: (i) the reasons and basis the Owner desires to rent or lease (or to sell under a Disguised Lease Land Contract, as the case may be) the Residence; (ii) the contact information of the Owner; (iii) the name and address of the proposed tenant/occupant and any other persons that will occupy the Residence on a regular basis; (iv) and such other information as the Board may lawfully request. A copy of the proposed written lease under which the Owner will be leasing the Residence if the Application is granted by the Board (or a copy of the proposed land contract in the case of a Disguised Lease Land Contract) shall be attached to the Application. The proposed lease (or the proposed land contract, as the case may be) shall affirmatively state in the body of the proposed lease (or in the body of the proposed land contract, as the case may be) in all capital, underlined letters that: (A) a copy of these Covenants, and the By-Laws, and its rules and regulations (including all amendments thereto) are attached to the proposed lease (or to the proposed land contract, as the case may be); (B) the tenant/occupant (or land contract buyer, as the case may be) agrees to abide by these Covenants, the By-Laws, and rules and regulations while the lease or contact is in force and effect; (C) such documents shall actually be attached to the proposed lease (or the proposed land contract, as the case may be); and (D) that there shall be no more than two (2) persons (the same to include adults and minors) who will make the Residence their regular residence for each bedroom in the Residence. The number of bedrooms in each Residence shall be determined by the Board, in its discretion.

Section 8.05. Action by the Board. Except as expressly limited herein, the Board shall have the right in its discretion to: (i) approve or disapprove any Application that a Residence be authorized to be a Nonowner Occupied Residence, and (ii) make any determinations the Board deems necessary or appropriate in determining whether to approve or disapprove an Application. The Board shall in good faith attempt to meet to begin consideration of an Application within twenty (20) days of receipt of an Application that is in the form contemplated herein. No failure

on the part of the Board to take action on or failure to consider any Application for a Residence to be Nonowner Occupied Residence Home, or any failure of the Association to be active, or to have a Board, shall provide any basis or grounds for contending that a Residence may be leased or rented or sold under a Disguised Lease Land Contract, or otherwise.

Section 8.06. Limitation on Authority of the Board. Notwithstanding anything in these Covenants to the contrary: (i) the Board shall not have any authority to approve a Residence to be a Nonowner Occupied Residence for a lease term of less than twelve (12) consecutive months; and (ii) the Board shall have no authority to approve a Residence to be a Nonowner Occupied Residence if at that time there are already two (2) Residences previously approved as Nonowner Occupied Residences under these Covenants; provided, however, that Residences which are registered as nonconforming Nonowner Occupied Residences under Section 8.09 shall not be included as any of the two (2) Residences under this Section 8.06.

Section 8.07. Appeal of Association Board's Decision. Any Owner may appeal the Board's decision to approve or disapprove a Nonowner Occupied Home to the members of the Association. The Association shall review the Application and the decision of the Board and for the purposes of this review the Association shall be deemed to have all of the powers, duties, and authority of the Board. The Association shall not be deemed to have taken action on an Application for a Residence to be a Nonowner Occupied Residence, unless at least sixty-five percent (65%) of all the then members of the Association vote and sign a written resolution. Any vote or action that is less than sixty-five percent (65%) of the full Association shall be deemed to affirm the decision of the Board.

Section 8.08. Approval shall run with the Occupant/Owner. In the event the Board or the Association approves an Application for a Residence to be a Nonowner Occupied Residence, any such approval shall be limited only to: (i) the proposed written lease and tenant (or proposed Disguised Lease Land Contract and buyer, as the case may be) that was submitted as part of the Application and any leasing (or proposed Disguised Lease Land Contract sale, as the case may be) to any other person or entity other than the specific tenant, person or entity expressly identified in the approved Application must first be presented to the Board for consideration for approval in the manner Applications are to be considered pursuant to Article VIII of these Covenants; and (ii) be for the benefit of only the Owner at the time the Application is submitted for approval, and any such approval to lease shall not run with the land and shall expressly run with the specific person making the Application to the Board; provided however, that the term of the lease submitted to and approved by the Board or the Association as part of the Application shall be permitted to continue through either the earlier of: (A) the next applicable termination date of the lease (or land contract, as the case may be), with no further extensions or renewals of any kind whatsoever; or (B) twelve (12) months from lease commencement. Any renewal or extension of a lease shall require the Owner to submit a new Application in accordance with this Article VIII.

