

COVINGTON ESTATES

AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION, Made this ____ day of _____, 200 __, by the Covington Estates Homeowners Association, Inc. (hereinafter referred to as the "Association"), after approval by a vote of at least a two-thirds (2/3) majority of its Members:

WHEREAS, the lands described in Exhibit "A", which is attached hereto and made a part hereof, which lands were heretofore owned by the Developer, were heretofore subdivided into a section known as COVINGTON ESTATES-SECTION ONE (hereinafter referred to as "Covington Estates"), which is more particularly described on the plat thereof which is recorded in the office of the Recorder of Hamilton County, Indiana; and,

WHEREAS, the residential lots and all of the platted lots and the lands located within Covington Estates and situated within the platted areas thereof were heretofore sold, conveyed held, hypothecated, encumbered, leased, rented, used, occupied and improved subject to mutual and beneficial restrictions, covenants, conditions, and charges under a general plan or scheme of improvement for the benefit of the lots and the lands in Covington Estates and the future owners thereof, which were filed with the Recorder of Hamilton County on or about July 17, 1992, as Instrument Number 9226721 and later amended by the First Amendment to Covington Estates Declaration of Covenants And Restrictions dated October 28, 1993 and filed with the Recorder of Hamilton County as Instrument No. 9354077, and were then amended by the Second Amendment to Covington Estates Declaration of Covenants and Restrictions dated December 14, 1994, and filed with the recorder of Hamilton County as Instrument No. 9451322, and were then amended by the Third Amendment to Covington Estates Declaration of Covenants and Restrictions dated _____ and filed with the Recorder of Hamilton County as Instrument No. _____, and were then amended by the Fourth Amendment to Covington Estates Declaration of Covenants and Restrictions dated _____ and filed with the Recorder of Hamilton County as Instrument No. _____, (hereinafter referred to as "Restrictions"); and,

WHEREAS, the Restrictions so imposed were established and agreed upon for the purpose of enhancing and protecting the value, desirability, and attractiveness of Covington Estates as a whole and each of the lots and all of the real estate situated therein; and,

WHEREAS, the Restrictions so imposed run with the land and were and are binding upon the parties having an interest in and to the real property located within Covington Estates or any part or parts thereof; and,

WHEREAS, the Restrictions created the Covington Estates Property Owners Association, Inc., a not-for-profit corporation; and,

WHEREAS, the Restrictions vested in the Covington Estates Property Owners Association, Inc., the authority to enforce and amend the Restrictions; and,

WHEREAS, the Covington Estates Property Owner's Association, Inc. subsequently reincorporated as the Covington Estates Homeowner's Association, Inc. (hereinafter referred to as the "Association), a not-for-profit corporation, which now is vested with the authority to enforce and amend the Restrictions; and,

WHEREAS, the Association has determined that the Restrictions should be amended and restated, and the Members of the Association, by a vote of a two-thirds (2/3) majority of its Members has approved such amendments as are herein contained;

NOW, THEREFORE, the Association hereby declares that all of the platted lots and the lands located within Covington Estates are held and shall be held, conveyed, hypothecated, or encumbered, leased, rented, used, occupied, and improved subject to the following restated and amended Covenants and Restrictions (hereinafter referred to as "Amended Restrictions" or "Restrictions":

1. PURPOSE AND INTERPRETATION. These Amended Restrictions are intended to, and shall be interpreted to, further a plan for the purpose of enhancing and protecting the value, desirability, and attractiveness of Covington Estates as a whole and of each of the lots situated therein. All of these Amended Restrictions shall run with the land and shall be binding upon Covington Estates and upon the parties having an interest in and to the real property or any part or parts thereof, within Covington Estates, and these Amended Restrictions shall inure to the benefit of Covington Estates and its successors and shall also inure to the benefit of each Owner, as that term is defined below.

2. DEFINITIONS. The following are the definitions of the terms as they are used in this Declaration.

- A. "Association" shall mean the Covington Estates Homeowners Association, Inc., its successors and assigns.**
- B. "Board" shall mean the Board of Directors of the Association.**
- C. "Committee" shall mean the Covington Estates Architectural Review Committee.**

- D. “Common Area” shall mean any real estate located within Covington Estates that is not a parcel of residential real estate and which is owned by the Association.**
- E. “Declaration” shall mean these Restrictions.**
- F. “Flag” shall mean any banner, ensign, or similar object.**
- G. “Lot” shall mean any parcel of residential real estate described by the plat of Covington Estates which is recorded in the office of the Recorder of Hamilton County, Indiana, and any improvement thereon.**
- H. “Member” shall mean any person entitled to membership in the Association.**
- I. “Owner” shall mean a person, partnership, trust, limited liability company or corporation who has any right, title, or interest, legal or equitable, in and to a Lot, but shall exclude those persons having such interest merely as security for the performance of an obligation.**
- J. “Person” means an individual, firm, corporation, limited liability company, partnership, association, trust or other legal entity or any combination thereof.**
- K. “Residence” shall mean any structure intended exclusively for occupancy by a single family together with all appurtenances thereto, including private garage and outbuildings and recreational facilities usual and incidental to the use of a single family residential lot.**
- L. “Restrictions” shall mean these Restrictions.**
- M. “Sign” shall mean anything, without limitation, that contains words, numbers, graphics or symbols.**
- N. “Temporary Sign” means a Sign that is capable of ready removal without tools of any kind, or a Sign advertising a Lot for sale that is intended to remain on a Lot for only so long as that Lot is for sale.**
- O. “Town” shall mean the Town of Fishers, Hamilton County, Indiana, and any legal entity that shall succeed the Town as the municipal authority with jurisdiction over Covington Estates.**
- P. “Tract” means the land described in Exhibit “A” and such other real estate as may from time to time be annexed thereto.**

