

MASTER

**DEDICATION AND DECLARATION OF PROTECTIVE RESTRICTIONS,  
COVENANTS, LIMITATIONS, EASEMENTS AND APPROVALS APPENDED  
AS TO PART OF THE DEDICATION AND PLAT OF  
COVINGTON RESERVE, PHASE III, SECTION II  
A SUBDIVISION IN ABOITE TOWNSHIP, ALLEN COUNTY, INDIANA**

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Southwest Development at Covington Road II, L.L.C., an Indiana limited liability company, hereby declares that it is the Owner of real estate described in Exhibit A which is attached hereto, and does hereby lay off, plat and subdivide said real estate in accordance with the information shown on the final plat, being the certified plat appended hereto and incorporated herein. The subdivision shall be known and designated as Covington Reserve, Phase III, Section II, a subdivision in Aboite Township, Allen County, Indiana.

The Lots shall be subject to and impressed with the covenants, agreements, restrictions, easements and limitations hereinafter set forth, and they shall be considered a part of every conveyance of land in said Subdivision without being written therein. The provisions herein contained are for the mutual benefit and protection of the Owners present and future of any and all land in the Subdivision, and they shall run with and bind the land and shall inure to the benefit of and be enforceable by the Owners of land included therein, their respective legal representatives, successors, grantees and assigns.

The Lots of Covington Reserve, Phase III, Section II, are numbered from [REDACTED] inclusive, and all dimensions are shown in feet and decimals of a foot on the plat. All streets and easements specifically shown or described are hereby expressly dedicated to public use for their usual and intended purposes.

**ARTICLE I**

**DEFINITIONS**

**Section 1.** "Architectural Control Committee" shall mean The Architectural Control Committee, composed of three members initially appointed by the Developer. After the sale of one-half (½) of the Lots in the subdivision, the members shall be subject to removal by the Association at any time with or without cause. Any vacancies from time to time shall be filled pursuant to the By-laws of the Association.

Section 2. "Association" shall mean and refer to the Covington Reserve Phase III Community Association, Inc., its successors and assigns.

Section 3. "Builder" shall mean a builder or builders who shall be designated by the Developer for the purpose of building the Units.

Section 4. "By-laws" shall mean the "By-laws" initially adopted by Covington Reserve Phase III Community Association, Inc. and all amendments and additions thereto.

Section 5. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners.

Section 6. "Developer" shall mean and refer to Southwest Development at Covington Road II, L.L.C., its successors and assigns.

Section 7. "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 8. "Lot" shall mean any type of Lot as have 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 platted upon restrictions as herein set out or such further restrictions as may be imposed by any applicable zoning ordinance.

Section 9. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 10. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be added to and brought within the jurisdiction of the Association.

Section 11. "Restrictions" shall mean and refer to the Dedication, Protective Restrictions, Covenants, Limitations, Easements and Approvals appended to as part of the Dedication and Plat of Covington Reserve, Phase III, Section II.

Section 12. "Subdivision" shall mean Covington Reserve, Phase III, Section I and II, and such future sections as may be added by the developer, a subdivision located in Aboite Township, Allen County, Indiana.

## ARTICLE II

### PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be owned by The Association, and which shall be appurtenant to and shall pass with the title to every Lot, 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 voting rights and right to the use of the recreational facilities by an Owner for any period during which any assessments against the Owner's Lot remains unpaid; and for a period not to exceed 30 days for any infraction of its published rules and regulations after hearing by the Board of Directors of the Association;

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Class B members. At such time as the Class B membership ceases in accordance with Section 2 of Article III hereof, no further dedication or transfer by the Association of any part of the Common Area to any public agency, authority or utility shall be effective unless an instrument signed by two-thirds (2/3) of the Class A members agreeing to such dedication or transfer has been recorded.

(d) access to the Common Areas shall be only at such locations where said Common Areas adjoin public roads. Existence of Common Areas shall not be deemed to have granted or created any easement, either actual, implied or constructive, over the property of any Owner for access to or use of the Common Areas.

Section 2. 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 3. Additions to Common Area. The Developer reserves the right so long as Class B members of the Association exist, to convey and transfer to the Association such additional real and/or personal property as the Developer within its sole discretion deems appropriate, and the Association shall accept such transfer and shall hold such property as a part of the Common Area of the Subdivision, subject to the review and approval of Allen County.