Section 8.09. Existing, Leased and Occupied Nonowner Occupied Residences. Within thirty (30) days after the recording of these Covenants, the Board shall send written notice to every Owner in the Subdivision stating that if the Owner's Lot is being occupied and leased as a Nonowner Occupied Residence, then the Owner shall have sixty (60) days after the Owner's

receipt of such written notice to apply to register with the Board such Nonowner Occupied Residence, which was existing, leased, and occupied at the time of the recording of these Covenants.

(a) In order to register a Nonowner Occupied Residence, which was existing, leased, and occupied at the time of the recording of these Covenants, the Owner must submit the following information to Board: (1) a copy of the written lease predating the recording of these Covenants; (2) the contact information of the Owner; (3) the name and address of the existing tenant/occupant and any other persons occupying the Residence and the date such occupancy began; and (4) such other information as the Board may lawfully request.

(b) If the Board (or the Association upon appeal) determines that the Nonowner Occupied Residence was existing, leased, and occupied at the time of the recording of these Covenants, then the Board (or the Association upon appeal) shall issue a written decision notifying the Owner of the approval of the legal nonconforming status of such Nonowner Occupied Residence and the Board (or the Association upon appeal) shall cause the nonconforming Nonowner Occupied Residence to be registered in the records of the Association.

(c) If approved, the Owner shall have a duty to update the information provided in Section 8.09(a) above, including but not limited to any new tenants, new leases or other such information. This updated information shall be provided within thirty (30) days of the event causing the change or update.

(d) If the Board determines that the Nonowner Occupied Residence was not existing, leased, and occupied at the time of the recording of these Covenants, then the Board shall issue a written decision notifying the Owner of the rejection of the nonconforming status for the Nonowner Occupied Residence. The Owner may appeal the Board's rejection to the Association as provided in these Covenants.

(e) A Nonowner Occupied Residence that was existing, leased, and occupied at the time of the recording of these Covenants, and that timely applies for and is registered with the Association under this Section 8.09 shall be allowed to continue as a Nonowner Occupied Residence until the earlier of: (1) the date the Owner sells the Residence to another person; or (2) the Nonowner Occupied Residence is vacant for a total of six (6) months in any one year, whether or not these months are consecutive.

(f) A Nonowner Occupied Residence that either: (1) fails to qualify as an existing, leased and occupied Nonowner Occupied Residence as of the time of these Covenants; or (2) loses its status as an existing, leased and occupied Nonowner Occupied Residence under Section 8.09(d) above, shall be subject to these Covenants and no Nonowner Occupied Residence shall be allowed on the Lot, except as expressly approved under these Covenants.

(g) A Nonowner Occupied Residence that fails to apply timely for registration under this Section 8.09 shall be subject to these Covenants and no Nonowner Occupied Residence shall be allowed on the Lot, except as expressly approved under these Covenants.

Section 8.10. Existing Land Contracts. Notwithstanding anything herein to the contrary: no land contract entered into prior to the recording of these Covenants shall at any time be deemed a Disguised Lease Land Contract.

Section 8.11. Attorneys' Fees. Any Owner, the Association, or the Board shall be entitled to recover their costs and reasonable attorneys' fees incurred in the enforcement against any person who violates or threatens to violate these Covenants.

## **ARTICLE IX. GENERAL PROVISIONS**

Section 9.01. Enforceability. The Association and any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of these Covenants. Failure by the Association to enforce any covenant or restriction contained in these Covenants shall in no event be deemed a waiver of the right to do so thereafter, and shall not operate to deprive an Owner from enforcing said covenant or restriction.