3. CHARACTER OF COVINGTON ESTATES.

- A. In general. Covington Estates shall be a well-maintained residential neighborhood. Every numbered lot platted as a part of Covington Estates is for single-family residential purposes only. No structure shall be erected, placed or permitted to remain upon any of said residential lots except a single-family dwelling house. No double or other multiple occupancy dwelling shall be permitted on any part of Covington Estates. All tracts of land located within Covington Estates which have not been designated by numbering as residential building lots in the recorded plat shall be used in a manner consistent with the zoning and use designated in the plan filed with the Department of Community Development in the Town.**
- B. Owner Occupation. Every residential dwelling located within Covington Estates shall be occupied by its Owner.**
- C. Leasing and Rental of Dwellings and Lots Prohibited. It has been the experience of the Board and the Association that the leasing or rental of dwellings within Covington Estates has resulted in the physical deterioration of leased or rented improvements. It has also been the experience of the Board and the Association that absentee owners can be difficult to locate and difficult to communicate with, creating a situation where the Covenants and Restrictions have become difficult or impossible to enforce against absentee owners. It has also been the experience of the Board and the Association that the leasing or rental of dwellings or lots results in a much greater degree of turn-over of dwellings from one lessor or renter to the next, which detrimentally affects the neighborhood. It is the considered determination of the Board and the Association, therefore, that the leasing or rental of dwellings or Lots within Covington Estates could have a substantial deleterious effect on the physical appearance of Covington Estates, on the value of properties in Covington Estates, and on the quality of life of the residents of Covington Estates. Therefore, leasing or rental of any dwelling or Lot, or any part thereof, is prohibited. In addition, "rent to own" or "lease to own" arrangements are likewise prohibited. The foregoing notwithstanding, a dwelling or Lot may be leased or rented for a period not to exceed thirty-one (31) days, to a person or persons who have entered a written agreement to purchase the Lot with the current owner of the Lot.**
- D. Storage Sheds Prohibited. Notwithstanding anything contained herein or in the Articles or Bylaws of the Association to the contrary, and in addition to all restrictions set forth in the Plat of Covington Estates, no form of shed, storage shed, large animal quarters, or other outbuilding shall be placed or constructed on any Lot or anywhere else in Covington Estates.**

- E. Occupancy of Partially Completed Dwelling House Prohibited.** No dwelling house constructed on any Lot within Covington Estates shall be occupied or used for any purpose until its construction has been substantially completed.

- F. Other Restrictions.** All tracts of ground in Covington Estates shall be subject to the easements, restrictions, and limitations of record appearing on the recorded plat and amendments thereto of the subdivision, and shall be subject to all governmental zoning authority and regulation affecting Covington Estates, all of which are incorporated herein by reference.

- G. General Easement Over Common Areas.** There is hereby created a blanket easement over, across, through and under the Tract for ingress, egress, installation, replacement, repair and maintenance of underground utility and service lines and systems, including but not limited to water, sewers, gas, telephones, electricity, television, cable and communication lines and systems. By virtue of this easement, a utility or service company may install and maintain facilities and equipment on the Tract and excavate for such purposes if such utility or service company restores any areas disturbed by such excavation as near as practicable to the condition in which it was found. No sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or relocated unless first approved by the Committee. This blanket easement shall not affect any other recorded easements on the Tract, shall be limited to improvements as originally constructed, and shall not apply to any portion of a Lot upon which a Residence has been constructed.

4. RESTRICTION ON SIZE, PLACEMENT, MATERIALS, AND MAINTENANCE OF DWELLING HOUSES AND OTHER STRUCTURES.

- A. Minimum Living Space Areas.** The minimum square footage or living space of dwellings constructed on residential Lots in Covington Estates, exclusive of porches, terraces, garages, carports, or similar facilities not designed or decorated for regular and continuous habitation, shall in no case be less than 1,600 square feet for one-story dwellings or 2,000 square feet for multi-level dwellings. Basements shall not be included in the computation of the minimum living area, except for that portion of a walkout basement which is finished as a living area.

- B. Residential Setback Requirements.**
 - i. Front Setbacks.** Unless otherwise provided in these Restrictions or on the recorded plat, all dwelling houses and above-grade structures shall be

constructed or placed on residential lots so as to comply with the set-back lines as established on the plat of Covington Estates.

ii. Side Yards. The side yard set-back lines shall not be less than ten (10) feet from the side line of the lot, unless approved by the Committee, or unless allowed by the zoning classification applicable for such lot.

iii. Rear Yards. The rear setback line shall be at least thirty (30) feet from the rear lot line, unless approved by the Committee.

C. Mailboxes. No mailbox or mailbox post shall be installed or replaced without its design, construction and appearance having first been approved by the Committee. All mailboxes and mailbox posts shall be of uniform design, construction and appearance.

D. Trees. Trees shall be maintained by each owner in order to maintain safety and to enhance the appearance of each Lot and Covington Estates as a whole. Dead trees shall be removed promptly by the Owner of the Lot on which the tree is situated.

E. Fences and Similar Screening.

i. IN GENERAL. No fencing or similar screening shall be installed or replaced without its design, construction and appearance having first been approved by the Committee. Fencing and similar screening shall be as harmonious as possible with the architectural character of the community. Fencing of the entire back yard is discouraged due to the effect such fencing may have on the feeling of spaciousness desired by other Owners.

ii. CONSTRUCTION. Fencing and similar screening must be constructed of cedar wood or other wood that is resistant to rot and insect infestation. No fencing or similar screening shall be made of a material other than wood. Fencing and similar screening must be of a “shadow-box” construction. Walls above grade must be constructed of natural stone, masonry, or shadow-box wood fencing.

iii. HEIGHT and OTHER CONSIDERATIONS. No fencing or similar screening shall exceed six (6) feet in height. No fencing or similar screening shall be approved by the Committee if its installation will obstruct necessary sight lines for vehicular traffic. The Committee will take into account undue obstruction of view of other amenities from adjoining properties when reviewing fences for approval. Fences shall not be nearer to the front of a home than the rear foundation line of a home except for fencing that is strictly decorative in character. Any decorative fencing that is nearer to the front of a home than the rear

foundation may not consist of greater than thirty-two (32) square feet. Such decorative fencing may be placed parallel to the front foundation of a home only if it does not cause unreasonable visual barriers. All fences and similar screening must be constructed and installed to professional standards of quality. All fences and similar screens shall be kept in good repair.