### ARTICLE III

#### ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot in the Subdivision shall be a member of the Association. As a member of the Association, Lot Owners shall be subject to all covenants, restrictions, and assessments of the Association. The membership shall be appurtenant to and may not be separated from Ownership of a Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting memberships:

Class A. Class A members shall be all Owners of Lots in the Subdivision except Southwest Development at Covington Road II, L.L.C. and such members shall be entitled to one vote for each Lot owned. When more than one person holds an 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.

Class B. Class B member(s) shall be Southwest Development at Covington Road II, L.L.C., and said member shall be entitled to four (4) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when title to all Lots in all sections of the Subdivision have been conveyed, or
- (b) on December 31, 2006.

#### ARTICLE IV

#### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot, excepting Southwest Development at Covington Road II, L.L.C., by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) monthly assessments, (2) special assessments for capital improvements, (3) tax recoupment assessments, and (4) storm water system maintenance (as provided in Sections 2, 3, 7 and 8, respectively, of Article V); such assessments to be established and collected as hereinafter provided. All assessments or any installments thereof which are not paid when due shall bear interest at a fluctuating rate equal to the maximum rate of interest which may be charged under the laws of the State of Indiana for consumer loans, adjusted on the first day of each calendar year. If any Owner shall fail, refuse or neglect to make any payment of any assessment when due, the Board of Directors of the Association may in its discretion declare the entire balance of unpaid assessments for the Assessment Period as hereinafter defined to be due and payable, with interest as aforesaid, and file a written Notice of Lien against said Owner's Lot in the office of the Recorder of Allen County, Indiana, which Notice of Lien shall perfect the lien of the Association and have the same force and effect as, to be enforced in the same manner as, a mortgage lien under Indiana law, and shall include the attorney's fees, title expenses, interest and any costs of collection.

Section 2. Subordination of the Lien to Mortgage. The lien of any assessments provided for in Articles V and VI shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a judgment and court order on a foreclosure of any first mortgage, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 3. No Exemption from Assessment. No Lot Owner may become exempt from paying any Assessments pursuant to these covenants and restrictions by any waiver of use or abandonment or any other action with respect to the Owner's Lot.

## ARTICLE V

### ASSOCIATION ASSESSMENTS

**Section 1. Purpose of 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 the Subdivision, and in particular for the improvement and maintenance of ponds and streams, entrance ways and all other Common Areas, payment of certain utility expenses and exterior portions of the Dwelling Units, including but not limited to, repair, maintenance, the cost of labor, equipment and materials, supervision, security, lighting, snow removal, the providing of neighborhood security, and all other things necessary or desirable in the opinion of the Board of Directors of the Association in connection therewith.

**Section 2. Maximum Monthly Assessments.** Until January 1 of the year immediately following the conveyance by the developer of the first Lot to an Owner, the maximum monthly assessment ("Monthly Assessment") shall be One Hundred Forty Dollars (\$140.00) per month per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the Board of Directors shall fix the Monthly Assessment for the following year ("the Assessment Period"). The maximum Monthly Assessment may be increased each year by the Board of Directors not more than 15% above the maximum assessment for the previous year together with any estimate increase in the utility expenses being borne by the association which estimate shall be separately set forth, without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Monthly Assessment may be increased above 15% only if proposed by the Board of Directors and approved by the vote or written assent of 51% of each class of members.

(c) Service Charge. A Lot Owner who failed to pay the required Monthly Assessment within five (5) days of its due date shall be subject to a \$5.00 per day service fee, retroactive to the due date.

**Section 3. Special Assessment For Capital Improvements.** In addition to the Monthly 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 thereto, provided that any such assessment shall have the vote or written assent of 51% of each class of members.

**Section 4. Notice and Quorum For Any Action Authorized Under Sections 2 and 3.** Any action authorized under Sections 2 or 3 of this Article V and requiring a vote or written assent of a certain percentage of the Association membership shall be taken at a meeting called for that purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite 51% of each class of members, members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by the appropriate officers of the Association not later than 30 days from the date of such meeting.

**Section 5. Uniform Rate of Assessment.** Except as hereinafter provided, both monthly assessments and special assessments except the structural insurance assessment must be fixed at a uniform rate for all Lots, may be collected on a monthly, quarterly or yearly basis. The Board of Directors of the Association may reduce the monthly assessment by an amount not exceeding fifteen (15%) percent of said assessment when in their sole discretion they determine that the full assessment is not applicable to any individual Lot because of the nature of the dwelling or services required by said Lot.