Section 9.02. Right of Entry. The Association or Committee, acting through their respective members, directors, officers, agents, independent contractors and other representatives (Representatives), shall have the right, during the hours of 8 a.m. to 8 p.m. on any day of the week to enter upon any Lot and Dwelling Unit, for purposes of:

(a) Inspecting and determining whether or not the provisions of these Covenants or requirements imposed by the Committee are being complied with; and,

(b) Exercising all rights and powers conferred upon the Committee or the Association with respect to the enforcement, correction or remedy of any failure of the Owner to observe and fully comply with the Covenants or requirements imposed by the Committee, but not limited to, self help.

(c) Any such entry, exercise or acts as are in any way necessary or related thereto, neither by the Association, Committee or their representatives shall nor any of their respective heirs, personal representatives, successors or assigns, shall be liable to anyone by reason of any mistake in judgment, negligence, nonfeasance, trespass, tort or wrongful act of any kind or otherwise arising out of or relating to any such entry, exercise or acts as are in any way necessary or related thereto. Notwithstanding the foregoing, an occupied Dwelling Unit may not be entered unless written notice of such proposed entry shall have been given to the Owner at least five (5) days prior to such entry.

Section 9.03. Covenants, Restrictions and Extensions. The Covenants shall run with the land, and be effective for a term of twenty (20) years from the date these Covenants are recorded, after which time they shall automatically be extended for successive periods of ten (10) years; provided these Covenants may be amended at any time by the affirmative vote of at least fifty-one percent (51%) of the Owners, said vote to be taken and administered as a vote of the Members of the Association by written ballot with proxies recognized at any annual or special meeting of the Members of the Association as provided in the By-laws of the Association.

Section 9.04. Subdivision of Lots. No Lot or combination of Lots may be further subdivided unless seventy-five (75%) of the Owners have approved by signing an instrument of approval and until said approval has been obtained from the Plan Commission.

Section 9.05. Cost and Attorney's Fees. The Association shall be entitled to recover from an Owner its costs and expenses, including, but not limited to, its reasonable attorney's fees incurred:

- (a) In filing or foreclosing a Lien, filing suit or other taking of any acts in an effort to collect any Assessments or amounts due pursuant to these Covenants, the By-laws or any rules and regulations adopted pursuant to the Covenants or By-laws, as each may be amended from time-to-time (collectively Covenants); or,
- (b) In seeking to enforce any violation or non-performance of the Covenants by the Owner, including, but not limited to, defending or resisting any challenge to the enforceability of the Covenants whether initiated by the Association or the Owner; or,
- (c) By reason of any violation or non-performance of the Covenants by the Owner.

Section 9.06. Flood Protection Grades. In order to minimize potential damages from surface water, flood protection grades are established as set forth below. All Dwelling Units and their improvements shall be constructed at or above the minimum flood protection grades; such grades shall be the minimum elevation of the lowest point of entry at which water may enter the structure. The flood protection grades shall be Mean Sea Level Datum and shall be: Lots 5, 6, 7, 8, 13, 14, 15, 16, 40, 41 and 42 – 843.0 feet MSL.

Section 9.08. Casualty Insurance and Assessment. The Association shall purchase a master casualty insurance policy with an "agreed amount and inflation guard endorsement" and a "blanket building endorsement" affording fire and extended coverage insurance insuring each Dwelling Unit in an amount consistent with the full replacement value of the improvements which, in whole or in part, comprise the Dwelling Units, including foundations, structural elements, walls, and roofs, but excluding all floor, ceiling and wall coverings and fixtures, betterments, and improvements installed by any Owner and excluding any personal property owned by any Owner whether located on any Dwelling Unit or elsewhere. If the Board can obtain such coverage for reasonable amounts, it shall also obtain "all risk" coverage. The Board shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required

above. If deemed advisable by the Board, the Board may cause such full replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a Common Expense. Such insurance coverage shall be for the benefit of each Owner, and, if applicable, the Mortgagee of each Owner.

Section 9.09. Severability. Should any provision of these Covenants be determined to be void or unenforceable, such determination shall not be deemed to affect the remaining provisions, which shall remain in full force and effect.

Section 9.10. Violations. If an Owner is found to be in violation of the above a verbal notice will be given to the Owner, followed by a written notice. If correction of the violation is not made within the time frame specified in the written notice, a second written notice will be made, and if no correction is yet made then legal action may be taken.