- F. SIDEWALKS.** Each home shall have a continuous concrete or brick sidewalk from the driveway to the front porch. In addition, each Lot shall be serviced by a 4' concrete walk on all portions of the Lot with street frontage. It is the responsibility of the Owner to maintain the sidewalks located on the Owner's Lot. It is the Owner's responsibility to clear the sidewalks of snow, ice, leaves and other debris so that the walks are in a safe and passable condition at all times. It is also the Owner's responsibility to repair or replace the sidewalks located on the Owner's Lot as may be necessary from time to time to ensure that the sidewalks are in a safe and passable condition, and to ensure that the sidewalks are esthetically pleasing and do not detract from the appearance of Covington Estates.
- G. RESTRICTIONS ON INSTALLATION OF SYSTEMS.** No heat pumps, air conditioning units, including without limitation window air conditioners, gas meters, electric meters, generators, or similar systems or appliances, shall be installed on the front of any house. No such system shall be moved from one location on a home to another without the prior approval of the Committee.
- H. DOORS.** No exterior door, including without limitation, storm doors, garage doors and service doors, may be replaced without the prior approval of the Committee. The only exception to the foregoing is that screened doors located on the exterior of screened-in porches may be replaced with a door of similar appearance and similar or better quality without the approval of the Committee. Storm doors must be painted to match the exterior of the home. No unfinished aluminum doors shall be allowed. New doors must be of a quality and construction that is similar to or better than the door being replaced.
- I. WINDOWS.** No exterior window, including storm windows, may be replaced without the prior approval of the Committee. Replacement windows must be of wood frame construction, wood frame construction with clad exterior, fiberglass construction or high quality vinyl construction. New windows must be of a quality and construction that is similar to or better than the windows being replaced.

- J. ROOF VENTS and STACKS.** Roof vents and stacks shall only be placed on the rear of a house, and shall be painted to match the color of the surrounding roofing shingles.
- K. ROOF SHINGLE REPLACEMENT.** No replacement of more than 10% of roof shingles on a house or garage shall be permitted without the prior approval of the Committee of the type, color and construction of the replacement shingles. Replacement shingles must be of asphalt, fiberglass or similar materials. No metal or other replacement roofing shall be allowed.
- L. AWNINGS NOT PERMITTED.** No awnings or patio covers shall be permitted.
- M. SWIMMING POOLS.** Only permanent, in-ground swimming pools with professional construction shall be permitted. No swimming pool may be installed without the prior approval of the Committee. All swimming pools must be oriented to minimize the potential effect on neighboring properties. All fencing around a swimming pool shall conform to county or municipal regulations and shall be further subject to the approval of the Committee.
- N. BASKETBALL, TENNIS and SIMILAR COURTS.** No basketball, tennis or similar court or other similar permanent recreational facility may be installed without the prior approval of the Committee. Any such courts must be surrounded on all sides by a screen of evergreen trees of at least six (6) feet in height. Any lighting installed on such courts must be of a baffled design to minimize the effect on surrounding properties. Any such lights must be controlled by a timer or other automatic device which ensures that the lights are not on between the hours of 9:00 P.M. and 8:00 A.M. Use of such courts shall be restricted to the hours of 8:00 A.M. to 9:00 P.M.
- O. PLAY EQUIPMENT and BASKETBALL GOALS.** Children's play equipment such as sandboxes, temporary swimming pools having a depth of less than 24 inches, swing and slide sets, playhouses and tents shall not require the approval of the Committee unless such equipment exceeds, at its tallest point, 6 feet in height or, at its widest or deepest point, 14 feet. Placement of any children's playhouse, except for a temporary playhouse less than 5 feet at its tallest point and made of vinyl, plastic or a similar material, and not having a foundation, requires the prior approval of the Committee. In no event may any playhouse be used for storage. A single basketball goal may be placed on any driveway on any Lot without approval of the Committee.

P. EXTERIOR CONSTRUCTION.

i. IN GENERAL. The finished exterior of every building constructed or placed on any Lot in Covington Estates shall consist of material and construction which harmonize with the surrounding buildings.

ii. SIDING and FACADES. Except for minor repairs to existing siding or façade, no siding or façade may be installed or replaced without the prior approval of the Committee. Siding or façade must be replaced with material that is of similar or better quality than the existing siding. Under no circumstances shall wood or fiber-cement siding be replaced with vinyl siding. The siding of all buildings, including but not limited to homes and garages, shall be natural stone, masonry, wood, fiber-cement, vinyl of Standard Residential Grade (.044 thickness) or better, or similar materials. Vinyl siding shall have a “Cape Cod” profile. No building shall have as its exterior covering, in whole or in part, aluminum siding, tar paper, rollbrick siding, or any other similar material.

iii. CHIMNEYS and FLUES. No house shall have metal prefabricated chimney flues, except for gas flues. Exterior chimney chases shall be of masonry construction for all homes fronting on or abutting Covington Boulevard. If being replaced, exterior masonry chimney chases must be replaced with like material.

iv. DRIVEWAYS. All driveways must be paved with concrete and maintained in a safe and esthetically pleasing condition.

v. GARAGES REQUIRED. All residential dwellings in Covington Estates shall have at least a two-car enclosed garage. No detached garages or carports shall be permitted. All garages must have doors suitable for the ingress and egress of vehicles. Under no circumstances may a garage or any part thereof be converted into living space.

Q. DUSK TO DAWN LIGHTING REQUIRED. In lieu of public street lighting, each Lot shall maintain at least two (2) continuous dusk-to-dawn lighting fixtures, which shall be controlled by a photocell. Owners shall ensure that the dusk-to-dawn lights on their home are operating properly at all times.