**Section 6. Date of Commencement of Monthly Assessments: Due Date.** The Monthly Assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the first Lot to an Owner. The Board of Directors shall fix the amount of the Monthly Assessment against each Lot at least thirty (30) days in advance of each Monthly Assessment Period. Written notice of the Monthly Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. 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 7. Tax Recoupment Assessment.** In addition to all other assessments provided for in this Article V, the Association may levy in any assessment year, an assessment ("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 of 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 plat 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.

**Section 8. Storm Water System Maintenance.** The Association shall be obligated to maintain, repair and/or replace, if necessary, the storm water drainage system and any current or future Storm Water Detention Basin together with its outlet and water level control structures, as filed with the Allen County Plan Commission in conjunction with this subdivision approval of which has been granted for the use and benefit of this section of this subdivision, and of further sections of Covington Reserve, the cost of which shall be assessed in accordance with Section 6 hereof.

The Owner of any Lot in the Subdivision 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.

**Section 9. Assignments.** The Association may assign its rights and duties granted by these Restrictions to an entity chosen by the Association. Pending such assignment the rights and obligations shall be assumed by the developer.

## ARTICLE VI

### ARCHITECTURAL CONTROL

No building, fence, wall, swimming pool, pond, spa or other structure shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein 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 to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Control Committee. Neither the Developer, the Architectural Control Committee, nor any member thereof, nor any of their respective heirs, personal representatives, successors or assigns, shall be liable to anyone by reason of any mistake in judgment, negligence, or nonfeasance arising out of or relating to the approval or disapproval or failure to approve any plans so submitted, nor shall they, or any of them, be responsible or liable for any structural defects in such plans or in any building or structure erected according to such plans or any drainage problems resulting therefrom. Every person and entity who submits plans to the Architectural Control Committee agrees by submission of such plans, that he or it will not bring any action or suit against the Committee or the Developer to recover any damages or to require the Committee or the Developer 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 therewith. Neither the submission of any complete sets of plans to the Developer's office for review by the Architectural Control Committee, nor the approval thereof by that Committee, shall be deemed to guarantee or require the actual construction of the building or structure therein described, and no adjacent Lot Owner may claim any reliance upon the submission and/or approval of any such plans or the buildings or structures described therein.

## ARTICLE VII

### GENERAL PROVISIONS

Section 1. Residential Purpose. 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 of said structure and attached thereto.

Section 2. Builder. Developer shall designate a Builder or Builders for the purpose of promoting the efficient and orderly development of Covington Reserve and in order to assure quality and consistency of design and construction of the Dwelling Units. The Builder(s) shall have the right to purchase Lots for the purpose of building and reselling Dwelling Units on Lots sold by Developer to individual purchaser.

Section 3. Home Occupations. No Lot 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 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 purpose 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; provided that, in no event shall a barber shop, styling salon, beauty 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, be construed as a home occupation.

**Section 4. Dwelling Unit and Lot Size.** All Dwelling Units shall have the following square footage restrictions which are exclusive of porches and garages: minimum of 1226 s.f. per Dwelling Unit. All Lots shall meet the minimum Lot width and size in accordance with the requirements of the Allen County Zoning Ordinance for land zoned RSP-1.

**Section 5. Garages.** All Dwelling Units must have a full size attached garage of at least 20 feet by 20 feet. Each residence shall have a garage which shall be maintained for the purpose of storing automobiles. Garage doors shall normally remain closed. No driveway access shall be off of or on to Covington Road.

**Section 6. 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 lines shown on the recorded plat, unless said reduction in distance is approved by an authorized representative of the Allen County Department of Planning Services in accordance with the requirements of the Allen County Zoning Ordinance as amended. as follows:

Front yard:	25 feet
Side yard:	5 feet
Rear yard:	25 feet

**Section 7. Utility Easement.** 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). Nothing herein shall be construed to 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. All such easements dedicated on the face of the plat shall be kept free of all permanent structures, that any structure, shrubbery, trees, or other installation thereon, whether temporary or permanent, shall be subject to the paramount right of the entities for which such easements are intended to benefit, to install, repair, maintain or place their utility or sewage facilities, and that the removal of any such obstructions by utilities or sewage treatment works shall in no way obligate them either in damages or to restore the obstruction to its original form.