Section 9.11. Mortgages. It is the responsibility of the Owners to provide to the Association, upon request, their mortgage holder(s) name and the address. It is the obligation of the Owner(s) to advise the Association within thirty (30) days of any change to the mortgage holder(s).

**[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

### Certificate of Adoption

The undersigned President of the Board of Directors of Covington Pointe Community Association, Inc., hereby certifies that the above AMENDED AND RESTATED DEDICATION AND DECLARATION OF PROTECTIVE RESTRICTIONS, COVENANTS, LIMITATIONS, EASEMENTS AND APPROVALS OF COVINGTON POINTE, SECTIONS I AND II, A SUBDIVISION IN ABOITE TOWNSHIP, ALLEN COUNTY, INDIANA were duly adopted by a written instrument signed by not less than seventy-five percent (75%) of the Owners of Lots in Covington Pointe, Sections I and II, in accordance with all applicable provisions of the former Covenants.

Dated: 9/9/14

COVINGTON POINTE COMMUNITY  
ASSOCIATION, INC.

By: Bonnie Elberson  
President, Board of Directors  
Bonnie Elberson

STATE OF INDIANA       )  
                                      ) SS:  
COUNTY OF ALLEN       )

Before me, the undersigned, a Notary Public, in and for said County and State, on this 9th day of September, 2014, personally appeared Bonnie Elberson, the President of Covington Pointe Community Association, Inc., and acknowledged the execution of the foregoing.

My Commission Expires:  
12-4-2015

Halleene Kitch  
\_\_\_\_\_, Notary Public  
Resident of Allen County, Indiana

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**



IN WITNESS WHEREOF, the undersigned Owner or Owners have agreed to and signed this Amendment on the date indicated below.

Lot No. 6

*Philip Lacey*  
(Signature)

Philip Lacey  
(Printed/Typed Name)

Lot No. 39

*Betty J. Hood*  
(Signature)

BETTY J. HOOD  
(Printed/Typed Name)

Lot No. 19

*Cheryl A. Disser*  
(Signature)

Cheryl A. Disser  
(Printed/Typed Name)

Lot No. 9

*Patricia Haefling*  
(Signature)

PATRICIA HAEFLING  
(Printed/Typed Name)

Lot No. 26

*Charlotte Bash*  
(Signature)

Charlotte Bash  
(Printed/Typed Name)

Lot No. 43

*Virginia Zimmerman*  
(Signature)

Virginia Zimmerman  
(Printed/Typed Name)

Lot No. 2422 29

*Anne Marie Libbing*  
(Signature)

Anne Marie Libbing  
(Printed/Typed Name)

Lot No. 35

*Stephen K Moore*  
(Signature)

Stephen K Moore  
(Printed/Typed Name)



*Katherine Kitch*  
9/9/14

IN WITNESS WHEREOF, the undersigned Owner or Owners have agreed to and signed this Amendment on the date indicated below.

Lot No. 31

Linda L. Wojewodzki  
(Signature)

Linda L. Wojewodzki  
(Printed/Typed Name)

Lot No. 5

J. E. Felts  
(Signature) JAMES E. FELTS.

(Printed/Typed Name)

Lot No. 14

R. J. Herif  
(Signature)

R. J. Herif  
(Printed/Typed Name)

Lot No. 44

Suzanne Libbing  
(Signature)

SUZANNE Libbing  
(Printed/Typed Name)

Lot No. 3

Sandra Handgraf  
(Signature)

Sandra Handgraf  
(Printed/Typed Name)

Lot No. \_\_\_\_\_

(Signature)

(Printed/Typed Name)

Lot No. 13

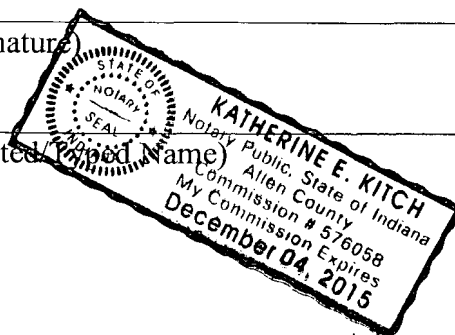
Jerome F. Hipskind  
(Signature)