R. HEATING PLANTS REQUIRED. Every house in Covington Estates must contain a heating plant that is installed in compliance with the required codes and which is capable of providing adequate heat for year-round human habitation of the house.

S. REPLACEMENT OF DAMAGED OR DESTROYED BUILDINGS. Any building or other improvement which has been partially or totally

destroyed by fire or otherwise shall be replaced within six (6) months from the time of such destruction or damage.

- T. NEW CONSTRUCTION REQUIRED.** All structures constructed or placed on any Lot shall be constructed with all new materials. No used structures shall be relocated to or placed on any Lot.
- U. MAINTENANCE OF LOTS AND IMPROVEMENTS.** The Owner of any lot in Covington Estates shall maintain the Lot and any improvements thereon in such a manner as to prevent the lot or improvements from becoming unsightly. Specifically, each Owner shall:
- i. Mow the lot as required to prevent the unsightly growth of grass, noxious weeds or other vegetation.**
 - ii. Remove all debris or rubbish from the Lot.**
 - iii. Paint improvements as necessary.**
 - iv. Remove and replace damaged exterior components to improvements including broken windows or screens, rotten wood, cracked siding, roofing shingles, and the like.**
 - v. Prevent the existence of any condition that reasonably tends to distract from or diminish the esthetic appearance of Covington Estates.**
 - vi. Cut down and remove dead trees and shrubs.**
 - vii. Install and maintain adequate landscaping, including trees, shrubs, grass and the like.**
- V. ASSOCIATION MAY PERFORM CERTAIN MAINTENANCE.** If the Owner of any Lot in Covington Estates fails to maintain such Lot and any improvement thereon in accordance with the provisions of these Restrictions, the Association may, upon reasonable notice to such Owner, by and through its agents or contractors, enter upon said Lot and repair, mow, clean, paint or perform such other acts as may be necessary, in the discretion of the Association, to bring such lot and improvements into conformity with these Restrictions. The Owner shall be liable for the costs incurred by the Association in performing such acts. If the Owner fails to reimburse those costs to the Association within ten (10) days of being invoiced, the Association may collect such costs by any lawful means. The Association may also add those costs to the annual assessment for such Lot. Neither the Association nor its agents, employees, or contractors shall be liable for any damages resulting from their acting pursuant to this provision.

W. TREE AND SHRUB MAINTENANCE IN RIGHTS OF WAY. The Town of Fishers requires that all owners respect the following with regard to the maintenance of trees and shrubs:

i. The owner of the dominant real estate adjacent to the area between the street and the sidewalk and/or right-of-way easement line on which any tree or shrub is planted shall be responsible for the maintenance of the tree or shrub, and shall be responsible for removal of the tree or shrub if removal is necessary.

ii. If, after notice from the Town or from the Association, the Owner fails to maintain or remove a dead tree or shrub or any dead or dangerous limbs or branches thereon, the Town may remove said shrub or limbs and collect the costs thereof from the Owner.

iii. The Town and all public utilities retain their ownership of and right of access to the area between the street and the right-of-way easement line of the dominant owner and retain the right to remove any tree or shrub impeding necessary work to be performed by the Town or any public utilities or other properly authorized users.

iv. Neither the Town nor any public utility or properly authorized users of the Town's property located between the street and the sidewalk and/or right-of-way easement line shall be liable to the Owner of the dominant real estate for any damages done to trees or shrubs located upon such property as a result of actions of the Town or any public utility or properly authorized user or their agents or employees in the performing of their duties.

v. Nothing which obstructs sight lines and elevations between three (3) and twelve (12) feet above the street shall be placed or permitted to remain on any corner lot within the triangular area formed by the street right-of-way lines and a line connecting points forty (40) feet from the intersection of the street lines or, in the case of a rounded property corner, from the intersection of the street right-of-way line extended.

vi. The same sight line limitations described in paragraph "v" immediately above, shall apply to any lot within ten (10) feet of the intersection of a street right-of-way line with the edge for the driveway pavement or alley line.

X. STORAGE OF FIREWOOD. Firewood must be stored in such a way that it remains dry and does not attract insects, rodents or other vermin. Firewood that is stored outside may not be placed directly on the ground.

5. DISPOSAL OF SANITARY WASTE.

- A. Outside toilets prohibited. No outside toilet shall be permitted.**
- B. Construction of sewage lines. All sanitary sewage lines on any Lot shall be designed and constructed and maintained in accordance with the provisions and requirements of the Town and applicable public utilities. No storm water, whether surface or subsurface, shall be discharged into sanitary sewers. Sanitary sewer manholes shall not be placed under or within one (1) foot horizontal distance of pavement or concrete, including driveways and sidewalks.**
- C. Lots not serviced by gravity sanitary sewer service. It is the responsibility of each Owner to determine whether that Owner's Lot is serviced by gravity sanitary sewer service. The Owner of a Lot that is not serviced by gravity sanitary sewer service shall bear the costs of and be responsible for the maintenance, repair or replacement of the grinder pump and force main from such residence to its connection to the gravity sanitary service line; provided, however, that the Association shall bear the costs of such maintenance, repair and replacement for so long as the Owner who owns such Lot on the date that these Restrictions are recorded in the Office of the Recorder of Hamilton County, Indiana, remains the Owner of such Lot.**