**Section 8. Surface Drain.** 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. All such easements dedicated on the face of the plat shall be kept free of all permanent structures, that any structure, shrubbery, trees, or other installation thereon, whether temporary or permanent, shall be subject to the paramount right of the entities for which such easements are intended to benefit, to install, repair, maintain or place their utility or sewage facilities, and that the removal of any such obstructions by utilities or sewage treatment works shall in no way obligate them either in damages or to restore the obstruction to its original form.

**Section 9. Nuisance.** No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon 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 the occupants thereof, 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 thereof.

**Section 10. Temporary Structures and Storage.** 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 anytime, or used as a residence either temporarily or permanently.

**Section 11. Sign.** No sign of any kind shall be displayed to the public view on any Lot except as hereinafter provided. The Developer or Builder may display one sign of not more than five square feet, advertising such Lot for sale or rent, or signs used by a builder to advertise such Lot during the construction and sales period. A subsequent Owner may display one sign provided by the Association advertising the Dwelling Unit for sale or rent.

**Section 12. Radio and Television Antenna.** No radio or television masts, towers, poles, antennas, satellite dishes, or aerials may be erected, constructed, or maintained without the prior approval of the Architectural Control Committee.

**Section 13. Drilling, Refining, Quarrying 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 14. Pets and Animals.** Pets and animals shall be permitted, only as provided for in this Section.

(a) Animals and pets shall be restricted to cats, dogs, fish, domestic birds, hamsters, gerbils, turtles, guinea pigs and rabbits. 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 within any enclosed privacy area of the Dwelling Unit in which the dog or cat resides and/or is maintained.

(d) The owner/custodian of each animal and pet and/or the individual walking same, shall be required to clean up after the pet/animal.

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

(f) The pet/animal owner and the Unit Owner of the Unit involved shall be strictly liable for damage caused to the Common Area by the pet/animal.

(g) Any pet/animal owner's right to have a pet/animal reside in or visit the Subdivision shall have such right revoked if the pet/animal shall create a nuisance or shall become a nuisance as may be determined by the Board of Directors of the Association

**Section 15. Service Screening, Storage Areas.** Garbage and refuse shall be placed in containers, which shall be kept in the garage of the Dwelling Unit. Garbage cans and trash 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 16. 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 in the exterior construction of any Dwelling Unit or other permitted structure of any Lots of said Subdivision 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 of said Lots.

**Section 17. Driveways and Sidewalks.** All driveways from the street to the garage shall be poured concrete or asphalt and not less than sixteen (16) feet in width for a unit with a front load garage and no less than ten (10) feet in width for a unit with a side load garage. Plans and specifications for this subdivision, on file with the Allen County 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.

**Section 18. 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 this Subdivision.

**Section 19. Use of Public Easements.** In addition to the utility easements herein designated, easements in the streets, as shown on this plat, are hereby 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 on Sections 7 and 8 or this Section 19 of this Article VII, 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 thereof as to maintenance and repair of said streets. All such easements dedicated on the face of the plat shall be kept free of all permanent structures, that any structure, shrubbery, trees, or other installation thereon, whether temporary or permanent, shall be subject to the paramount right of the entities for which such easements are intended to benefit, to install, repair, maintain or place their utility or sewage facilities, and that the removal of any such obstructions by utilities or sewage treatment works shall in no way obligate them either in damages or to restore the obstruction to its original form.

**Section 20. 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 21. Improvements.** Before any Dwelling Unit on any Lot in this Subdivision shall be used and occupied as a dwelling or as otherwise provided by the Subdivision restrictions above, the developer or any subsequent Owner of said Lot shall install improvements serving said Lot provided in said plans and specifications for this Addition filed with the County of Allen. This covenant shall run with the land and be enforceable by the County of Allen, State of Indiana, or by any aggrieved Lot Owner in this Subdivision.

**Section 22. Permits and Certificates.** Before any Dwelling Unit located on any Lot may be used or occupied such user or occupier shall first obtain from the Allen County Zoning Administrator an Improvement Location Permit and a Certificate of Occupancy as required by the Allen County Zoning Ordinance.

**Section 23. Pools and Other Outdoor Recreational Equipment.** No in-ground pool or above-ground pool or other outdoor recreational equipment, including by way of example and not limitation, swing sets, slides and sandboxes shall be placed or maintained on any Lot.