Jerome F. Hipskind  
(Printed/Typed Name)

Lot No. \_\_\_\_\_

(Signature)

(Printed/Typed Name)



Katherine Kitch  
9/9/14

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF ALLEN        )

Before me, the undersigned, Notary Public, in and for said County and State, on this  
9<sup>th</sup> day of September, 2014, personal appeared Philip Laux, Betty Hood, Cheryl  
Disser, Patricia Haefling, Charlotte Bash, Virginia Zimmerman, Anne Marie Libbing, Stephen  
Moore, Linda Wojewuczki, James Felts, RJ Heiny, Suzanne Libbing, Sandra Landgraf, Jerome  
Hipskind

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

and acknowledged the execution of the foregoing.

My Commission Expires:

12-4-2015

Katherine E. Kitch

Notary Public  
Resident of Allen County, Indiana



This instrument prepared by Patrick R. Hess, Attorney at law, Beckman Lawson, LLP, 201 W.  
Wayne Street, Fort Wayne, Indiana 46802.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social  
Security number in this document, unless required by law, Patrick R. Hess.

Mail to: Beckman Box

IN WITNESS WHEREOF, the undersigned Owner or Owners have agreed to and signed this Amendment on the date indicated below.

Lot No. 7  
Revere F Reese Jr  
(Signature)

REVERE F REESE JR  
(Printed/Typed Name)

Lot No. 18  
Janice I. Hantelman  
(Signature)

Janice I. Hantelman  
(Printed/Typed Name)

Lot No. 26  
Shirley Shultz  
(Signature)

Shirley Shultz  
(Printed/Typed Name)

Lot No. 27  
Genie A. Fritter  
(Signature)

GENIE A. FRITTER  
(Printed/Typed Name)

Lot No. 36  
Lawrence J. Wetli  
(Signature)

LAWRENCE J. WETLI  
(Printed/Typed Name)

Lot No. 12  
Barbara Moistner  
(Signature)

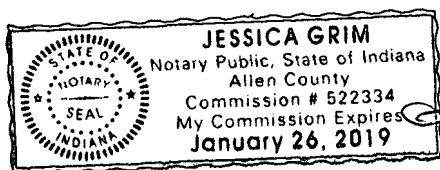
BARBARA MOISTNER  
(Printed/Typed Name)

Lot No. 32  
Esther L. Boyd  
(Signature)

ESTHER L. BOYD  
(Printed/Typed Name)

Lot No. 38  
Glenn Aller  
(Signature)

GLENN ALLER  
(Printed/Typed Name)



9/9/2014

IN WITNESS WHEREOF, the undersigned Owner or Owners have agreed to and signed this Amendment on the date indicated below.

Lot No. 30

Suzanne Shaw  
(Signature)

Suzanne Shaw  
(Printed/Typed Name)

Lot No. 33

Bonnie Elberson  
(Signature)

BONNIE ELBERSON  
(Printed/Typed Name)

Lot No. 2

Sandra Bickhart  
(Signature)

SANDRA BICKHART  
(Printed/Typed Name)

Lot No. 24

Kathleen A. Leakey  
(Signature)

Kathleen A. Leakey  
(Printed/Typed Name)

Lot No. 11

Carolyn A. Thatch  
(Signature)

CAROLYN A. THATCHER  
(Printed/Typed Name)

Lot No. 41

Charles St. Cyr  
(Signature)

CHARLES ST. CYR  
(Printed/Typed Name)

Lot No. 25

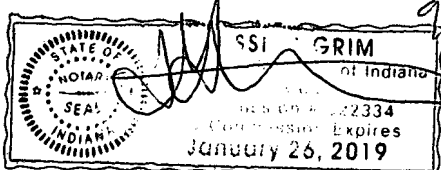
Stephen E. Sullivan  
(Signature)

Stephen E. Sullivan  
(Printed/Typed Name)