6. GENERAL PROHIBITIONS.

- A. Nuisances. No noxious, offensive or illegal activities shall be permitted on any Lot or in any Common Area, nor shall anything be done on any Lot or in any Common Area that is or may become an annoyance or nuisance to other Owners. Barking dogs shall be considered a nuisance under this subsection.**
- B. Exterior Antenna. Except as provided otherwise in these Restrictions, no exterior antenna shall be installed on any Lot without the prior approval of the Committee. Exterior antenna shall be allowed on lots numbered 132, 133 and 134 provided that the location of any such antenna must receive the prior approval of the Committee. No antenna may be placed or erected by any Owner on any Common Area.**
- C. Satellite dishes. Satellite dishes not exceeding one (1) meter in diameter shall be permitted on all Lots. The location of a satellite dish must receive the prior approval of the Committee. Every reasonable effort shall be made to ensure that a satellite dish is not placed on the front elevation of a residence or where it is visible from any street. Satellite dishes over one (1) meter in diameter shall not be permitted. No satellite dish may be placed or erected by any Owner on any Common Area.**

D. Signs. No sign, other than the Temporary Signs addressed in subparagraphs i through v, below, may be placed on any Lot or on any structure within Covington Estates without the prior approval of the Committee. No sign placed or located in Covington Estates shall contain any profane or vulgar words, language or images. No sign advertising any service or product, except as addressed in sub-paragraph ii, below, may be placed on any Lot. No sign which, in the sole discretion of the Board, contains words, language or images that is or are likely to be offensive to other Owners or to the community at large, may be displayed. When placing or erecting any sign, the Owner shall ensure compliance with all laws, ordinances and regulations. No Owner may place or cause a sign to be placed in the Common Area. Any other language in these Restrictions notwithstanding, no sign shall be displayed or placed on any Lot or improvements or structures in Covington Estates, except the following:

i. Temporary Signs not larger than six (6) square feet which state “Welcome” or contain similar greetings, or that are intended to celebrate a particular holiday or to recognize a particular occasion or event.

ii. Temporary Signs of not larger than nine (9) square feet that advertise a home or Lot for sale.

iii. Temporary Signs of not larger than three (3) square feet that indicate that a residence is protected by an alarm system or similar device.

iv. Temporary Signs not larger than nine (9) square feet that contain a political message and which are placed or erected within two (2) weeks before a public election.

v. With respect to Signs placed or erected in the Common Area, any sign that the Board deems necessary or desirable for the neighborhood as a whole.

E. Flags.

i. Method of display. No pole or other permanent structure intended for use in displaying a flag shall be constructed or erected without the prior approval of the Committee. Any such pole or structure must comply with laws, ordinances, and regulations. Any pole or other structure used for display of the American Flag must also comply with the United States Flag Code, Title 4 U.S.C. § 1, et seq. Flags may be displayed on temporary poles that are capable of being removed without the use of any tool without the prior approval of the Committee. No Lot may display more that two (2) flags at the same time.

ii. **Size restrictions.** No flag that exceeds twenty (20) square feet shall be displayed on any Lot, except for American Flags, which may not exceed twenty-four (24) square feet.

iii. **Type of Flags.** Flags of the United States of America or of any state of the United States may be displayed. Display of the Flag of The United States of America must comply in all respects with the United States Flag Code, Title 4 U.S.C. § 1, et seq. Flags of universities, colleges, high schools or other schools may be displayed. No flag that contains profane or vulgar words, language or images may be displayed. No flag which, in the sole discretion of the Board, contains images or language that is likely to be offensive to the community at large, may be displayed.

F. ANIMALS. No animals may be kept or maintained on any Lot except for usual household pets. Any such pets shall be kept reasonably confined so as not to become a nuisance.

G. VEHICLE PARKING. No vehicle or trailer of any kind shall be parked on unpaved areas. No trucks capable of carrying payload of one (1) ton or greater, campers, trailers, boats, personal water craft, recreational vehicles or other similar vehicles shall be parked on any street in Covington Estates. No motor vehicle, recreational vehicle, trailer, camper, boat or other vehicle which is not intended for use as regular transportation shall be permitted to remain on any driveway or lot, except within a closed garage.

H. BURNING OF REFUSE AND LEAVES PROHIBITED. The burning of refuse, garbage, leaves, and other debris is prohibited.

I. UNDERGROUND STORAGE TANKS. Placement or construction of underground tanks for the storing of fuel or other liquids is prohibited.

J. REFUSE CONTAINERS. Containers for the disposal of refuse shall be placed and kept in such a manner that they are not visible from any street within Covington Estates, except at times when refuse collections are being made. If refuse containers are provided by the Association or by a contractor retained by the Association, Owners shall use such containers and no other.

K. TEMPORARY STRUCTURES PROHIBITED. No temporary house, trailer, garage or similar outbuilding shall be placed or erected on any Lot. No tent shall be allowed to remain on a lot for a period exceeding seven (7) consecutive days.

L. HOME OCCUPATION. No Lot or improvement thereon shall be used for any purpose other than as a single-family residence, except that a

home occupation, defined as follows, may be permitted: any use conducted entirely within the residence dwelling and participated in solely by a member of the immediate family residing in said residence, which is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof and in connection with which there is: a) No sign or display that will indicate from the exterior that the building is being utilized in whole or in part for any purpose other than that of a dwelling; b) No commodity is sold upon the premises; c) No person is employed other than a member of the immediate family residing on the premises; d) No manufacture or assembly operations are conducted on the premises; e) No vehicles of patrons or clients of the Home Occupation are kept or parked in a driveway or upon a street. No exterior improvements that are intended to facilitate a Home Occupation shall be allowed.

In no event shall the following or similar activities be conducted; a barber shop, hair styling salon, beauty parlor, nail salon, tea room, fortune-telling parlor, tanning salon, animal hospital, or any form of animal care or treatment such as a pet grooming salon.