**Section 24. Fencing.** No fencing shall be permitted without the prior approval of the Architectural Control Committee. The installation of new fences shall comply with the current standards as set forth in the Allen County Zoning Ordinance.

**Section 25. Mailboxes.** Type, location and installation of mailboxes shall be the responsibility of the Developer.

**Section 26. Time for Building Completion and Restoration.** Every Dwelling Unit on any Lot in the Subdivision shall be completed within twelve (12) months after the beginning of such 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 three (3) months from the time of such destruction or damage.

**Section 27. Enforceability.** The Association, or the Developer, 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 and restrictions. Failure by the Association or the Developer to enforce any covenant or restriction herein contained 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 28. Right of Entry.** The Developer and the Association, acting through their respective representatives, shall have the right, during reasonable hours, to enter upon and inspect the Lot and Dwelling Unit, whether prior to, during, or after the completion of, any construction, for purposes of determining whether or not the provisions of these restrictions are being complied with and exercising all rights and powers conferred upon the Developer, the Architectural Control Committee and the Association with respect to the enforcement or correction or remedy of any failure of the Owner to observe these restrictions, and the Developer, the Architectural Control Committee and the Association and such representatives shall not be deemed to have committed a trespass as a result thereof. Notwithstanding the foregoing, an occupied Dwelling Unit may not be entered hereunder unless written notice of such proposed entry shall have been given to the Owner at least five (5) days prior to such entry.

**Section 29. Partial Invalidation.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.

**Section 30. Covenants, Restrictions and Extensions.** The covenants and restrictions herein contained shall run with the land, and be effective for a term of twenty(20) years from the date these covenants and restrictions are recorded, after which time they shall automatically be extended for successive periods of ten (10) years; provided these covenants and restrictions may be amended by an instrument signed by not less than 75% of the Lot Owners, and provided further, the Developer, its successors or assigns shall, with the approval of the Allen County Plan Commission, have the exclusive right for a period of two (2) years from the date of recording of the plat to amend any of the Covenants and Restrictions.

**Section 31. Subdivision of Lot.** No Lot or combination of Lots may be further subdivided unless 75% of the Lot Owners have approved by signing an instrument of approval and until said approval has been obtained from the Allen County Plan Commission.

**Section 32. Exterior Building Surface.** All exterior building surfaces, materials and colors shall be harmonious and compatible with colors of the natural surrounding and other Dwelling Units. The Architectural Control Committee shall have the right to approve or disapprove materials and colors so controlled.

**Section 33. Fires.** No outdoor fires for the purpose of burning leaves, grass or other forms of trash shall be permitted to burn upon any street, roadway or Lot in this subdivision, other than that as related to the construction of a Dwelling Unit.

**Section 34. Cost and Attorney Fees.** In any proceeding arising because of the failure of an Owner to pay any assessments or amounts due pursuant to this Declaration, the By-Laws or any rules and regulations adopted pursuant thereto, as each may be amended from time-to-time, the Association shall be entitled to recover its costs, to include its reasonable attorney's fees.

**Section 35. Annexation.** Additional properties may be annexed by Developer and made subject to this Declaration. Said additional properties may be developed for condominiums, villas and single family residences. Said annexation may be perfected without the consent of the Owners.

**Section 36. Flood Protection Grade.** In order to minimize potential damages from surface water, flood protection grades are hereby established as set forth below. All dwellings shall be constructed at or above the minimum flood protection grades; such grades shall be the minimum elevation of the first floor or the minimum sill elevation of any opening below the first floor. The flood protection grades for Lots 101, 104, 105, 108, and 109 are 830.30 feet Mean Sea Level.

**Section 37. 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, 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 38. Parking.** Regular overnight parking of all passenger vehicles will be in garages. Passenger vehicles may be occasionally parked in the unit's driveways or in other areas designated by the Association. Overnight parking of all passenger vehicles will be in garages or in other areas designated by the Association. Passenger vehicles may occasionally be parked in the unit driveways. Overnight parking of all other vehicles and recreational equipment, including boats and campers, shall be in garages. No buses, tractor trailers or semi-trucks shall be parked 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 of the Property.

**Section 39. Clothes Lines.** No outdoor clothes lines or other outdoor clothes drying apparatus or equipment shall be permitted on any Lot.