Lot No. \_\_\_\_\_

Marilyn Carsten  
(Signature)

MARILYN CARSTEN  
(Printed/Typed Name)



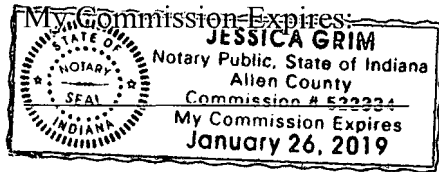
9/9/2014

STATE OF INDIANA        )  
                                      ) SS:  
COUNTY OF ALLEN        )

Before me, the undersigned, Notary Public, in and for said County and State, on this  
9<sup>th</sup> day of September, 2014, personal appeared Revere Reese, Jr., Janice  
Hangelman, Shirley Shultz, Genie Fritter, Lawrence Wetli, Barbara Moistner, Esther Boyd, Glen  
Auer, Suzanne Shaw, Bonnie Elbersen, Sandra Bickhart, Kathleen Leakey, Carolyn Thatcher,  
Charles St. Cyr, Stephen Sullivan, Marilyn Carsten,

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

and acknowledged the execution of the foregoing.



  
\_\_\_\_\_

Notary Public  
Resident of Allen County, Indiana

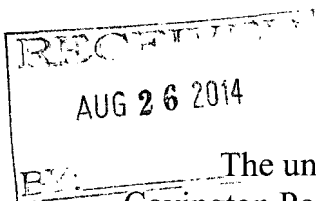
This instrument prepared by Patrick R. Hess, Attorney at law, Beckman Lawson, LLP, 201 W. Wayne Street, Fort Wayne, Indiana 46802.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law, Patrick R. Hess.

Mail to: Beckman Box

**AMENDED AND RESTATED DEDICATION AND DECLARATION  
OF PROTECTIVE RESTRICTIONS, COVENANTS, LIMITATIONS,  
EASEMENTS AND APPROVALS COVINGTON POINTE, SECTIONS I AND II  
A SUBDIVISION IN ABOITE TOWNSHIP, ALLEN COUNTY, INDIANA  
[Cross Reference 94-051546, 95-037659, 205051618 and 205051619]**

**Approval of Plan Commission on following page.**



**ABSENTEE BALLOT**  
**COVINGTON POINTE COMMUNITY ASSOCIATION**  
**SPECIAL MEETING**  
**September 9, 2014**

The undersigned, being the owner(s) of Lot # or address 2502 Cov Pt in the  
Covington Pointe Community Association and member(s) in good standing of the  
Covington Pointe Community Association does (do) hereby cast my ABSENTEE vote.  
One (1) vote per lot.

I, Otis J. Ambrose **IN FAVOR** of the proposed amendments to the  
covenants.

I, \_\_\_\_\_ **AGAINST** the proposed amendments to the covenants.

This Absentee Ballot must be received by Above & Beyond Community  
Management, 507 Airport North Office Park, Fort Wayne, IN 46825 prior to the  
commencement of the meeting to which this Absentee vote applies.

IN WITNESS WHEREOF, the undersigned Owner or Owners have agreed to and signed  
these Amendments on the dates indicated below.

Home No. 2502 Covington Pointe Home No. 28

Otis J. Ambrose  
(Signature) (Signature)

Otis J. Ambrose  
(Printed/Typed Name) (Printed/Typed Name)

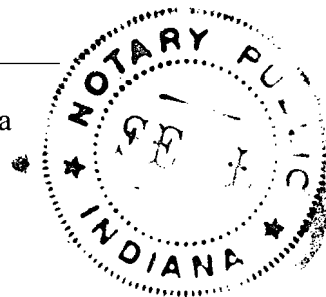
STATE OF INDIANA )  
) SS:  
COUNTY OF ALLEN )

Before me, the undersigned, a Notary Public, in and for said County and State, on this  
25<sup>th</sup> day of August, 2014, personally appeared  
Otis Ambrose

\_\_\_\_\_ and acknowledged the execution of the  
foregoing.