- M. DRAINAGE SWALES AND DITCHES.** Drainage swales or ditches along dedicated roadways and within the right-of-way, or on dedicated drainage easements, may not be altered, dug out, filled in, tiled, or otherwise changed, without the prior written permission of the Town Engineer. Owners must maintain swales and ditches as sodded grassways or other non-eroding surfaces. Water from roofs or parking areas must be contained on the property long enough so that the swales or ditches will not be damaged by that water. Driveways may be constructed over swales or ditches only when appropriate-sized culverts or other approved structures have been permitted by the Town Engineer. Culverts must be protected, especially at the ends, by head walls or metal end sections, and, if damaged enough to retard flow, must be replaced. Any Owner who alters or damages a drainage swale or ditch will be given ten (10) days notice, by certified mail, to conduct repairs, after which time, if no action is taken, the Town or the Association may make repairs at such Owner's cost.
- N. UTILITY SERVICES.** Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the Recorded Plat. No utility services shall be installed, constructed, repaired, removed, or replaced under finished streets, except by jacking, drilling or boring.
- O. WELLS AND SEPTIC TANKS.** No water wells shall be drilled or kept on any Lot, other than for heating and cooling purposes. No septic tank shall be installed on any Lot.

7. ARCHITECTURAL REVIEW COMMITTEE.

- A. Creation.** The Architectural Review Committee is hereby created.
- B. Members and Governance.** The Committee shall consist of no more than five (5) individuals, appointed by the Board, who must be Owners and Members in good standing and who must reside within Covington Estates. The Board shall appoint one of the Members of the Committee to be the Chairperson of the Committee. The Chairperson of the Committee shall oversee the administration of the work of the Committee and shall report to the Board about Committee activities as the Board may require. The members of the Committee shall serve at the pleasure of the Board. Committee members are not entitled to compensation. Members of the Board may serve as Members of the Committee.
- C. Purpose.** The Committee shall regulate the external design, appearance, use, location and maintenance of lands and improvements in Covington Estates, subject to these Restrictions. The Committee shall act in such a manner as to preserve and enhance property values and to maintain a harmonious relation between and among structures and the natural vegetation and topography.
- D. Committee Approval Required.** No dwelling, building, structure or improvement of any type or kind, shall be constructed, placed or made upon any Lot in Covington Estates without the prior written approval of the Committee, except for such buildings, structures or improvements that are explicitly allowed to be made without Committee approval in these Restrictions. The following activities are examples of activities that require the approval of the Committee; however, this enumeration is made for illustration only and is not exhaustive:
- i.** Any improvement to the exterior of an existing structure that requires a building permit or similar permit from the Town or other government entity.
 - ii.** Replacement of any mailbox or mailbox post.
 - iii.** Changing the existing color of any part of the exterior of a residential dwelling or garage.
 - iv.** Installation or replacement of any exterior door or window, except for screen doors, as addressed in section 4H.
 - v.** Planting of any tree or shrub in the area between the street and sidewalk.

- vi. **Construction or modification of any porch, patio, or deck.**
 - vii. **Replacement of greater than ten (10) percent of roofing shingles.**
 - viii. **Construction or modification of any fence, wall or screen.**
 - ix. **Construction or replacement of a swimming pool.**
 - x. **Replacement of greater than ten (10) percent of the siding or façade of a residential dwelling or garage.**
 - xi. **Replacement of any exterior lighting fixture.**
- E. Procedures for Obtaining Committee Approval. To obtain Committee approval for any activity that requires it, an Owner must, prior to the commencement of any project or activity:**
- i. **Apply, in writing, to the Committee for approval on such forms as the Committee may prescribe from time to time.**
 - ii. **Provide the Committee with a complete set of plans and specifications for any such proposed construction or improvement. Such plans must include:**
 - a. **Plot plans showing the location of the existing improvements on the lot and the location of the proposed improvements;**
 - b. **Building plans, drawings and blueprints that illustrate the proposed improvements;**
 - c. **The color of all exterior materials proposed for use together with and color samples in a form that is acceptable to the Committee;**
 - d. **The composition of all exterior materials proposed for use;**
 - e. **Any proposed landscaping; and**
 - f. **Any other materials or information that the Committee may reasonably require.**
 - iii. **Provide the Committee with any other materials or information that it reasonably requests.**
- F. Powers of Committee. The Committee shall have the following powers:**

i. The power to prescribe forms and procedures necessary to accomplish its purposes and duties pursuant to these Restrictions.

ii. The power, but not the obligation, to inspect, through its members, agents, employees or contractors, any work being performed with its approval in order to assure compliance with these Restrictions and with applicable codes and regulations.

iii. The power to deny permission to construct, place or make any requested improvement when:

a. The plans, specifications, drawings or other material submitted with a request for approval are inadequate or incomplete;

b. The proposed improvement is in violation of these Restrictions;

c. The design or color scheme of a proposed improvement is not in harmony with the general surroundings of the Lot or with the adjacent buildings or structures;

d. The proposed improvement, or any part of it, would, in the sole opinion and absolute discretion of the Committee, be contrary to the interests, welfare, or rights of all or any of the other Owners.

iv. The power to grant variances or adjustments of these Restrictions where literal application would result in unnecessary hardship, but any such variance or adjustment shall be granted in conformity with the general intent and purposes of these Restrictions, and no variance or adjustment shall be granted which is materially detrimental or injurious to other lots in Covington Estates.

G. Duties of Committee. The Committee shall provide written notice of approval or disapproval of proposed improvements within thirty (30) days after all required information has been submitted to it. If the Committee disapproves a proposed improvement, the written notice shall specify the reason or reasons for disapproval. The Committee shall maintain a permanent record of all applications for approval for proposed improvements, and shall also maintain a permanent record of all written approvals and denials. These records shall be the property of the Association.

H. Committee Shall Have No Liability. Neither the Committee, nor any member thereof, nor any agent thereof, nor the Board, nor the Association, nor any Member or Owner, shall be liable in any way for any costs, fees, damages, delays, or any charges or liability whatsoever relating to any activity in which the Committee engages, including but not

limited to the following: the approval or disapproval of any application for proposed improvements submitted to it; the failure to approve or disapprove any application for proposed improvements; the failure to keep or maintain any records of any kind; the failure to comply with any law, ordinance, regulation or code; or any other alleged or supposed act or failure to act.