**Section 40. Lease Restrictions.** No Owner of a Dwelling Unit may lease said Dwelling Unit for a period of less than one year.

**Section 41. Severability.** Should any provision of this Declaration be determined to be void or unenforceable, such determination shall not be deemed to affect the remaining provisions of the declaration, which shall remain in full force and effect.

**SOUTHWEST DEVELOPMENT  
AT COVINGTON ROAD II, L.L.C.**

By: Gregory C. Walbridge  
Gregory C. Walbridge, Member

STATE OF INDIANA )  
 ) SS:  
COUNTY OF ALLEN )  
 ST. JOSEPH )

**My Commission Expires:**

October 25, 2006

**Name Printed:**

Stephen Rudisell  
Stephen Rudisell Notary Public  
 Resident of St. Joseph County, Indiana

This instrument prepared by: G. William Fishering (6854-02), Beers Mellers Backs & Salin, LLP  
110 W. Berry Street, Suite 1100, Fort Wayne, IN 46802

## **EXHIBIT A**

### **LEGAL DESCRIPTION:**

#### **COVINGTON RESERVE, PHASE III, SECTION II**

A PART OF THE NORTHWEST QUARTER OF SECTION 14, IN TOWNSHIP 30 NORTH, RANGE 11 EAST, ABOITE TOWNSHIP, ALLEN COUNTY, INDIANA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID SECTION 14, WHICH CORNER BEING MARKED BY A HARRISON MONUMENT (0.5 FEET BELOW GROUND); THENCE SOUTH 89 DEGREES 56 MINUTES 44 SECONDS EAST ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 329.00 FEET; THENCE SOUTH 0 DEGREES 16 MINUTES 37 SECONDS WEST, A DISTANCE OF 414.25 FEET TO THE NORTHWEST CORNER OF BLOCK "B" IN COVINGTON PLACE AS RECORDED IN PLAT BOOK 48, PAGE 71 IN THE OFFICE OF RECORDER OF SAID COUNTY; THENCE CONTINUING SOUTH 0 DEGREES 16 MINUTES 37 SECONDS WEST ALONG THE WEST LINE OF SAID COVINGTON PLACE, A DISTANCE OF 482.99 FEET; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 147.76 FEET; THENCE NORTH 87 DEGREES 29 MINUTES 54 SECONDS WEST, A DISTANCE OF 50.00 FEET TO A POINT OF CURVATURE OF A NON-TANGENT CURVE, CONCAVE TO THE EAST, HAVING A RADIUS OF 550.00 FEET, A CENTRAL ANGLE OF 5 DEGREES 16 MINUTES 55 SECONDS, AND A CHORD OF 50.68 FEET BEARING NORTH 5 DEGREES 08 MINUTES 33 SECONDS EAST; THENCE ALONG SAID CURVE, A DISTANCE OF 50.70 FEET; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 134.39 FEET TO THE EAST LINE OF COVINGTON RESERVE, SECTION I AS RECORDED UNDER DOCUMENT NUMBER 96-22701 IN PLAT CABINET "C", PAGE 98 IN THE OFFICE THE RECORDER OF SAID COUNTY WHICH POINT ALSO, BEING NORTH 0 DEGREES 18 MINUTES 53 SECONDS EAST, A DISTANCE OF 1801.76 FEET FROM THE WEST QUARTER CORNER OF SAID SECTION 14 MARKED BY A RAIL POST; THENCE NORTH 0 DEGREES 11 MINUTES 49 SECONDS EAST ALONG SAID EAST LINE AND THE EAST LINE OF A TRACT OF LAND AS RECORDED UNDER DOCUMENT NUMBER 7108587 IN THE OFFICE OF SAID RECORDER, ALSO BEING THE WEST LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 844.89 FEET TO THE POINT OF BEGINNING, CONTAINING 6.604 ACRES, MORE OR LESS; AND, SUBJECT TO RIGHT OF WAY, EASEMENTS, COVENANTS, AND RESTRICTIONS OF RECORD.

LINE BEARINGS ARE WITH REFERENCE TO SAID MONUMENTS FOUND MARKING THE NORTHWEST CORNER AND THE WEST QUARTER CORNER OF SAID SECTION 14, WITH AN ASSUMED BEARING OF SOUTH 0 DEGREES 16 MINUTES 37 SECONDS WEST FROM SAID NORTHWEST CORNER.