My Commission Expires:  
FEB 13, 2015

Aeresa Aldham Notary Public  
Resident of Allen County, Indiana





**ABSENTEE BALLOT**  
**COVINGTON POINTE COMMUNITY ASSOCIATION**  
**SPECIAL MEETING**

**September 9, 2014**

The undersigned, being the owner(s) of Lot # or address \_\_\_\_\_ in the Covington Pointe Community Association and member(s) in good standing of the Covington Pointe Community Association does (do) hereby cast my ABSENTEE vote. One (1) vote per lot.

I, EMILIE L. FOX IN FAVOR of the proposed amendments to the covenants.

I, \_\_\_\_\_ AGAINST the proposed amendments to the covenants.

This Absentee Ballot must be received by Above & Beyond Community Management, 507 Airport North Office Park, Fort Wayne, IN 46825 prior to the commencement of the meeting to which this Absentee vote applies.

IN WITNESS WHEREOF, the undersigned Owner or Owners have agreed to and signed these Amendments on the dates indicated below.

Home No. 37

Home No. \_\_\_\_\_

Emilie L. Fox  
(Signature)

\_\_\_\_\_  
(Signature)

EMILIE L. FOX  
(Printed/Typed Name)

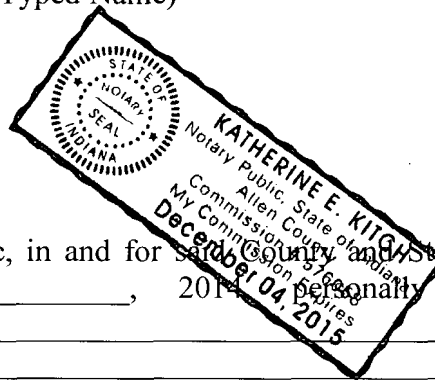
\_\_\_\_\_  
(Printed/Typed Name)

STATE OF INDIANA )

) SS:

COUNTY OF ALLEN )

Before me, the undersigned, a Notary Public, in and for said County and State, on this 22nd day of September, 2014, personally appeared \_\_\_\_\_

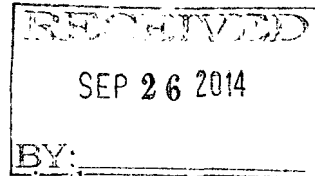


\_\_\_\_\_ and acknowledged the execution of the foregoing.

My Commission Expires: 12-4-2015

Katherine E. Kitch  
\_\_\_\_\_  
Resident of Allen County, Indiana  
Notary Public

**ABSENTEE BALLOT**  
**COVINGTON POINTE COMMUNITY ASSOCIATION**  
**SPECIAL MEETING**  
**September 9, 2014**



The undersigned, being the owner(s) of Lot # or address 15 in the  
Covington Pointe Community Association and member(s) in good standing of the  
Covington Pointe Community Association does (do) hereby cast my ABSENTEE vote.  
One (1) vote per lot.

I, Caroline Roller **IN FAVOR** of the proposed amendments to the  
covenants.

I, \_\_\_\_\_ **AGAINST** the proposed amendments to the covenants.

This Absentee Ballot must be received by Above & Beyond Community  
Management, 507 Airport North Office Park, Fort Wayne, IN 46825 prior to the  
commencement of the meeting to which this Absentee vote applies.

IN WITNESS WHEREOF, the undersigned Owner or Owners have agreed to and signed  
these Amendments on the dates indicated below.

Home No. #15  
Caroline Roller  
(Signature)

Home No. \_\_\_\_\_  
\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed/Typed Name)

\_\_\_\_\_  
(Printed/Typed Name)

STATE OF INDIANA     )  
                                      ) SS:  
COUNTY OF ALLEN     )

Before me, the undersigned, a Notary Public, in and for said County and State, on this  
24th day of September, 2014, personally appeared  
Caroline Roller

\_\_\_\_\_ and acknowledged the execution of the  
foregoing.

My Commission Expires:  
July 18, 2021

Jami Labit  
Jami Labit, Notary Public  
Resident of Allen County, Indiana



Jami S. Labit  
Notary Public - Seal  
State of Indiana, Allen County  
My Commission Expires July 18, 2021