- I. Committee Shall Exercise Discretion. The Association intends that the Members of the Committee shall exercise discretion in the performance of its duties consistent with the provisions of these Restrictions. Every Owner, by the purchase of a Lot, is conclusively presumed to have consented to the exercise of discretion by the Committee and its members.**

- J. Remedies for Failure to Obtain Approval from the Committee. In the event that an Owner shall fail to seek or obtain approval from the Committee for any improvements or other action taken by the Owner that requires such approval, the Association shall have the following remedies, together with any other remedies provided or allowed by law, which may be exercised separately or together or in any combination:**
 - i. The Association may require the offending Owner to cease construction of or to remove any improvements that were made without its approval, at the Owner's sole expense, and to restore the Lot and any improvements thereon to the state in which they existed prior to the making of the unapproved improvements;**

 - ii. The Association may require the offending Owner to make changes to the unapproved improvements to bring those improvements into conformity with these Restrictions;**

 - iii. The Association, through the Board, may initiate a judicial proceeding to enforce compliance with these Restrictions, including proceedings for temporary restraining orders and permanent injunctions, and may recover from the offending Owner, in addition to any other recovery allowed by law or by these Restrictions, its costs and reasonable attorneys' fees. The Association may also recover its costs and reasonable attorneys' fees incurred in defending against any claim, counterclaim or cross-claim brought by an Owner relative to any action or alleged inaction by the Committee. In any judicial proceeding, the Owner shall bear the Association's costs and reasonable attorney's fees, unless the Owner is the prevailing party.**

- K. Evidence and Inferences In Judicial or Similar Proceedings. In any judicial or similar proceeding challenging a determination by the Committee, and in any action initiated to enforce this Declaration, these Restrictions, or a determination of the Committee, an abuse of discretion**

may be established only if a reasonable person, considering the evidence in the light most favorable to the Committee, and drawing all inferences in favor of the Committee, could only conclude that such determination constituted an abuse of discretion.

8. OWNERSHIP, USE AND ENJOYMENT OF COMMON AREAS.

- A. Ownership of Common Area.** All Common Area located within Covington Estates shall remain private and shall be owned by the Association in fee simple absolute, subject to easements and restrictions of record.
- B. Non-residential Use of Common Areas.** No Common Area shall be used for residential purposes.
- C. License to Use Common Areas.** Upon such terms and conditions as the Association, through the Board, may establish from time to time, Members of the Association are granted a license for the use and enjoyment of the Common Areas.
- D. Suspension or Revocation of License.** The license of any Member and the members of any Members household to use and enjoy the Common Areas may be suspended or revoked by the Board if the Member, or any member of his or her household, fails to abide by the terms and conditions imposed by the Association for the use and enjoyment of the Common Areas, or if the Member fails to pay any assessment required by these Restrictions.
- E. Improvements Upon Common Area.** The Association may erect and maintain improvements upon Common Area. Any such improvements shall be designed to inure to the benefit of the Members as a whole.

9. COVINGTON ESTATES HOMEOWNERS ASSOCIATION, INC.

- A. Membership.** Each Owner is a member of the Association and shall enjoy the privileges and be bound by the obligations contained in the Articles and Bylaws of the Association. An Owner is subject to all the requirements and limitations imposed by this Declaration and these Restrictions, including but not limited to the payment of Assessments.
- B. Powers.** The Association shall have such powers as are set forth in this Declaration and these Restrictions, and in the Articles and Bylaws, together with all other powers that belong to it by law, and all powers incidental and necessary to exercise its rights and obligations under this Declaration and these Restrictions. The Board shall have the authority to establish rules and regulations to clarify, set forth procedures for, and

establish guidelines or parameters for, matters provided for or addressed in these Restrictions.

C. Reserve for Replacements. The Board shall establish and maintain a reserve for replacements by the allocation and payment to such reserve fund of an amount determined annually by the Board to be sufficient to meet the cost of the periodic construction, maintenance, repairs, renewal, and replacement of the Common Area or any improvements thereon. In determining the amount of the reserve, the Board shall take into consideration the expected useful life of the Common Area and improvements thereon, projected increases in the cost of materials and labor, interest to be earned by any such fund and the advice of any consultants that the Board may choose to employ.

D. Limitation on Certain Actions by the Association. Unless two-thirds (2/3) of the Members have given their prior approval in writing, the Association, the Board and/or the Owners may not do any of the following:

i. By act or omission abandon, partition, subdivide, encumber, sell or transfer the Common Area or any part thereof;

ii. Fail to maintain fire and extended insurance coverage on insurable Common Area on a current replacement cost basis in an amount of at least one hundred percent (100%) of the insurable value, based on then current replacement cost

iii. Use hazard insurance proceeds paid as a result of losses to any Common Area for anything other than the repair, replacement or reconstruction of the Common Area;

iv. Change the method of determining the obligations, assessments, dues or other charges that may be levied against the Owner of a Residence;

v. By act or omission change, waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Residences, or the maintenance and up-keep of the Common Area;

vi. Fail to maintain the reserve account for replacements in the amount required by this Declaration.

10. ASSESSMENTS.

- A. Creation of the Lien and Personal Obligation of Assessments.** Each Owner of any Lot, by acceptance of a Deed thereto, whether or not it is expressed in such deed, is deemed to covenant and agree to pay the Association certain assessments, as described herein, together with late fees as further described herein, costs of collection, and reasonable attorney fees incurred in an effort to collect such assessments. All assessments, together with late fees as further described herein, costs of collection, and reasonable attorney fees shall be a charge upon and a continuing lien upon the Lot against which each assessment is made until paid in full. Such lien shall be subordinate to the lien of any recorded first mortgage on such Lot and any valid tax or special assessment lien on such Lot in favor of any governmental taxing or assessing authority. Sale or transfer of any Lot shall not affect the lien of the Association for any General Assessment or Special Assessment, except that the sale of any Lot pursuant to mortgage foreclosure shall extinguish the lien of such Assessments. All assessments, together with late fees as further described herein, costs of collection, and reasonable attorney fees shall also be the personal obligation of the person or persons who was or were the Owner of the Lot at the time the assessment became due.
- B. General Assessment.** By a vote of a majority of Directors, the Board shall, on the basis specified herein, fix the General Assessment (as defined below) for each assessment year of the Association.
- i. Method of Assessment.** The General Assessment shall be set at an amount sufficient to meet the obligations imposed by these Restrictions upon the Association (the "General Assessment"). The Board shall establish the General Assessment to be paid for each Lot annually.
- ii. Amount of General Assessment and Increases.** The amount of the General Assessment shall be the same for each Lot. The Board shall fix the amount of the General Assessments and any increases thereto, and shall mail written notice of that amount to the post office address of each Lot at least thirty (30) days before the due date. The Board shall prescribe the manner in which the General Assessment shall be paid.
- iii. Due date of General Assessment.** The due date for the General Assessment shall be January 31, unless the Board fixes another date.
- C. Special Assessments.** In addition to such other Special Assessments as may be authorized by these Restrictions, the Board may levy in any fiscal year a Special Assessment applicable to that year and not more than the next four (4) succeeding fiscal years for the purpose of defraying, in whole or in part, the cost of any construction, repair or replacement of a

capital improvement upon the Common Area, including fixtures and personal property relating thereto, provided that any such Special Assessment shall have the assent of a majority of the votes of Members who vote in person or by proxy at a meeting of such Members duly called for this purpose.

- D. **Certification Regarding Assessments.** Upon request by an Owner, the Association shall provide such Owner, or such other person as the Owner may direct, a written certificate signed by an officer of the Association stating that the Assessments, whether general or special, relating to the Owner's Lot have been paid or remain unpaid, in whole or in part, as the case may be. If any assessment remains unpaid, the certificate shall state the amount still owing, including, if applicable, late fees, attorneys' fees and costs of collection incurred to the date of the certificate.
- E. **Annual Budget.** By a majority vote of the directors, the Board shall adopt an annual budget for the subsequent fiscal year, which shall provide for allocation of expenses in such a manner that the obligations imposed by this Declaration and Restrictions will be met.
- F. **Suspension of Privileges of Membership.** Notwithstanding any other provision contained herein, the Board or the Association shall have the right to suspend the voting rights, if any, and the services to be provided by the Association, together with the right to use the facilities of the Association, including Common Areas, of any Member or any member of the Member's household:
 - i. For any period during which any assessment, or any part thereof, made by the Association on such Member's Lot is unpaid;
 - ii. During the period of any continuing violation of these Restrictions, after notice of the existence of the violation is provided to the Member;
 - iii. During the period of any violation of the Articles of Incorporation of the Association, By-Laws of the Association, or regulations of the Association.

11. REMEDIES

- A. **In General.** In addition to any other remedies provided to the Association herein, and any remedies available at law or in equity, the Association or any party to whom these Restrictions inure, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, or to force compliance with these Restrictions and Covenants, together with the right to collect costs and reasonable

attorneys' fees, but the Association shall not be liable for damages of any kind to any person for failing either to abide by, enforce, or carry out any of these Restrictions.

B. Effect of Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of these Restrictions shall be held to be a waiver by that party of any right available to that party upon the occurrence, reoccurrence or continuation of such violation or violations. Neither shall any such delay or failure act as an estoppel of any aggrieved party to assert any available remedy.

C. Enforcement by Town. These Restrictions may be enforced by the Town or any agency thereof, pursuant to whatever powers or procedures are statutorily available to it for such purpose.

12. EFFECT OF BECOMING AN OWNER.

The Owners of any Lot subject to these Restrictions, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, accepts such deed and executes such contract subject to each and every Restriction and agreement contained in these Restrictions. By acceptance of such deed or execution of such contract, the Owner acknowledges and accepts the rights and powers of the Association, the Board and the Committee with respect to these Restrictions. Such Owners, for themselves, their heirs, personal representatives, successors and assigns, covenant and agree and consent to and with the Association, the Board and the Committee, and to and with the Owners and subsequent Owners of each of the Lots affected by these Restrictions to keep, observe, comply with, abide by and perform these Restrictions and the By-laws and regulations of the Association.

13. TITLES.

The titles preceding the various paragraphs and sub-paragraphs of the Restrictions are for convenience of reference only and none of them shall be used as an aid to the construction of any provision of the Restrictions. Wherever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

14 DURATION.

The foregoing Covenants and Restrictions are to run with the land and shall be binding on all persons or entities claiming under them or subject to them until changed in whole or in part by vote of those persons who are then the Owners of two-thirds (2/3) of the numbered Lots in Covington Estates, with each lot receiving one vote irrespective of the number of owners of the lot.

15. SEVERABILITY.

If any Restriction, or any part thereof is held to be invalid, void, or unenforceable, or to lack the quality of running with the land, that holding shall have no effect on the remaining Restrictions, and the remaining Restrictions shall remain in full force and effect and these Restrictions shall be construed in all respects as if such invalid, void, or unenforceable provision were omitted.

16. AMENDMENT.

This Declaration and these Restrictions may be amended at any time by an instrument signed by an officer of the Association acting pursuant to the authority granted by not less than two-thirds (2/3) of the votes of the Members cast, in person or by proxy, at a meeting duly called for the purpose of amending this Declaration and these Restrictions, with each lot receiving one vote irrespective of the number of owners of the lot. Any Amendment shall be effective on the date it is recorded in the Office of the Recorder of Hamilton County, Indiana.

SO DECLARED:

DATE

Robert Kane, President
Covington Estates Homeowner's
Association, Inc.

Carol Van Buskirk, Secretary
Covington Estates Homeowner's
Association, Inc.

This Instrument was prepared by;

Timothy J. O'Connor
Attorney at Law
O'CONNOR & AUERSCH
4309 S. East Street
Indianapolis, IN 46227
(317) 784-8484

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.

Timothy J. O'Connor